

# United States Election Assistance Commission

## Meeting Minutes – May 24, 2005

Minutes of the meeting of the United States Election Assistance Commission (EAC) held on Tuesday, May 24, 2005 at 10:00 a.m. at the EAC offices located at 1225 New York Avenue, N.W., Washington, DC 20005.

**Call to Order:** Chair Hillman called the meeting to order at 10:00 a.m.

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

**Roll Call:** Chair Hillman recognized General Counsel Juliet Thompson who took roll call for the Election Assistance Commission. In addition to the Chair, present were Vice-Chair Paul DeGregorio, and Commissioner Ray Martinez.

**Adoption of Agenda:** Chair Hillman requested that the meeting agenda be changed to move the discussion of the Executive Director search to the first item on the agenda, and that the agenda be moved for adoption with this change. Commissioner Martinez moved to adopt the revised agenda, and the motion was seconded by Vice Chair DeGregorio. The motion carried unanimously.

Chair Hillman noted that the search for a permanent EAC Executive Director had taken many months and included 3 recommendations from Both the Standards Board and Board of Advisors. The Chair noted that the final EAC deliberations had been concluded and that she was very pleased to announce that Mr. Tom Wilkey had been selected as the first Executive Director of the Election Assistance Commission. The Chair noted that Mr. Wilkey was the former Executive Director of the New York State Board of Elections, and that he had served a long and illustrious career as an election official at both the State and local level. The Chair concluded her comments by noting that Mr. Wilkey would begin his service with the EAC on Monday, June 20, 2005.

Vice Chair DeGregorio extended his own congratulations to Mr. Wilkey, and noted that the EAC had exercised due diligence in its search and had selected the very best candidate available as Executive Director.

Commissioner Martinez also added his congratulations to Mr. Wilkey on his appointment and noted that Mr. Wilkey was familiar with the operations of the EAC since he had assisted the

Commission in various projects over the last 18 months and had provided an invaluable understanding of the perspectives of State and local election officials to various issues before the EAC.

**Adoption of Minutes:**

Chair Hillman recognized Vice Chair DeGregorio who moved that EAC adopt the Minutes of the Commission Meeting held April 26, 2005. The motion was seconded by Commissioner Martinez, and the motion carried unanimously.

**Reports:**

Chair Hillman first recognized Peggy Sims of the EAC staff to provide an update on Title II Requirements Payments to the states. Ms. Sims reported that as of May 16, 2005, EAC has asked the GSA to disburse more than \$1.88 billion of the more than \$2.3 billion appropriated for requirements payments in fiscal years 2003 and 2004. Ms. Sims noted that these payments have gone to fifty-three of the fifty-five States and Territories eligible to receive them. All fifty-three have received their requirements payments for fiscal year 2003, and forty-five of these States and Territories also have received their full payments for fiscal year 2004. 2003 payments total over \$774 million and 2004 payments total over \$1.1 billion.

Chair Hillman next recognized Commissioner Martinez for an update on EAC guidance on Statewide Voter Registration Lists. Commissioner Martinez began by noting that tomorrow is the last day to submit comments on the EAC draft guidance. Commissioner Martinez reported that this project represented the first time that the EAC had developed guidance under Sections 311 and 312 of HAVA, and while EAC is not a regulatory agency, HAVA requires the Commission to issue guidance on a number of issues. Commissioner Martinez noted that the EAC was challenged to arrive at useful guidance for States that have already moved forward with the development of the statewide voter registration list, as well to provide guidance for those states less far along in the implementation process. Commissioner Martinez estimated that the final product would be released by EAC sometime in June.

EAC Research Director Ms. Karen Lynn-Dyson next updated the Commission on progress regarding the Provisional Voting Study and the Voter Identification study. Ms. Lynn-Dyson reported that EAC had recently contracted with Eagleton Institute of Rutgers University and the Moritz College of Law at the Ohio State University on a \$540,000 project to study and produce guidance on provisional balloting and voter ID issues. Ms. Lynn-Dyson noted

that these projects are currently scheduled to be completed by the end of 2005.

The Chair next recognized Mr. Kimball Brace of Election Data Services, Inc, to provide an update on analysis efforts related to the EAC Election Day Data Survey, and UOCAVA Survey. Mr. Brace reported that the Election Day Survey requested information from a total of 6,568 local election administrators. If all questions in the survey had been completed, it would have produced 282,424 individual data items. Mr. Brace noted that there were, unfortunately a substantial number of missing responses. Mr. Brace noted response rates varied on individual questions from a high of over 90% to a low of under 50%. Mr. Brace commented that it was important to point out that response rates varied, in part, because this was the first time such an extensive survey was conducted, and because participation in the survey was voluntary. As a baseline survey, Mr. Brace noted a number of issues identified with the administration of the survey. These issues included differences in how election officials interpreted some of the terminology used in the survey questions, a lack of lead time to plan and set up systems for compiling required statistics, responses received in formats different from the officially requested format, and numerous data entry errors. Mr. Brace noted that despite these problems, he believed that reliable information was obtained for many of the questions asked in the Election Day Data Survey.

Mr. Brace outlined four recommendations to EAC on future data collection efforts. These recommendations were:

- The EAC hold a series of symposiums for election officials and data users to produce accurate and consistent definitions of election administration terminology.
- The next survey provide interactive quality assurance checks via a web based interface or other similar system.
- The EAC expand its clearinghouse role to include the ongoing funding and collection of precinct-based election data.
- To improve current baseline data, involve the States in reviewing current data to identify and correct data errors and to retrieve missing data.

Finally, Mr. Brace noted that coverage rates and data quality issues related to the EAC Military and Overseas Absentee Ballot Survey (UOCAVA) were even more problematic than the data received from the Election Day Survey.

Chair Hillman next recognized General Counsel Juliet Thompson to provide an update on the California Audit. Ms. Thompson

reported that in January of 2005, EAC had voted to conduct an audit of the use of Federal funds received by California in fiscal year 2004. Ms. Thompson also reported that EAC had signed a contract with the Inspector General of the U.S. Department of Interior to conduct this audit, and that the EAC would approve the initial audit plan in approximately 20 days.

Chair Hillman next recognized EAC Interim Executive Director Carol Paquette to update the Commission on the process of publishing the Voluntary Voting System Guidelines (VVSG). Ms. Paquette reported that EAC had received the draft VVSG and collected public comments from the TDGC through NIST on May 9, 2005, and on May 20, 2005 NIST delivered to the EAC a revised and updated VVSG glossary. Ms. Paquette reported that EAC was developing a web application to facilitate both public comment submission and EAC review of all future public comments. Ms. Paquette noted that EAC expected to publish a notification of availability and a summary of the VVSG in the Federal Register in early June. The full VVSG will be available via the EAC web site at that time. In order to accommodate all parties, EAC will have the VVSG available via CD. Ms. Paquette reported that the EAC Standards Board and Board of Advisors would be reviewing VVSG concurrent with the public comment period.

Ms. Paquette reported that EAC would hold the first of 2 public hearings on the VVSG July 30, 2005 in New York City and that final adoption of the VVSG was expected for the end of September, or early October, 2005.

## **Presentations**

Chair Hillman next introduced members of a panel discussing the merits of effective dates and grandfathering provisions for the VVSG. The panel included Mr. The Honorable Al Ater, First Assistant Secretary of State for Louisiana, Mr. Michael Kerr from the Information Technology Association of America (ITAA), and Mr. Joseph Hazeltine, Senior Director of Eastern Test Operations for Wyle laboratories.

Mr. Hazeltine spoke first, addressing grandfathering from the perspective of voting systems test laboratories. Mr. Hazeltine first commented that standards are generally phased in over a period of time, and that both the 1990 and 2002 Voting Systems Standards were implemented over a 2-3 year period. Mr. Hazeltine also observed that European Norm Standards generally have 2-3 year grandfathering provisions.

Mr. Hazeltine next noted several benefits of grandfathering. These benefits include:

- Provides time to train lab staff on new requirements.
- Provides time to prepare, review and approve Compliance checklists.
- Provides time for vendors to implement design changes at the same time, thus avoiding a piecemeal approach and potential compatibility issues.
- Is consistent with past practices and other standards.

Mr. Hazeltine also note that grandfathering might have some negative impact, including slowing implementation of 2005 VVSG, limited use of VVSG for 2006 election cycle, and lack of resolution and testing of some outstanding issues such as those related to VVPAT.

Mr. Hazeltine stated that it was his opinion that his laboratory was not ready to implement the VVSG today, and that the lab would need three to six months to prepare to test to the VVSG.

Mr. Ater spoke second, giving a state perspective on grandfathering issues. Mr. Ater reported that Louisiana was required by state statute to use the Federal Voting Systems Standards/Guidelines in the procurement of voting systems, and that Louisiana was glad that EAC was considering grandfathering issues. Mr. Ater noted that Louisiana has an active RFP with responses due to his office by June 1, 2005. Mr. Ater went on to report that Louisiana has 50 parishes that currently use lever voting machines which they have agreed to replace pursuant to accepting HAVA funds. Mr. Ater further commented that Louisiana did not wish to spend \$50,000,000 of taxpayer money to purchase a system that may not meet new standards. In addition, Mr. Ater noted that his state did not wish to be out of compliance with EAC, the Department of Justice, or with anybody else. Mr. Ater concluded by stating that Louisiana only wished to certify those voting systems which meet the standards and guidelines set forth by the EAC.

Mr. Kerr spoke last and gave the perspective of the vendor community on grandfathering issues. Mr. Kerr noted that he was representing the ITAA Election Technology Council. Membership in this organization is open to and voting system vendor and current members are Advanced Voting Solutions, Danaher Guardian Voting System, Diebold, ES&S, Hart InterCivic, Perfect Voting System, Sequoia, and Unilect.

Mr. Kerr reported that it was unrealistic to expect that vendors, independent test labs, and customers, which include state, county and local officials, will be able to make wholesale changes to current products and get those products certified to new standards and into the field for a national election in November of 2006. Mr. Kerr noted that early indications point to many new requirements in the VVSG that impact widely on vendor equipment and practices, and on the customer. Mr. Kerr speculated that on the vendor side, a likely scenario will be that changes brought by VVSG will be factored into system design, production, testing, marketing, and maintenance operations over the course of two to three years after their final release.

Mr. Kerr stated that his organization believes that systems qualified under the 2002 Voting Systems Standards are HAVA compliant, and that the core requirements of the 2002 VSS make up VVSG, with some notable additions. Mr. Kerr commented that it should then follow that systems qualified to 2002 VSS, and that have been proven in the field to provide the customer and the voter with an acceptable level of usability, reliability, accuracy, and security would be grandfathered under VVSG.

Mr. Kerr noted that companies operating in a profit-seeking market are driven to out-compete each other on all fronts, and it would be logical that they will make every effort to bring their products into line with updated guidelines since that is what customers will demand. On the other hand, Mr. Kerr remarked that finding a system un-certifiable against a possibly unattainable or untestable standard set forth in VVSG, while that equipment can readily meet the requirements spelled out in HAVA, would be a poor outcome and one that may force states to squander federal and state monies already appropriated, disbursed and spent.

Mr. Kerr concluded by stating that ETC members fully support the goals of the VVSG development efforts, but urge EAC to develop workable and reasonable requirements and timetables for meeting those requirements.

Prior to the call for adjournment, Chair Hillman recognized Interim Executive Director Carol Paquette and thanked Ms. Paquette for her excellent work and assistance over the past months, and for her willingness to continue to assist the EAC with the VVSG and other related work.

**Adjournment:**

Chair Hillman asked for a motion to adjourn the meeting. Commissioner Martinez moved to adjourn the meeting; Vice Chair DeGregorio seconded the motion, and the motion passed unanimously. The meeting adjourned at 12:08 p.m.