



Arizona House of Representatives House Majority Research MEMORANDUM

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To: JOINT LEGISLATIVE AUDIT COMMITTEE
Representative David Burnell Smith, Co-Chair
Senator John Huppenthal, Co-Chair

Date: December 13, 2005

Subject: Sunset Review of the Election Officer Education, Training and Certification Advisory Committee

Attached is the final report of the sunset review of the Election Officer Education Training and Certification Advisory Committee, which was conducted by the House of Representatives Judiciary and Senate Judiciary Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona
The Honorable Janet Napolitano

President of the Senate
Senator Ken Bennett

Speaker of the House of Representatives
Representative James P. Weiers

Senate Members
Senator John Huppenthal, Co-Chair
Senator Linda Aguirre
Senator Jack Harper
Senator Dean Martin
Senator Richard Miranda

House Members
Representative David Burnell Smith, Co-Chair
Representative Steve Gallardo
Representative Ben Miranda
Representative Doug Quellan
Representative Steven Yarbrough

Election Officer Education, Training and Certification Advisory Committee
Arizona State Library, Archives & Public Records
Office of the Auditor General

Senate Majority Staff
Senate Research Staff
Senate Minority Staff
Senate Resource Center

House Majority Staff
House Research Staff
House Minority Staff
Chief Clerk

*House of Representatives Judiciary
and Senate Judiciary
Committee of Reference Report*

ELECTION OFFICER EDUCATION, TRAINING AND CERTIFICATION ADVISORY COMMITTEE

Background

Pursuant to A.R.S. § 41-2953, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Election Officer Education, Training and Certification Advisory Committee (Committee) to the House of Representatives Judiciary and Senate Judiciary Committee of Reference (COR).

The Committee was established in 1987 to assure the public that persons performing duties of an election officer are knowledgeable in the technical, legal and administrative aspects of conducting elections and are competent to perform election duties. (See Laws 1985 Ch. 214 §§ 1 and 5)

The Committee is made up of the following members:

- An Assistant Attorney General appointed by the Attorney General
- Three election officers, deputy county election officers or county recorders appointed by the Secretary of State
- A training coordinator in the office of the Secretary of State appointed by the Secretary of State

The Election Officer Education, Training and Certification Advisory Committee evaluates:

- The curriculum proposed by the Secretary of State for the election officer certification program.
- The procedures proposed by the Secretary of State for evaluation of participants.
- The form and content of all examinations given in the election officer certification program.

The Secretary of State is directed by state law to provide for election officer certification programs where successful participants obtain election officer certificates. These certificates attest to the attendance at, participation in, and completion of a course of instruction in the technical, legal, and administrative aspects of conducting elections within Arizona.

Except for elected officials, clerical and secretarial personnel, counting center personnel, precinct election board and tally board members and election officials in cities and towns, no person may perform the duties or exercise the authority of an election officer or of the clerk of the board of supervisors, or the county recorder in performance of election duties unless the person is the holder of an election officer's certificate issued by the Secretary of State before January 1st of each general election year.

(See A.R.S. § 16-407)

Committee of Reference Sunset Review Procedures

The COR held one public meeting on December 13, 2005 to review the Election Officer Education, Training and Certification Advisory Committee's response to the 12 sunset factors as well as 4 additional questions, as required by A.R.S. § 41-2954. The COR took public testimony from the Secretary of State's Office, county recorders, elections directors, and a city clerk.

Committee of Reference Recommendations

The COR recommended that the Election Officer Education, Training and Certification Advisory Committee be continued for ten years.

Attachments

1. Response provided to committee of Reference from the Secretary of State
2. Meeting Notice
3. Minutes of the COR Meeting.

COMMITTEE OF REFERENCE REPORT

House of Representatives Committee on Judiciary and Senate Committee on Judiciary
Committee of Reference

ELECTION OFFICER EDUCATION, TRAINING AND
CERTIFICATION ADVISORY COMMITTEE

To: JOINT LEGISLATIVE AUDIT COMMITTEE
Representative Laura Knaperek, Co-Chair
Senator Robert Blendu, Co-Chair

Date: December 13, 2005

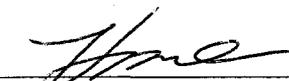
Pursuant to Title 41, Chapter 27, Arizona Revised Statutes, the Committee of Reference, after performing a sunset review and conducting a public hearing, recommends the following:

The Election Officer Education, Training and Certification Advisory Committee be continued for ten years.

COMMITTEE OF REFERENCE



Representative David Smith, Co-Chair



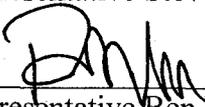
Senator John Huppenthal, Co-Chair



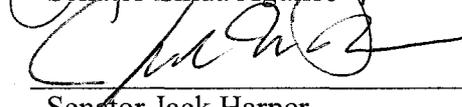
Representative Steve Gallardo



Senator Linda Aguirre



Representative Ben Miranda



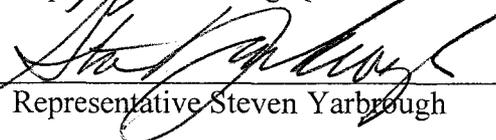
Senator Jack Harper



Representative Doug Quelland



Senator Dean Martin



Representative Steven Yarbrough



Senator Richard Miranda



JAN BREWER
SECRETARY OF STATE
STATE OF ARIZONA

August 31, 2005

The Honorable David Burnell Smith
Arizona House of Representatives
1700 W. Washington, Suite H
Phoenix, Arizona 85007-2844

Dear Representative Smith:

Thank you for your letter dated August 17, 2005, regarding the legislative Committee of Reference's sunset review of the Election Officer Education, Training and Certification Advisory Committee law set forth in A.R.S. § 16-407.

In addition to the comments provided in my letter dated August 1, 2005, the following are answers to the specific questions posed in your letter dated August 17, 2005, as required by A.R.S. § 41-2950:

1. The objective and purpose in establishing the agency.

Section 16-407 does not establish an "agency" as that term is ordinarily used. It establishes the Election Officer Education, Training and Certification Advisory Committee (Committee). The purpose of the Committee is to assure the public that persons who perform the duties of an election officer are knowledgeable in the technical, legal and administrative aspects of conducting elections and competent to perform election duties. See Laws 1996, Ch. 13, § 3.

2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.

The Committee has effectively and efficiently met its objectives in assuring the public that our State's election officers are knowledgeable in the technical, legal and administrative aspects of conducting elections and competent to perform election duties. Although the exact numbers are not known, hundreds of election officers have gone through the training program since its inception in 1987. In 2003, for example, the Secretary of State issued 232 diplomas to Arizona election officials.

3. The extent to which the agency has operated within the public interest.

The Committee has operated within the public interest since its inception. Elections by definition are a matter of important public interest. To the extent the Committee has

assisted the Secretary of State in providing top quality training to our State's elections officers, the public interest has been well served.

4. The extent to which rules adopted by the agency are consistent with the legislative mandate.

No rules have been adopted by the Committee or the Secretary of State with regard to A.R.S. § 16-407.

5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

No rules have been adopted by the Committee or the Secretary of State with regard to A.R.S. § 16-407.

6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.

To the best of our knowledge, the Committee has not received any formal complaints regarding its tasks or the Election Officer Education, Training and Certification program. Feedback is encouraged from the election officers attending the training and that feedback is used when considering future curriculums.

7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

The Arizona Attorney General has enforcement authority over all of Title 16, which includes any violation of A.R.S. § 16-407. See A.R.S. § 16-1021.

8. The extent to which agencies have addressed deficiencies in their enabling statutes which prevent them from fulfilling their statutory mandate.

No such action was taken to address any deficiencies in the Secretary of State's enabling statutes.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in this subsection.

No changes in the laws of the agency are necessary to comply with the factors listed in A.R.S. § 16-407.

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare.

As stated in my letter dated August 1, 2005, the Election Officer Education, Training and Certification Advisory Committee established in A.R.S. § 16-407(D), (E) & (F), has served a useful purpose in helping to develop the curriculum and method of evaluation for the training. Nevertheless, because the Secretary of State has successfully administered this training for several election cycles, it is our belief that having a formal advisory committee is no longer necessary. Our office meets regularly with the county election officials and will continue to consult with them regarding the training in a similar manner to that currently prescribed in subsections (D), (E) and (F). Thus, it is no longer necessary to have these responsibilities set forth in statute.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.

See response to Question 10 above.

12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.

To my knowledge, no private contractors have been used to perform the tasks required by A.R.S. § 16-407.

The following is our response to remaining questions posed in your letter:

1. An identification of the problem or the needs that the agency is intended to address.

The purpose of the Committee is to assure the public that persons who perform the duties of an election officer are knowledgeable in the technical, legal and administrative aspects of conducting elections and competent to perform election duties. See Laws 1996, Ch. 13, § 3.

2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.

The Committee has met its objectives in assuring the public that our State's election officers are knowledgeable in the technical, legal and administrative aspects of conducting elections and competent to perform election duties. Although the exact numbers are not known, hundreds of election officers have gone through the training

program since its inception in 1987. In 2003, for example, the Secretary of State issued 232 diplomas to Arizona election officials.

- 3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.**

There is no other agency to our knowledge that has a similar, conflicting or duplicate objective to that of the Committee.

- 4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.**

See response to Question 10 above.

. . .

The Election Officer Training program established in A.R.S. § 16-407 has proven to be an invaluable service to Arizona's election administrators and voters. As the reports filed with the Legislature every other December in accordance with A.R.S. § 16-407(G) establish, this program has trained and certified hundreds of Arizona's election administrators over the past decade. This approach to training Arizona's election officials has contributed to greater uniformity and understanding of the election process by those officials charged with administering our elections.

The course consists of a weeklong training session that covers approximately 35 hours of intensive, practical, substantive and hands-on training of Arizona's election laws and procedures. For example, during the week each participant is required to spend four hours using a wheelchair in order to reinforce the training received in the disability awareness segment of each session. At the end of each week, participants are required to pass a comprehensive final exam.

Recognizing the value of the program, the Legislature this past session expanded it to allow city and town election officials to participate. See Laws 2005, Ch. 144, § 1. Moreover, because this course helps assure greater uniformity among our election administrators, it is our belief that it along with the Secretary of State's procedures manual, has helped eliminate the issues that plagued Florida during the 2000 presidential election. You may recall that a major issue in the Bush v. Gore case was the fact that Florida had no statewide election procedures and the counties were not applying the election laws uniformly in conducting the recount. This training helps ensure that all Arizona election officials uniformly apply the law.

The Honorable David Burnell Smith
August 31, 2005
Page 5 of 5

It is therefore our recommendation that A.R.S. § 16-407 be renewed indefinitely, but for the reason stated in response to Question 10 above, A.R.S. § 16-407(D), (E) & (F), which create the Election Officer Education, Training and Certification Advisory Committee, be allowed to terminate on July 1, 2006 in accordance with A.R.S. § 41-3006.07(B).

If you have any questions, please do not hesitate to call me at (602) 542-6167 or contact me by email at jkanefield@azsos.gov.

Sincerely,



Joseph Kanefield
State Election Director

cc: Katy Proctor
The Honorable John Huppenthal
Jennifer Eugster, Senate Judiciary Analyst

JK

ARIZONA STATE LEGISLATURE

INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE JUDICIARY AND HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF THE ELECTION OFFICER EDUCATION, TRAINING AND CERTIFICATION ADVISORY COMMITTEE

Date: Tuesday, December 13, 2005

Time: 1:00 p.m.

Place: House Hearing Room 5

AGENDA

1. Call to Order
2. Opening Remarks
3. Presentation by the Election Officer Education, Training and Certification Advisory Committee
4. Public Testimony
5. Discussion
6. Recommendations by the Committee of Reference
7. Adjourn

Members:

Senator John Huppenthal, Co-Chair
Senator Linda Aguirre
Senator Jack Harper
Senator Dean Martin
Senator Richard Miranda

Representative David Burnell Smith, Co-Chair
Representative Steve Gallardo
Representative Ben Miranda
Representative Doug Quelland
Representative Steven Yarbrough

11/16/05
jmb

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

ARIZONA STATE LEGISLATURE
Forty-seventh Legislature – First Regular Session

SENATE JUDICIARY AND HOUSE OF REPRESENTATIVES JUDICIARY
COMMITTEE OF REFERENCE FOR THE SUNSET HEARING OF THE ELECTION
OFFICER EDUCATION, TRAINING AND CERTIFICATION ADVISORY
COMMITTEE

Minutes of Meeting
Tuesday, December 13, 2005
HHR5 -- 1:00 pm

Chairman David Burnell Smith called the meeting to order at 1:07 pm and attendance was noted by the secretary.

Members Present

Senator Linda Aguirre
Senator Jack Harper
Senator Richard Miranda
Representative Steve Gallardo
Representative Ben Miranda

Representative Doug Quelland
Representative Steven Yarbrough
Senator John Huppenthal - Cochair
Representative David Burnell Smith - Cochair

Members Absent

Senator Dean Martin

Speakers Present

Katy Proctor, Legislative Analyst
Joseph Kanefield, State Election Director, Secretary of State
Karen Osborne, Maricopa County Elections Director
Mary Jo Kief, City Clerk, Peoria
Penny Pew, Apache County Elections Director
Helen Purcell, Maricopa County Recorder
Ana Wayman-Trujillo, Yavapai County Recorder
Brad Nelson, President, Election Officials of Arizona

Opening Remarks

Katy Proctor, Legislative Analyst, explained that the sunset review process is a tool used in Arizona to evaluate an agency to determine if the merits of the program justify its continuation. All agencies, boards and commissions are subject to this review. Sunset reviews are based on sunset audits conducted either by the office of the Auditor General or Legislative Committee of

Reference. In the case of the Election Officer Education, Training and Certification Advisory Committee, the audit was conducted by this Committee of Reference (COR). All agencies scheduled for sunset are assigned to a House and Senate COR. Today's Joint Committee of Reference provides an opportunity to discuss the audit, to receive testimony from agency officials and to provide an opportunity for public comment. The COR must submit a final sunset review report containing the COR recommendation to continue, revise, consolidate, or terminate this committee. The report is prepared by the legislative staff; legislation is required to continue the agency beyond its sunset termination date.

Public Testimony

Joseph Kanefield, State Election Director, Secretary of State, has taught the training classes and feels that they are incredibly valuable. He is on the record against allowing the statute to sunset. This committee is dealing with the advisory committee which is appointed by the Secretary of State to advise on the class curriculum. Mr. Kanefield feels that county input is vital, that the counties do not wish the advisory committee to sunset, that they like having their voices at the table and the working relationships that have been established. His organization takes no position on the sunset of the advisory committee.

Representative Smith asked if the committee does not sunset this law, does Mr. Kanefield have a recommendation about how long to continue. He replied that he does not have a recommendation, although to renew for another ten year period seems reasonable.

Representative Smith then asked why Mr. Kanefield changed from an earlier position in favor of sunsetting. He replied that the training is very valuable, but perhaps it could be continued not by statute, but by a procedures manual or other capacity. Either way, he supports the counties' wishes, and if they wish to continue by statute, then he supports that.

Representative Gallardo inquired if the committee would hear from county representatives. Representative Smith said that they would.

Karen Osborne, Maricopa County Elections Director, spoke of the importance of the training of election officers and election recorders in a unified manner. The committee is a good mix of trainers, and election officials have a good working relationship that allows them to react to changes in legislation and precinct requirements, and changes due to court cases or federal law. The training is cost-free and is serving Arizona well.

Senator Aguirre asked if Ms. Osborne would be in favor of another 10 years, rather than sunsetting this committee now. Ms. Osborne replied "yes, I agree".

Representative Smith asked about the 10-year figure, as opposed to 5 years or 6 years. Ms. Osborne replied that the 10-year figure is the standard sunset interim set by the Legislature.

Representative Miranda commented that, in view of Prop 200, the Legislature may have to go beyond ten years to assess the impact on the election system.

Mary Jo Kief, City Clerk, City of Peoria, has served in various capacities in the Secretary of State's office and has been involved with the certification committee since its inception. She stressed how important it is that persons performing the election duties be knowledgeable in the technical, legal, and administrative aspects of conducting elections. She wishes that the training programs were open to city and town clerks. She feels that the advisory committee is very important, and is against sunseting this program.

Penny Pew, Apache County Elections Director, stated that public perception of elections is important. That the training is defined by Statute gives the voting public greater confidence. She believes that the training is very necessary.

Representative Quelland asked about availability of polling places, and Ms. Pew replied that Apache County has plenty of polling places. He then asked if the committee could poll the other counties. Chairman Smith asked Ms. Purcell to speak to this, although it is off-topic.

Helen Purcell, Maricopa County Recorder, stated that there is a constant search to provide enough polling places. A recurring problem is that a polling place used in one election will not be available in the next election. Newly developed areas often don't have the facilities. Re-precincting has recently added over eighty precincts, and polling places must be identified for each of those.

Senator Harper said that he will be running a bill to reverse earlier legislation which allowed electioneering at polling places. He stated that the result from the earlier law has been that, if electioneering was allowed, fewer places have been willing to be polling places.

Ana Wayman-Trujillo, Yavapai County Recorder, stated that she agrees with other speakers about how important this advisory committee is. She has been a certified elections officer since 1998, and her experience of going to the classes was very valuable. Also, she stressed the importance of the working relationship among the Secretary of State, elections directors and the County Recorder.

Brad Nelson, President, Election Officials of Arizona, is in favor of retaining the advisory committee. He is the Pima County Election Director, and leads the Election Officials of Arizona, which is comprised of election officials at the state, county and municipal level. He has been involved in Arizona elections for thirty years, and he has heard his counterparts from other states voice their envy of the procedures manuals, statutes, and inter-communication that Arizona has.

Chairman Smith asked for additional discussion. He stated that he is in favor of renewing, but is concerned that perhaps a five-year interval would be better to allow for needed changes.

Representative Miranda stated that the Legislature can give the committee additional charges in five years, but at this point he thinks that ten years is the proper sunset interval. He believes that in the next ten years there will be many changes in election law, perhaps even an "all vote by mail" system.

Representative Gallardo attested to the importance of the advisory committee and the certification classes. Because the impact of legislation can be different in different Arizona locales, having the input of county recorders and elections directors from all over the state is important to fair and open elections.

Senator Aguirre supports the ten-year sunset, as this is the standard and there is not a problem thus far with the committee.

Senator Miranda also supports the ten-year interval as the standard.

Senator Huppenthal stated that, in order to keep process to a minimum, he is in favor of the ten-year continuance.

Senator Huppenthal moved to continue the Election Officer Education, Training and Certification Advisory Committee for ten years. The motion was seconded by Senator Aguirre. A roll call vote was taken and the motion passed 8-0-0-2 (Attachment 1).

Without objection, the meeting adjourned at 1:35 p.m.


Jane Dooley, Committee Secretary
December 15, 2005

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk.)