

# United States Election Assistance Commission

## Meeting Minutes - February 23, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Wednesday, February 23, 2005 at 10:00 a.m. in Columbus, Ohio at the Ohio State University Moritz College of Law, 202 Drinko Hall, 55 W. 12<sup>h</sup> Avenue.

**Call to Order:** Chair Hillman called the meeting to order at 10:05 a.m.

**Pledge of Allegiance:** Chair Hillman led all present in the Pledge of Allegiance.

**Roll Call:** Chair Hillman recognized Juliet Thompson, EAC General Counsel, who took the roll call and in addition to the Chair, found present Vice Chairman Paul DeGregorio, Commissioner Ray Martinez, and Commissioner DeForest Soaries.

**Adoption of Agenda:** Chair Hillman recognized Vice Chairman DeGregorio, who moved to adopt the agenda for the meeting of February 23, 2005. The motion was seconded by Commissioner Martinez and carried unanimously.

**Adoption of Minutes:** Chair Hillman recognized Commissioner Martinez who moved that EAC adopt the minutes of the commission meeting held January 27, 2005. The motion was seconded by Commissioner Soaries and carried unanimously.

**Updates and Reports:** EAC Vice Chairman DeGregorio provided an update on the Help America Vote Act (HA V A) Title II requirements payments. He noted that EAC began disbursement of Title II funds to States and territories on June 10, 2004. The Vice Chairman and Commissioner Martinez comprise a committee of two that maintains oversight of the disbursement process. EAC staffperson Peggy Sims reports to these Commissioners on a regular basis regarding State plans and certifications regarding Title II funds.

Commissioner Martinez added that Congress appropriated approximately \$2.3 billion to be distributed under Title II of HA V A. It is the responsibility of EAC to work with the States to ensure that certain requirements have been met in order to disburse Title II funding. Among these requirements are the implementation of administrative complaint procedures and that the States have provided the five percent match for the federal funds.

Commissioner Martinez noted that, as of February 23, 2005, 49 states including the District of Columbia and the Territory of American Samoa have received their Fiscal Year 2003 requirements payments. These

payments total over \$764 million. Thirty-eight States have received Fiscal Year 2004 payments, totaling \$940 million. Altogether, EAC has distributed more than \$1.7 billion of the \$2.3 billion that was appropriated by Congress under Title II.

Approximately \$614 million remains available for the States that have not yet certified that they have met the conditions to receive their federal funds. Commissioner Martinez noted that the State of Ohio, where this public meeting was being conducted, has drawn down both the FY 2003 and FY 2004 funds and has received approximately \$90.9 million to implement their State plan. Commissioner Martinez concluded by noting that the requirements payment committee has some issues pending. For example, the State of Texas recently submitted some material changes to its State plan that will have to be reviewed by the EAC and published in the Federal Register.

Chair Hillman provided some background by way of setting the context for the next set of presentations on the transition of the testing lab accreditation and voting systems certification processes from the National Association of State Election Directors (NASED) to the EAC.

Chair Hillman noted that HA V A requires the EAC to provide for the testing, certification, decertification and recertification of voting systems by accredited testing laboratories. Prior to HA V A the accreditation of test labs and the qualification of voting systems was carried out by NASED. The NASED Voting Systems Board is continuing to do this work until EAC is ready to accept the responsibility. Chair Hillman noted there are several elements involved, including:

- Developing voting system standards and test procedures. The first standards were published in 1990 by the Federal Election Commission (FEC). FEC published a revised version of these standards in 2002. As mandated by HA V A, the Technical Guidelines Development Committee and the National Institute of Standards and Technology (NIST) are developing Voluntary Voting System Guidelines for the EAC to adopt.
- Identifying testing laboratories that are competent to test voting system hardware and software against the standards. NASED has performed accreditation of testing labs since the early 1990's. The EAC will assume this responsibility this year, with technical assistance from the National Institute of Standards and Technology (NIST) .
- Providing independent review of voting system test reports to

validate that appropriate tests have been performed and the test results adequately demonstrate system conformance to the standards. This is another function that NASED has been performing. At the conclusion of test report review NASED assigns a qualification number to indicate that a system has successfully completed the process. EAC will begin performing this work later this year.

Chair Hillman noted that the following people would make presentations: Mr. Tom Wilkey, Ms. Mary Saunders, and Ms. Carol Paquette.

Following the Chair's remarks, Tom Wilkey, Chairman of the NASED Voting Systems Standards Committee and former Executive Director of the New York State Board of Elections, gave a presentation on the NASED process, which has been on-going for nearly 15 years. He noted that in 1985 there were no standards for voting systems. Congress instructed the FEC to formulate standards in coordination with a group of State and local election officials. Bob Naegele served as technical consultant to this working group. The effort took five years to develop the first set of standards, which the FEC promulgated as the Voting System Standards in 1990.

NASED was formed that same year, and the organization decided to create a voluntary program to get vendors to have their systems tested by independent testing labs for conformance with the new standards. States could then receive these test reports for consideration in their process of certifying systems for use in their States.

This required the identification of an independent testing lab that was competent to test against the Voting System Standards. Wyle Laboratories was the first company accredited by NASED as an Independent Testing Authority (ITA) for voting systems. In the mid-1990s Wyle determined that they would only verify the hardware and firmware elements of voting systems and that software validation would have to be undertaken by another organization. At that time, a predecessor to what is now CIDER Corporation became accredited for software validation. A third ITA, SysTest, was accredited by NASED a few years ago for software validation and has recently completed accreditation for both hardware and software qualification testing.

Mr. Wilkey indicated that NASED applies the ISO 17025 standard for ITA accreditation. This is the same standard that NIST utilizes in their national laboratory accreditation program. The accreditation process is conducted by a professional engineer who is member of the NASED

Voting Systems Board and who has been certified by NIST as technically competent to perform this work.

To obtain a NASED qualification number, a voting system vendor must take its product and the associated Technical Data Package to one of the NASED-approved IT As for review and testing. Once the tests have been completed, the IT A issues a report. This test report is submitted to the NASED Board for peer review. The peer review group ensures that appropriate testing has been performed and that the test results reported indicate conformance to the Voting System Standards. When the test report has been accepted, NASED assigns a qualification number to the system. This information is then posted to the NASED website for reference by election officials and others who wish to know which voting systems have been qualified.

Mr. Wilkey noted that this has been an entirely volunteer process for its nearly 15 years of operation. There has never been any funding to support it. The individuals involved do not receive reimbursement for their work and have devoted substantial amounts of their own time to perform this valuable service for the country.

The next presenter was Mary Saunders, Chief of the Standards Services Division, NIST Technology Services, and the National Voluntary Laboratory Accreditation Program. Ms. Saunders noted that HA V A requires NIST to conduct an evaluation of independent nonfederal laboratories no later than six months after the EAC first adopts voting systems guidelines. The law also requires that NIST submit a list of accredited labs to the EAC for recognition. NIST's job is to ensure the on-going technical competence of the labs that test voting systems - both the software and the hardware. NIST is working with the EAC, NASED, the IT As, voting system vendors, and election officials to ensure there is minimal disruption during the transition from the NASED ITA process to the EAC accreditation process.

Ms. Saunders noted that NIST will carry out its laboratory evaluation responsibility through the National Voluntary Laboratory Accreditation Program (NVLAP). Prospective accreditation criteria applicable to Voting System Testing Labs include NIST Handbook 150, ISO 17025, the 2002 Voting System Standards, and any other criteria the EAC deems necessary.

Under NVLAP lab accreditation procedures, an applicant lab submits an application of accreditation and undergoes an on-site assessment. NVLAP reviews all of the assessment information, makes the accreditation decision and makes a public announcement of the accreditation of a lab.

NVLAP, once having granted accreditation, will inform the EAC of its accreditation.

To date, NVLAP issued a Federal Register notice on June 23, 2004, announcing the establishment of an accreditation program for Voting System Testing Labs. On August 17, 2004, NVLAP conducted a workshop on lab accreditation with participation from EAC, NASED, voting systems vendors, labs and States. NVLAP has also provided briefings to NASED and NASS. NVLAP will begin accepting applications for Voting Systems Testing Laboratory accreditation in April, 2005.

NIST and EAC are working on a transition plan that will include the grandfathering of the existing NASED accredited ITAs through June, 2008. Concurrently, NVLAP will proceed with the assessment and evaluation of all applicants requesting Voting System Testing Laboratory certification. Accredited labs that perform related but non-voting system tests may also be considered for EAC approval. This will help widen the pool of qualified labs that can contribute to the process of testing voting systems. The EAC will maintain the register of qualified labs to help vendors and election officials identify resources to fulfill their system testing requirements.

The next presenter was Carol Paquette, Interim Executive Director of the EAC, who discussed the framework for a plan to transition voting system qualification from NASED to the EAC. She noted that NASED has proposed March 31 as the transition date, but that EAC cannot commit to a date until the process and the resources are in place for EAC to start performing this function.

The EAC has identified six major elements that are part of the EAC system qualification process:

- A procedure for the submission and peer review of the system test reports from the independent test labs.
- A panel of qualified peer reviewers to review the test plans. The panel will be comprised of technical experts and election administration personnel. To date four individuals have indicated an interest in becoming a peer reviewer.
- A documentation process to record peer review findings and qualification recommendations.
- A list of qualified voting systems, including product descriptions and version numbers.
- A procedure for the interpretation and clarification of the 2002 Voting System Standards, with appropriate documentation.
- A grievance procedure for resolution of vendor and test lab

disagreements on interpretation of the Voting System Standards.

Ms. Paquette noted that there are several implementation considerations that arise in transferring responsibility for voting system qualification from a volunteer board of a professional association to a Federal government agency. For example, the peer reviewers will be under contract and paid for their services. Their performance will be subject to periodic review. In addition, the process will be subject to various Federal laws governing the openness and fairness of government activities, such as the Freedom of Information Act and the Administrative Procedures Act.

Ms. Paquette concluded her remarks by noting that the EAC staff is working to further develop all these elements. This effort is being undertaken in consultation with the NASED Voting Systems Board, NIST, the test labs, and the vendor community. She recommended that the Commissioners approve this general planning framework, so that the staff can complete the drafting of a transition plan and thereby establish a firm date for EAC to assume responsibility for the voting system qualification process.

This presentation was followed by questions and discussion among the Commissioners and the presenters. Commissioner Soaries asked Ms. Saunders to clarify if EAC will be accrediting testing labs. Ms. Saunders explained that the testing labs will be accredited by NIST, through their NVLAP process. When they have determined that a lab has the technical competence to test voting systems in accordance with the relevant standards, NIST will then recommend the lab to EAC for final approval and designation as a voting system lab.

Commissioner Soaries noted that HA V A provides for NIST to evaluate test labs and submit to EAC a list of those laboratories that they propose to be accredited. The EAC will then vote on those recommendations for accreditation. The Commissioner further noted that HA V A uses the term "certification" in relation to voting systems, not the term "qualification" that Ms. Paquette used in her presentation. He expressed concern that the language of HA V A should be adhered to and not be confused with the terminology used in other contexts.

Ms. Saunders responded that she thought EAC, NIST and NASED could come to common agreement on the definition of these terms. She noted that NIST has developed a draft glossary of terms which provides a starting place. In addition, she commented that when new programs are announced in the Federal Register, the first part of the notice is a definition of the terms.

Commissioner Soaries sought clarification on what it means for a voting system to receive a NASED qualification number. Mr. Wilkey responded that the NASED number reflects that the system has been tested by an ITA and found to qualify under the Voting System Standards. The ITA issues a test report that is reviewed by the NASED peer reviewers to ensure that testing was properly conducted and to review the test results. He went on to note that the certification of systems is done by the States, according to requirements prescribed by legislation or defined by regulation.

Commissioner Martinez noted that the section of HA V A that deals with the certification and decertification of voting systems and the accreditation of test labs states that the Director of NIST proposes laboratories to be accredited, but that EAC, not NIST, accredits them. Commissioner Martinez further noted that in his reading of the statute, Congress says that EAC shall provide for the certification, decertification and recertification of voting systems by accredited laboratories. The statute does not say that EAC will do the certification of systems, but that EAC will provide the framework for this to happen. EAC works with NIST to get a list of accredited labs and to update the voting system guidelines, EAC adopts those guidelines, and begins the process.

Commissioner Martinez asked Mr. Wilkey how many States currently utilize the NASED qualification process. Mr. Wilkey stated that about forty-one rely on the NASED qualification for their system certification and that a handful do not have any certification process.

Vice Chairman DeGregorio began his inquiries by noting the advantages and disadvantages to States of adopting standards for certification. He asked Mr. Wilkey to comment on whether the adoption of voting systems standards by the States would help prevent election problems. Mr. Wilkey noted that it would be good if all states would adopt the new Voluntary Voting System Guidelines. However, in most cases, States are using equipment that has been qualified by NASED. He suggested that States may not want to go through the legislative problems of getting the voting guidelines included in their State laws.

Vice Chairman DeGregorio asked Ms. Saunders if there will be enough labs to process and certify the new voting equipment. She indicated that the transition plan will ensure the current IT As will continue to operate, and that some other labs have indicated some interest in becoming accredited. She noted that the interest has not been overwhelming since this is not seen by labs as a large income producer. To address this issue, the goal would be to broaden the number of labs that can produce qualification reports.

Chair Hillman asked Ms. Saunders to explain what the impact of a sound laboratory accreditation and voting system testing process will have on the individual voters. Ms. Saunders noted that the NIST process for accrediting testing labs provides an assurance of ongoing technical competence through their periodic revalidation of lab qualifications. The user of a voting system can have a high degree of confidence in the system because of the testing and certification process it has gone through. Ms. Saunders compared this degree of user confidence to that that Underwriters Laboratories provides when it certifies products for electrical safety.

Chair Hillman asked Mr. Wilkey to comment on the whether States will adopt the new Voluntary Voting System Guidelines. Mr. Wilkey expressed the belief that since NIST is involved in the development of the new guidelines, a greater number of States will adopt them. He also emphasized the importance of having management guidelines in addition to system standards because the way voting systems are set up and used has a big impact on how well the system performs. Much of the bad publicity about voting systems does not come from the original certification process and testing by the labs, but rather from how they were implemented in the field. There must be a good set of operational procedures for defining ballots, loading ballots in the voting machines, and testing the tabulation process, for example.

Commissioner Soaries made a motion to direct the EAC staff to develop a comprehensive plan that includes definitions, a budget, a timetable, and lays out a high level process for facilitating the transition of the laboratory accreditation and voting system certification to the EAC, to include a firm date for the transfer from NASED. Commissioner Martinez offered a friendly amendment to this motion to add that the detailed plan would be published in the Federal Register and that a [mal vote would be taken on the final work product before it is implemented.

**Chair Hillman presented the motion:  
To direct EAC staff to develop a comprehensive transition plan, including a firm date for the transition of these functions-lab accreditation and voting system certification (the functions outlined in HA V A), to be published in the Federal Register in the appropriate time frame and with appropriate notification, and to be adopted formally by the EAC after the public comment period.  
The motion was passed by all Commissioners.**

Commissioner Soaries concluded by noting that voting machine certification has a highly unique significance and, as a consequence, the EAC must give it a great deal of attention. This certification, ultimately,

can have an impact on whether or not our country goes to war or whether or not taxes go up or down.

The meeting was adjourned at 11 :41 am