

Report of the By-Laws Committee

On November 17, 2008, the By-Laws Committee of the Standards Board was appointed for the purposes of soliciting proposed by-laws for consideration at the meeting of the Standards Board to be held in February 2009. At the time of appointment, the membership of the committee consisted of William Campbell (MA), Chair, Marilyn Avery (MS), Timothy Hurst (ID), Howard Sholl, Jr. (DE), Brad King (IN), Tonni Bartholomew (MI), *ex officio*.

On November 26, 2008, notice was sent by the Executive Board that the next meeting of the Standards Board had been scheduled for February 26, 2009 and February 27, 2009. The Board determined that pursuant to Article X(2)(b) of the by-laws, submissions of proposed by-laws had to be submitted to the DFO by December 18, 2008, that being seventy (70) days prior to the next Standards Board meeting.

On December 4, 2008, notice was issued to the Standards Board by the DFO on behalf of the By-Laws Committee soliciting proposed amendments to the by-laws by December 18, 2008. The Committee included with the notice an amendment submission form as well as a current copy of the by-laws. The Committee received no proposed amendments to the by-laws in response to the notice.

On December 16, 2008, the Committee submitted to the DFO a proposed by-law pursuant to a vote of the Standards Board made at its meeting on December 14, 2007. The amendment was submitted as follows:

“Establishing a new Article V(1)(e) as follows: ‘An Executive Board member shall immediately notify the Executive Board of any change made in the member’s party affiliation while serving as a member of the Executive Board.’”

The DFO submitted the proposed amendment to the office of the General Counsel of the U.S. Election Assistance Commission for review. Comments concerning the proposed amendment were received from the office of the General Counsel. Two issues were raised. The first was what the remedy would be if an imbalance in political party membership is created. The second issue came in the form of a recommendation that the amendment be further amended by adding after the words “notify the Executive Board” the words “and the DFO”.

With respect to the proposed amendment, Attorney Tamar Nedzar, U.S. Election Assistance Commission, responded on December 22, 2008:

“This is an important issue to address. My first comment, however has to do with remedy. As Mr. Campbell notes, HAVA requires that there be a specific mix of state/local level officials and parties represented on the

Executive Board. If someone's switching parties creates a situation where the Executive Board no longer complies with HAVA, I think this bylaw needs to go into detail concerning what to do. For example, if there are 5 Republicans and 4 Democrats and one of the Democrats becomes a Republican, the Executive Board will be in a situation where it does not comply with HAVA (no more than 5 may be of the same party). Does the Standards Board hold a special election to replace the person who created the imbalance? If not, does it hold an election for all 6 (using my example) Republicans to limit representation to 5 (i.e. would all Republicans have to run again)? Is the person who creates the imbalance permitted to serve until the next regularly-scheduled Executive Board election? I think all of these questions need to be addressed, perhaps in a more detailed bylaws amendment.

"My second comment is that the notification should be not only to the Executive Board, but also to the DFO so they will know there is an imbalance."

Section 213(c)(1) of HAVA provides in pertinent part:

"Not later than 60 days after the last day on which the appointment of any of its members may be certified under subsection (b), the Standards Board shall select nine of its members to serve as the Executive Board of the Standards Board, of whom ... (C) not more than five may be members of the same political party."

The Charter of the Standards Board provides in pertinent part:

"Membership... 2. The Board shall select nine of its members as an Executive Board of whom, ... not more than five may be members of the same political party. Members of the Executive Board shall serve two year terms..."

Article V of the By-Laws provides in pertinent part:

"Pursuant to Section 213(c) of HAVA, the Standards Board shall select nine (9) of its members to serve as the Executive Board of the Standards Board as follows: ... 1(c) Not more than five (5) members of the Executive Board may be of the same political party."

With respect to election of the Executive Board, Article V(2)(c)(iv) of the By-Laws provides in pertinent part:

"In the case of the election of a candidate(s) which causes an unbalanced ratio of political party representation, the person(s) in the party with the smaller political party representation receiving the highest number of

votes shall be elected until the political party representation ratio is restored.”

In each of the governing documents, the membership on the Executive Board references political party representation at the time of election. There is no unambiguous language that mandates the balance of the political party composition among the members of the Executive Board except at the time of election.

An amendment may be made to the proposed amendment to address the concerns of the General Counsel by adding a second sentence to Article V(1)(e) as follows:

“If such change in the member’s party affiliation results in more than five (5) members of the Executive Board being of the same political party, a vacancy shall be present in the seat of the member who changed party affiliation.”

This would allow the Executive Board to appoint an interim member under Article V(2)(d)(i)(d) which states in pertinent part:

“In the event of a vacancy on the Executive Board, the remaining members of the Executive Board may appoint an interim member of the Executive Board until the next Standards Board meeting.”

The By-Laws Committee recommends that the recommendation of the General Counsel to add after the words “notify the Executive Board” the words “and the DFO” be adopted.

Respectfully submitted,
William C. Campbell, Chair
Standards Board By-Laws Committee