

ELECTION CODE

TITLE 8. VOTING SYSTEMS

CHAPTER 122. STATE SUPERVISION OVER VOTING SYSTEMS

SUBCHAPTER A. VOTING SYSTEM STANDARDS

Sec. 122.001. VOTING SYSTEM STANDARDS.

(a) A voting system may not be used in an election unless the system:

- (1) preserves the secrecy of the ballot;
- (2) is suitable for the purpose for which it is intended;
- (3) operates safely, efficiently, and accurately and complies

with the voting system standards adopted by the Election Assistance Commission;

- (4) is safe from fraudulent or unauthorized manipulation;

(5) permits voting on all offices and measures to be voted on at the election;

(6) prevents counting votes on offices and measures on which the voter is not entitled to vote;

(7) prevents counting votes by the same voter for more than one candidate for the same office or, in elections in which a voter is entitled to vote for more than one candidate for the same office, prevents counting votes for more than the number of candidates for which the voter is entitled to vote;

(8) prevents counting a vote on the same office or measure more than once;

- (9) permits write-in voting; and

(10) is capable of providing records from which the operation of the voting system may be audited.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 404 (H.B. 25), Sec. 8, eff. September 1, 2020.

(c) The secretary of state may prescribe additional standards for voting systems consistent with this title. The standards may apply to particular kinds of voting systems, to particular elements comprising a voting system, including operation procedures, or to voting systems generally.

(d) Effective January 1, 2006, a voting system may not be used in an election if the system uses:

- (1) mechanical voting machines; or

County Judge
Aug 8, 2023
Woodward
on
Agenda

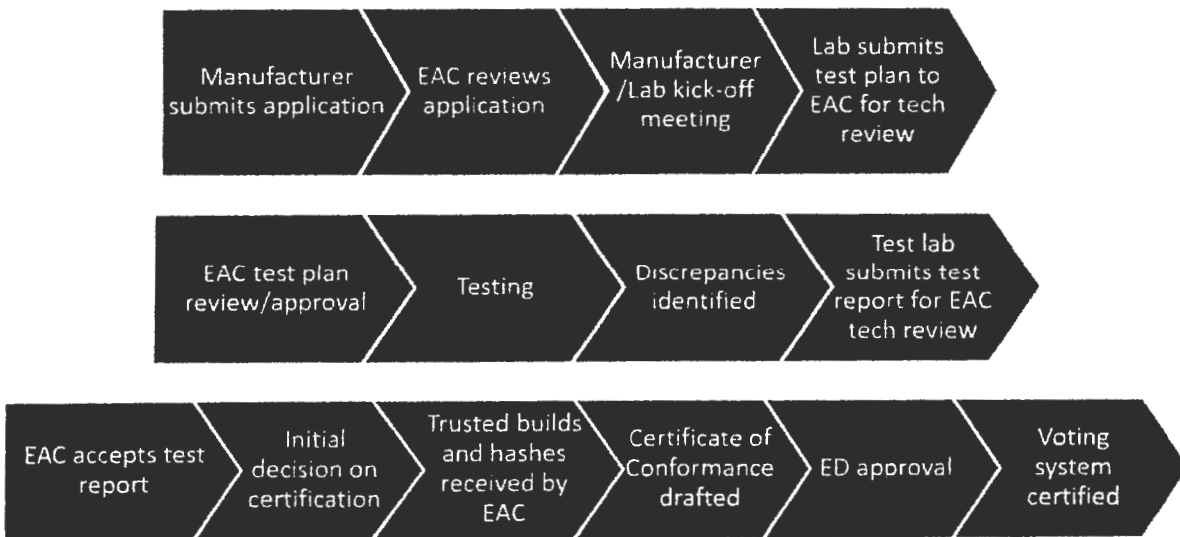
Voting System Certification

A voting system is considered EAC certified when it has been tested by a federally accredited test laboratory, has successfully met the requirements of the VVSG and any other claims made by the voting system manufacturer and the EAC has issued a certificate that all the steps required by the lab and the manufacturer have been completed.

The EAC accredits independent test laboratories (voting system test laboratories or VSTLs) that evaluate voting systems, including their software against the VVSG to determine if they provide all of the basic functionality, accessibility, and security capabilities required of these systems. The test laboratory provides a recommendation to the EAC, and the Commission's Testing and Certification Division, working through the Executive Director, makes the determination whether to issue a certification. Once a decision has been made, the EAC will post the information on the Voting System Certification section of the EAC website.

Before final certification is granted, the VSTL must deliver specified elements in the EAC repository including, the source code used for the trusted build and its file signatures, a detailed description of the build environment including setup and configuration, executable code, and all documentation to provide evidence to verify that a particular system has met all requirements.

In addition to system certifications, the EAC also processes engineering change orders such as updating end of life commercial hardware components or applying security patches.



The diagram above outlines the process steps for voting system certification

1. Introduction

- 1.1. Background.** In 2002, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the voluntary testing and certification of voting systems. This mandate represented the first time that the Federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the voting system standards in the form of the Voluntary Voting System Guidelines (VVSG), a voting system certification program in the form of the Voting System Testing and Certification Program Manual and this document, the Voting System Test Laboratory Program Manual.
- 1.2. Authority.** HAVA Section 231(b) (42 U.S.C. §15371(b)) requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards. Generally, the EAC considers for accreditation those laboratories evaluated and recommended by the National Institute of Standards and Technology (NIST) pursuant to HAVA Section 231(b)(1). However, consistent with HAVA Section 231(b)(2)(B), the Commission may also vote to accredit laboratories outside of those recommended by NIST upon publication of an explanation of the reason for any such accreditation.
- 1.3. Role of the National Institute of Standards and Technology.** Section 231(b) (1) of HAVA requires that the National Institute of Standards and Technology “conduct an evaluation of independent, non-federal laboratories and shall submit to the Commission a list of those laboratories...to be accredited....” Additionally, HAVA Section 231(c) requires NIST to monitor and review the performance of EAC accredited laboratories. NIST has chosen its National Voluntary Laboratory Accreditation Program (NVLAP) to carry out these duties.

NVLAP conducts a review of applicant laboratories in order to provide a measure of confidence that such laboratories are capable of performing testing of voting systems to Federal standards. Additionally, the NVLAP program monitors laboratories by requiring regular assessments. Laboratories are reviewed one year after their initial accreditation and biennially thereafter. The EAC has made NVLAP accreditation a requirement of its Voting System Test Laboratory (VSTL) Program. However, a NVLAP accreditation is not an EAC accreditation. The EAC is the sole Federal authority for the accreditation and revocation of accreditation of Voting System Test Laboratories.
- 1.4. Scope.** This manual provides the procedural requirements of the EAC Voting System Laboratory Program. Although participation in the program is voluntary, adherence to the program’s procedural requirements is mandatory if VSTLs choose to participate. The procedural requirements of this manual supersede any prior laboratory accreditation requirements issued by the EAC. This manual is intended to be read in conjunction with

the Voting System Testing and Certification Program Manual.

- 1.5. **Manual Maintenance and Revision.** The manual will be reviewed periodically and updated to meet the needs of the EAC, VSTLs, voting system manufacturers, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with federal law. Substantive input from stakeholders and the public will be sought whenever possible. Changes in policy requiring immediate implementation will be documented via policy memoranda and will be issued to each VSTL and manufacturer. Changes, addendums, or updated versions will also be posted on www.eac.gov.
- 1.6. **Clarification of Program Requirements and Procedures.** VSTLs and manufacturers may request clarification regarding the requirements and procedures set forth in this manual. Requests for interpretation must be based upon ambiguity arising from the application of this manual. Hypothetical questions will not be considered. Requests must be submitted to the Program Director in writing as described in Chapter 9 of the Voting System Testing and Certification Program Manual. The request must clearly identify the section of the manual and issue to be clarified, a proposed interpretation and all relevant facts. Clarifications issued by the EAC will be provided to all VSTLs and manufacturers and published on www.eac.gov.
- 1.7. **Program Personnel.** All EAC personnel and contractors associated with this program are held to the highest ethical standards. All agents of the EAC involved in the VSTL Program are subject to conflict-of-interest reporting and ethics review, consistent with federal law and regulation. The term "Program Director" as used throughout this manual refers to the Voting System Testing and Certification Director. In the event of a vacancy in this position, the EAC Executive Director will designate staff to temporarily assume these duties.
- 1.8. **Submission of Documents.** Any documents submitted in accordance with the requirements of this manual must be submitted electronically via secure e-mail or physical delivery of digital media. The submitted electronic files must be in PDF format, formatted to protect the document from alteration. If sent via physical delivery, by certified mail (or similar means that allows tracking) to the following address:

U.S. Election Assistance Commission
Attn: Testing and Certification Program Director
633 3rd Street NW, Suite 200
Washington, DC 20001

- 3.5.1. Notice of Nonconformity. In the event the Program Director identifies (1) missing documentation or information and/or (2) issues of noncompliance, the Program Director must notify the laboratory of the deficiencies. The written notice of nonconformity must identify missing documentation or information and issues of noncompliance. The laboratory will have 10 business days to amend the application package or submit additional information in response to identified nonconformities.
- 3.5.2. Action on Notice of Nonconformity. A laboratory's response to a notice of nonconformity must include any missing documents identified in the notice, as well as any additional or clarifying information or documentation responsive to an issue of noncompliance. If a laboratory fails to provide required information or documentation within the required timeframe, the Program Director will reject the application as incomplete and return the package to the laboratory for resubmission consistent with the requirements of this chapter.
- 3.5.3. Recommendation to Commissioners. After final review of the application package, the Program Director must forward the application package to the Chair of the Commission with a recommendation of disposition.
- 3.5.4. Vote by Commissioners. Upon receipt of an application package and recommendation from the Program Director, the Chair of the Commission will forward the information to each EAC Commissioner. The Chair of the Commission will bring the matter to a vote, consistent with the rules of the Commission. The measure presented for a vote will take the form of a written Commissioners' Decision which (1) makes a clear determination as to accreditation and (2) states the basis for the determination.
- 3.6. **Grant of Accreditation**. Upon a vote of the EAC Commissioners to accredit a laboratory, the Program Director must inform the laboratory of the decision, issue a Certificate of Accreditation, and post information regarding the laboratory on www.eac.gov.
- 3.6.1. Certificate of Accreditation. A Certificate of Accreditation will be issued to each accredited laboratory. The certificate will be signed by the Chair of the Commission and state:
- The name of the VSTL;
 - The scope of accreditation, by stating the VVSG version(s) to which the VSTL is competent to test;
 - The effective date of the certification; and
 - The technical standards to which the laboratory was accredited.
- 3.6.2. Post Information on Web Site. The Program Director will make the following

[dailytrib.com](https://www.dailytrib.com)

Appeals court dismisses voting machine suit against Burnet County - DailyTrib.com

Suzanne Freeman

3-4 minutes

A civil lawsuit against Burnet County that sought to do away with electronic voting machines was dismissed by the Texas First District Court of Appeals on Thursday, May 11.

In the case of Patricia Cope v. Doug Ferguson et al., the nine-member panel of judges dismissed the case because Cope, a Marble Falls resident, did not respond to the last brief filed. The deadline for response was Feb. 24, 2023.

"After being notified that this appeal was subject to dismissal, appellant did not respond," reads the memorandum opinion from Chief Justice Terry Adams and justices Peter Kelly and Gordon Goodman. "Accordingly, we dismiss the appeal for want of prosecution for failure to timely file a brief. We dismiss any pending motions as moot."

Cope, who has been unavailable for comment on the issue, [filed the lawsuit in August 2022](#). It was appealed from the 424th District Court in Burnet County and named as defendants Election Administrator Doug Ferguson, county commissioners Jim Luther,

Damon Beierle, Billy Wall, and Joe Don Dockery, and County Judge James Oakley.

"This indicates that the suit is officially closed," **Burnet County Attorney Eddie Arredondo told DailyTrib.com**. "If Ms. Cope decides to pursue anything further, it's my hope that she considers taking it to the state Legislature and the Secretary of State's office, where the laws and regulations are being set for how elections get done. That's the proper forum. **Burnet County is following all regulations and laws.**"

The case resulted in a high-profile recusal by [Arredondo in an animal cruelty case involving Commissioner Wall](#) last fall. The law prohibits an attorney from defending and prosecuting the same person. As county attorney, Arredondo defends county commissioners in all lawsuits. Attorneys from Williamson County handled that case instead and will continue to do so, Arredondo said, even now that he is no longer involved in defending Wall in the election lawsuit.

The animal cruelty case is being investigated by [District Attorney Wiley "Sonny" McAfee, who recently told DailyTrib.com he is still collecting evidence.](#)

The voting machine suit mirrors similar lawsuits filed in other Texas counties and states in August 2022 ahead of a Sept. 3 deadline for destroying election materials from the November 2020 presidential election.

Burnet County preserved the 2020 election results and will keep them on file a while longer, Ferguson told DailyTrib.com.

"The rest of the lawsuit was about things we are legally doing anyway because the machines are certified by the state of Texas," Ferguson said. "This has had no effect on Burnet County voting."

suzanne@thepicayune.com

Voting device suit dropped

By Connie Swinney
Associate Editor
The First Court of Appeals rejected an appeal by a Burnet County resident, who filed a lawsuit that questioned the reliability of voting devices and election integrity.

On May 11, the Burnet County Attorney's Office received notification that the appeals court, based in Houston, dismissed the suit filed by Patricia Cope.

"They threw it out for lack of prosecution," Burnet County Attorney Eddie Arredondo told *The Highlander*. "She asked for the appeal and then she's given a chance to turn in her arguments, and then she didn't follow through with it, so they've dismissed it at this point."

In August, a 424th Judicial District judge denied the petitioner's request to order Burnet County officials to temporarily halt the use of electronic voting devices and to hand-count ballots during the upcoming election. The petition was initially filed on Aug. 3.

The lawsuit named the county elections administrator and county commissioners as well as the county judge.

The suit, which was approximately 500 pages, made references to collec-

tions of reports throughout the country after the 2020 presidential election alleging issues with the elections process.

Excerpts made references to the Dominion software in voting machines in that state that used "numerical values to identify candidates."

The report alleged that votes for one candidate in the presidential election were actually attributed to another candidate as a result of that system.

The document also pointed to reports of hacking risk, corruption of files, potential for modifications of devices, software inconsistencies, possible insecurities in internet connection and uploading.

The lawsuit also raised questions about the integrity of vote tallying machines and even the machinery utilized to construct the voting devices.

Local officials contend such concerns do not apply to Burnet County because the Texas Secretary of State oversees elections.

"We're following the guidelines set out by the state in terms of the Secretary of State's office and the Texas legislature," Arredondo said. "We're not the ones who created these regulations."

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September 23, 2022**

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District judge rejects Burnet County voting device lawsuit

"Burnet County is following the law and the regulations from the Secretary of State."

— Eddie Arredondo
Burnet County Attorney

By Connie Swinney
Associate Editor
A 424th Judicial District judge denied a petitioner's request to order Burnet County officials to temporarily halt the use of electronic voting devices and to hand-count ballots during the upcoming election.
On Aug. 30, Judge Evan Stubbs declined the request in a lawsuit filed by Burnet

County resident Patricia Cope, according to court documents. The petition was initially filed on Aug. 3.

The lawsuit named the county elections administrator and county commissioners, including the county judge.

"We did receive a notice

Lawsuit... see Page 3



Staff photo
The more than 500-page lawsuit contains reports of voting machine anomalies reported around the country.



UNITED STATES
ELECTION ASSISTANCE
COMMISSION



Testing and Certification Program

Friday, March 11, 2022

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The U.S. Election Assistance Commission's (EAC) Testing and Certification Program assists state and local election officials by providing voting machine testing and certification. This program is a requirement of the Help America Vote Act (HAVA) of 2002, legislation that created the EAC and mandated that the Commission provide certification, decertification, and recertification of voting systems, as well as the accreditation of voting system testing laboratories. This legislation marked the first time the federal government provided oversight for these activities, a step that allowed states to procure new certified voting systems without the added expense of independent testing and certification. While states are not required to

participate in the program, some have enacted laws or have regulations that require a level of participation.

Prior to the passage of HAVA, voting systems were assessed and qualified by the National Association of State Election Directors (NASED), a nonpartisan association consisting of state level election directors nationwide. These voting systems were tested against the 1990 and 2002 voting system standards developed by the Federal Election Commission (FEC). With HAVA's enactment, the responsibility for developing voting system standards was transferred from the FEC to the EAC and their new iterations are now the EAC Voluntary Voting System Guidelines.

[EAC Testing & Certification Program \(Full PDF Version\)](#)



U.S. Election Assistance Commission

633 3rd Street NW, Suite 200,
Washington, DC 20001



Contact the EAC

Phone: 1 (866) 747-1471 (toll free)

Email: clearinghouse@eac.gov

Website: [Contact Us](#)

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County Judge

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Election Advisory No. 2017-21

To: Election Officials**From:** Keith Ingram, Director of Elections**Date:** November 16, 2017**RE:** Expansion of definition of DRE (OAG Opinion - KP-0170)

On October 24, 2017, the Office of the Attorney General issued Opinion No. KP-0170 (PDF) ("opinion") which opined on the definition of "direct recording electronic voting machine" ("DRE") as it is defined in Subsection 121.003(12) of the Texas Election Code, and whether this definition could include "electronic voting machines that also produce marked paper ballots." This opinion concluded that voting machines that produce marked paper ballots may qualify as DREs as long as they meet the statutory requirements of a DRE. Additionally, the opinion provided that under Texas law, the definition of a DRE does not specify that a DRE must only constitute a single piece of equipment.

In light of this recent OAG opinion, this Election Advisory address several items relating to the affected voting systems.

EAC Certification Requirements

Under Section 122.001 (a)(3) of the Texas Election Code, a voting system may not be used in an election unless the system "complies with the voting system standards adopted by the Election Assistance Commission." All components certified for use in Texas elections must be certified by the Election Assistance Commission ("EAC"). However, the definition of DRE under the Texas Election Code, as interpreted by KP-0170, may include more than a single piece of equipment and may include a marked paper ballot. Therefore, under Texas law, a combination of EAC-certified components, when presented together, may constitute a DRE system. If the component parts of the DRE system have been certified by the EAC, they would meet the requirement under Section 122.001(a)(3) for EAC certification. The Secretary of State has determined that a DRE system is EAC-certified when it consists of (1) a ballot marking device,

The Honorable Lyle L. [REDACTED] (178)

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

VIRGINIA K. HOELSCHER
Chair, Opinion Committee

and (2) a precinct ballot counter, both pieces of equipment are used together in one polling place, and both pieces of equipment have been certified by the EAC.

Currently, there are two vendors in Texas that have systems that may constitute a DRE voting system based on their component parts.

1. Hart Intercivic Verity Voting 1.0 and 2.0: These systems, as certified on December 15, 2016 (as updated on October 26, 2017), include, among other components, the Verity Touch Writer with Access (EAC-certified ballot marking device) and Verity Scan (EAC-certified precinct scanner).
2. ES&S EVS 5.2.1.0, 5.2.2.0, and 5.4.0.0: These systems, as certified on December 15, 2016 (as updated on October 26, 2017) (EVS 5.2.1.0), and July 28, 2017 (as updated on October 26, 2017) (EVS 5.4.0.0 and EVS 5.2.2.0) include, among other components, the ExpressVote (EAC-certified ballot marking device) and the DS200 (EAC-certified precinct scanner).

Modifications to Existing Certifications

If a vendor has a system that has been previously certified by the Secretary of State for use in Texas elections and would like the certification modified to include the use of the system as a DRE system under the expanded, Texas-specific definition of a DRE system, when that system was not examined as DRE system during the certification process, the vendor must seek a modification to the certification under Chapter 122, Subchapter C, Texas Election Code. An application must be submitted for review in accordance with Section 122.063 of the Texas Election Code. The Secretary of State will review the application and determine whether the modified design satisfies applicable requirements, in accordance with Section 122.064 of the Texas Election Code.

Future Certification Procedures

If a vendor seeking certification of a system which has not been previously certified, would like the equipment considered as a DRE system under the expanded, Texas-specific definition of a DRE system, they must indicate this on their application for certification and complete the relevant portions of Form 101 that apply to DRE systems.

DRE Requirements

Under Section 129.002(a) of the Texas Election Code, DRE systems must "provide the voter with a screen in summary format of the voter's choice for the voter to review before the vote is actually cast." To meet this requirement, all systems certified as a DRE system under the expanded, Texas-specific definition, must allow for voting on the component that contains the full presentation of the voter's ballot and summary screen. The tabulation portion of the voting process may occur on a component that is separate from the component the voter uses to make their selections and mark their ballot.

Section 123.005 of the Texas Election Code provides that only one kind of voting system may be used at a polling place

in an election. In order to comply with this section, all voting (ballot marking) must occur on the DRE device that records the voter's choices even if the tabulation occurs on a separate device. Voters may not separately mark by hand a pre-printed ballot, but instead, must utilize the DRE device when marking their ballot in the polling place. Additionally, DRE systems are precinct-based systems. Even when a central accumulation station is established for the accumulation of vote totals, the counting/tabulation of ballots occurs at the election day precinct or polling place. Therefore, the counting/tabulation component of the DRE system must also be utilized at the polling place. Accordingly, voters cannot utilize the DRE device to mark their ballot, then deposit their marked ballot or cast vote record into a pre-locked, pre-sealed ballot box for transfer to a central counting station for counting/tabulation.

NOTE: If equipment malfunctions or there are irregularly marked ballots, there are circumstances where the ballots **MUST** be transferred to the central counting station for counting/tabulation. These are exceptions to the requirement that DRE voting/ballot marking and counting/tabulation must occur at the precinct polling place. Please see Advisory 2017-17 for more details.

Requirements for systems with paper components

DRE systems that have a paper-based component will be expected to meet requirements associated with paper-based systems to the extent they can be feasibly and consistently applied to a DRE system. Various sections of the Texas Election Code provide that if (and only if) a paper-based Texas Election Code requirement can feasibly be applied to a DRE system, and is not inconsistent with provision(s) applicable to voting systems and/or DRE systems, it should be applied to a DRE system. See, e.g., TEX. ELEC. CODE § 121.001; TEX. ELEC. CODE § 129.001(b). The following paper-based system requirements can feasibly and consistently be applied to a DRE system under the expanded, Texas-specific definition of a DRE system, which have a paper-based component.

1. **Partial Manual Count:** Section 127.201(g) of the Texas Election Code exempts DREs from having to complete the partial manual count. DRE systems under the expanded, Texas-specific definition of a DRE system, which have a paper-based component, are **required** to complete the partial manual count unless it has been waived by the Secretary of State pursuant to Section 127.201(f) of the Texas Election Code.
2. **Recounts:** Section 214.042 of the Texas Election Code provides that a recount must be conducted electronically or manually. For a DRE system under the expanded, Texas-specific definition of a DRE system, this means that the paper component that contains the voter's selections (full ballot or cast vote record) is the ballot of record for the purposes of a recount. If an electronic recount is requested, the paper ballot or cast vote record **must** be rescanned. An electronic recount cannot simply consist of rereading the electronic media containing device totals. If a manual recount is requested, the paper ballot or cast vote record will be hand tallied.
3. **Preservation of Voted Ballots:** The paper ballots or cast vote records are required to be preserved for a period of at least 60 days after the date of the election in a locked ballot box in accordance with Section 66.058(b) of the Texas Election Code. On the 61st day, the general custodian of election records may transfer them to another secure container for the remainder of the preservation period in accordance with Section 66.058(b) of the Texas

[dailytrib.com](https://www.dailytrib.com)

Voting machine suit against Burnet County thrown out of district court - DailyTrib.com

Suzanne Freeman

~3 minutes

A lawsuit asking for emergency relief from electronic voting machines in Burnet County was thrown out of the 424th Judicial District Court on Aug. 30 by District Judge Evan Stubbs. The suit asks that all future elections be conducted with paper ballots only and seeks the seizure of the county's voting machines and all materials relating to elections from November 2020 forward.

It was filed by Marble Falls resident Patricia Cope, who could not be reached for comment. An appeal is pending in the Third Court of Appeals.

The lawsuit named Election Administrator Doug Ferguson, Burnet County Commissioners Jim Luther, Damon Beierle, Billy Wall, and Joe Don Dockery, and County Judge James Oakley as defendants.

Cause No. 54047 uses the exact language as a series of

similar lawsuits filed in other Texas counties, including Lubbock, Jefferson, and Hood. The suits were filed in August to beat the Sept. 3 deadline for destroying election materials in the November 2020 presidential election, a timeframe set by law.

State law mandates a 22-month holding period for election materials in all elections. Ferguson said he would keep the information stored and safe as the lawsuit makes its way through the courts.

He also assured local voters that Burnet County's voting machines are "unhackable."

"None of them are hooked up to the internet," he said. "And neither one of our election computers has an ethernet connection, and they don't work on wireless. The only way anything can be done to these computers or voting machines is in person."

His office is under 24-hour surveillance with cameras posted throughout the building. Only three people have the combination to the office door's sturdy, coded lock.

"A lot of the complaints made in the lawsuit are for things that don't pertain to elections in Texas," Burnet County Attorney Eddie Arredondo said. "I also think if they have an issue with the process, they should take it up with the Secretary of State. **Burnet County is following the law of the state.**"

All of the similar lawsuits in other Texas counties have been filed by residents of those counties.

suzanne@thepicayune.com

Voting machine lawsuit over for county - DailyTrib.com

Suzanne Freeman

A lawsuit against Burnet County seeking to do away with electronic voting in favor of paper ballots has ended with a final action from the First Court of Appeals Texas Judicial Branch.

The appeals court will send a mandate to issue to the Burnet District Court on Friday, July 28, in the case of Patricia Cope v. Burnet County et al. A mandate to issue closes out an appeal. The case is then sent back to the original court, an appeals court clerk told DailyTrib.com.

“The whole process is now done,” the clerk said, adding that all of the due dates for motions have passed without any filings from the plaintiff, who is a Marble Falls resident. The First Court of Appeals dismissed the case on May 11.

Burnet County Attorney Eddie Arredondo verified that assessment.

“I think the matter is just done,” Arredondo said. “We will continue to try to work with Ms. Cope to see if we can find common ground because, in the end, what she wants and what we want is the same: a safe election that is depended upon by the public to say ‘this is the true result.’”

Cope filed the lawsuit on Aug. 22, 2022, naming Election Division Director Doug Ferguson, Burnet County Judge James Oakley, and county commissioners Jim Luther, Damon Beierle, Billy Wall, and Joe Don Dockery as defendants.

It was dismissed by the 424th Judicial Court in Burnet on Aug. 30 by District Judge Evan Stubbs. It was then appealed.

Cope had not returned phone calls from DailyTrib.com for comment by the time of this story’s publication.

suzanne@theepicayune.com



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

County Judge

8-22-23

14c
Patricia
Cox

October 24, 2017

The Honorable Lyle Larson
Chair, Committee on Natural Resources
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Opinion No. KP-0170

Re: Whether the term "direct recording electronic voting machine" as used in subsection 121.003(12) of the Election Code includes voting machines that produce paper ballots (RQ-0169-KP)

Dear Representative Larson:

You request an opinion concerning the meaning of the term "direct recording electronic voting machine" as used in subsection 121.003(12) of the Election Code.¹ Subsection 121.003(12) defines "direct recording electronic voting machine" as "a voting machine that is designed to allow a direct vote on the machine by the manual touch of a screen, monitor, or other device and that records the individual votes and vote totals electronically." TEX. ELEC. CODE § 121.003(12). Specifically, you ask whether the phrase "direct recording electronic voting machine" includes "electronic voting machines that also produce marked paper ballots" as an added security measure. Request Letter at 1.

You explain that certain voting systems allow voters to cast their votes on an electronic screen and also "produce a marked paper ballot that a device will read and record on an electronic storage component." *Id.* You describe the operation of these machines as "first record[ing] the voter's choices on a marked paper ballot, which the voter feeds into a device that scans and reads the ballot." *Id.* at 2. You explain that "[s]ometimes these paper ballots are fed into a physically separate device; other times the same device that marks the paper ballot also collects and reads that ballot." *Id.* at 1. After the machine records the voter's choices on the paper ballot, it records the choices "on an electronic data-storage component, whose data will be taken and tabulated at the end of voting." *Id.* at 2. The paper ballots serve as a paper recording of the electronic votes cast, providing "an additional safeguard against tampering or voting fraud." *Id.* The paper ballots are available "if needed for a future audit or recount." *Id.* at 1. You explain, however, that "they do not act as substitutes for the electronic recording of votes." *Id.* at 2. You question whether the

¹See Letter from Honorable Lyle Larson, Chair, House Comm. on Nat. Res., to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (July 6, 2017), <https://www.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

ES-SS-8

machines as described qualify as direct recording electronic voting machines, as defined in subsection 121.003(12) of the Election Code. *Id.* at 1.

The statutory definition of "direct recording electronic voting machine" contains two requirements. TEX. ELEC. CODE § 121.003(12). First, the machine must be "designed to allow a direct vote on the machine by the manual touch of a screen, monitor, or other device." *Id.* Second, the machine must "record[] the individual votes and vote totals electronically." *Id.* The fact that the electronic voting machines you describe provide the added benefit of a marked paper ballot to better protect against voter fraud does not disqualify them as direct recording electronic voting machines. Nothing in the language of subsection 121.003(12) or elsewhere in the Election Code suggests that direct recording electronic voting machines may not also record a voter's choices on a paper ballot. *See id.* Thus, voting machines that produce marked paper ballots may qualify as direct recording electronic voting machines as long as they meet the additional statutory requirements.²

You indicate some of the machines you ask about require a voter to submit the marked paper ballots into a physically separate scanner and tabulator for recording. Request Letter at 2. You raise the concern that an argument could be made that these machines do not satisfy the requirements of subsection 121.003(12) because the statute implies that a direct recording electronic voting machine must constitute a single piece of equipment. *Id.* at 2-3. Thus, you ask whether "direct recording electronic voting machine" could consist of two physically separate devices that together encompass the voting machine. *Id.* at 3.

The definition of direct recording electronic voting machine does not, on its face, specify whether the machine must constitute a single piece of equipment or whether it could encompass a machine with multiple pieces of equipment that together satisfy the statutory requirements. However, the Legislature authorized direct recording electronic voting machines as a type of voting system established under Title 8 of the Election Code. *See* TEX. ELEC. CODE §§ 129.001-.057 (chapter 129, "Direct Recording Electronic Voting Machines," found in Title 8, "Voting Systems"). The Legislature defined "voting system" as "a method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus and includes the procedures for casting and processing votes and the programs, operating manuals, tabulating cards, printouts, and other software necessary for the system's operation." *Id.*

²In addition to the requirements in subsection 121.003(12), a direct recording electronic voting machine "must provide the voter with a screen in summary format of the voter's choices for the voter to review before the vote is actually cast." TEX. ELEC. CODE § 129.002(a). Section 122.033 includes additional requirements for the approval of all voting systems and equipment. *Id.* § 122.033. Before any voting equipment may be used in an election, the Secretary of State must approve the equipment. *Id.* § 122.031(a); *see also id.* § 122.001 (establishing the state voting system standards, including a requirement that a voting system comply with the voting system standards adopted by the federal Election Assistance Commission). While this office may opine on the legal requirements for direct recording electronic voting machines, whether a specific machine meets all voting system standards, including federal certification, such that it may be approved for use in an election, is a question for the Secretary of State in the first instance after a full inspection of the machine. *See generally id.* §§ 122.031-.039 (establishing procedures for the Secretary of State to approve voting systems and equipment); *see also id.* § 122.032(b) (authorizing the Secretary of State to prescribe specific requirements and standards for such approval).

§ 121.003(1). The Legislature's definition of "voting system" acknowledges that the system may encompass more than one single piece of equipment.

Furthermore, the Legislature defined "voting machine" as "an apparatus on which voters cast their votes, that records each vote, and that furnishes a total of the number of votes cast for the candidates and for and against the measures." *Id.* § 121.003(3). The Legislature did not define "apparatus," so we construe that term according to its common meaning. TEX. GOV'T CODE § 311.011(a) ("Words and phrases shall be . . . construed according to . . . common usage."). Courts will often look to dictionary definitions to determine a term's common, ordinary meaning. *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014). Dictionary definitions of "apparatus" include "a set of materials or equipment designed for a particular use." MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 59 (11th ed. 2004) (emphasis added); *see also* NEW OXFORD AMERICAN DICTIONARY 75 (3d ed. 2010) (defining "apparatus" as "the technical equipment or machinery needed for a particular activity or purpose"). Under these definitions, an apparatus could include more than one piece of equipment. Thus, a court would likely conclude that the Legislature did not intend to limit direct recording electronic voting machines to machines that operate using a single piece of equipment.

You also ask whether direct recording electronic voting machines that produce marked paper ballots may be used in the countywide polling place program. Request Letter at 1. The Election Code requires the Secretary of State to implement a program authorizing some counties "to eliminate county election precinct polling places and establish countywide polling places" for most elections if the county meets certain requirements. TEX. ELEC. CODE § 43.007(a). To participate in the countywide polling place program, a county must, among other requirements, use direct recording electronic voting machines. *Id.* § 43.007(d)(4). You explain that the machines that you ask about accommodate multiple ballot styles on a single device, which allows "a voter to vote in the same elections in which the voter would be entitled to vote in the county election precinct in which the voter resides," as required by law. *Id.* § 43.007(e); *see also* Request Letter at 4. As discussed above, the fact that a voting machine produces a marked paper ballot does not disqualify the machine as a direct recording electronic voting machine. Furthermore, a direct recording electronic voting machine could include multiple pieces of equipment that operate together. Thus, as long as machines meet the other requirements of direct recording electronic voting machines, counties may use them in a countywide polling place program.

S U M M A R Y

Subsection 121.003(12) of the Election Code defines "direct recording electronic voting machine" as "a voting machine that is designed to allow a direct vote on the machine by the manual touch of a screen, monitor, or other device and that records the individual votes and vote totals electronically." Voting machines that produce marked paper ballots will qualify as direct recording electronic voting machines as long as they meet all statutory requirements.

The Legislature authorized direct recording electronic voting machines as a type of voting system established under Title 8 of the Election Code. It defined "voting system" as "a method of casting and processing votes that is designed to function wholly or partly by use of mechanical, electromechanical, or electronic apparatus," thereby acknowledging that voting systems may encompass more than a single piece of equipment. Furthermore, the Legislature defined "voting machine" in Election Code subsection 121.003(3) as "an apparatus on which voters cast their votes, that records each vote, and that furnishes a total of the number of votes cast for the candidates and for and against the measures." A common meaning of the term apparatus is "a set of materials or equipment designed for a particular use." Thus, a court would likely conclude that the Legislature did not intend to limit direct recording electronic voting machines to only those machines that operate using a single piece of equipment.

To participate in the countywide polling place program, a county must, among other requirements, use direct recording electronic voting machines. That a voting machine produces a marked paper ballot or includes multiple pieces of equipment that operate together to effectuate direct voting does not disqualify the machine from use in a countywide polling place program as long as the voting machines meet the other requirements of a direct recording electronic voting machine.

Very truly yours,



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Jane Nelson
Secretary of State

October 6, 2023

Summary of Legal Requirements, Procedures, and Considerations **Regarding Hand-Counting of Ballots in Texas Elections**

This purpose of this document is to outline the legal requirements, procedures, and necessary considerations for conducting an election in which votes will be tabulated through a hand count.

All statutory references in this document are to the Texas Election Code ("the Code"), unless otherwise indicated.

Authority that Determines Counting Method

The authority responsible for adopting a voting system for an election will determine whether an electronic voting system will be used to tabulate the results or whether the results will be tabulated through a hand count. (Sec. 123.001).

- For the **general election for state and county officers**, an election ordered by the governor, or an election ordered by a county authority, the commissioners court is the authority responsible for adopting the voting system. (Sec. 123.001).
- For an **election ordered by a political subdivision other than a county**, the political subdivision's governing body is the authority responsible for adopting the voting system. (Sec. 123.001).
- For a **separate primary election**, each party's county executive committee is the authority responsible for adopting the voting system for that party's primary. (Sec. 123.001).
- For a **joint primary election**, the county election officer is the authority responsible for adopting the voting system for the joint primary. (Sec. 172.126(f)).

As a reminder, the county election officer is either the county clerk, the county elections administrator, or the county tax assessor-collector, depending on the actions of the county commissioners court. (Secs. 31.031, 31.071, 31.091).

Polling Location Requirements

For an election in which ballots are hand-counted, polling locations (election precincts) are based on voter registration precincts. On election day, precinct returns are prepared at each individual polling location. (Sec. 65.014). Therefore, polling locations shall be based on voter registration precincts.

In certain elections, precincts may be combined or consolidated according to the procedures outlined in Chapter 42 of the Election Code. Combining election precincts and consolidating election precincts are two distinct procedures that impact the manner in which precinct returns are prepared in different ways.

Consolidating Precincts (Secs. 42.008, 42.009)

- The consolidation of precincts is only available in a special election that requires the use of county election precincts, such as a constitutional amendment election or an election to fill a legislative or congressional vacancy (Sec. 42.008), or in a primary election (Sec. 42.009).
- County election precincts cannot be consolidated in a general election for state and county officers.
- The consolidated precinct is treated as a single precinct and is subject to the requirements applicable to a single precinct under Sections 42.005, 42.006, and 42.007 of the Code.
- In a primary election, under Section 42.005 of the Code, consolidation is only possible if the consolidated precinct does not contain territory from more than one commissioners precinct, justice precinct, congressional district, state representative district, state senatorial district, or State Board of Education district. In practice, this means that an entity may not have more than one "ballot style" per precinct.
- Voter check-in paperwork is completed for the consolidated precinct as a single precinct.
- Precinct returns are prepared for the consolidated precinct as a single precinct.
- The consolidation of precincts is performed by the following authority, depending on the election:
 - Commissioners court, on recommendation of the county election board, in a special election. (Sec. 42.008).
 - The party's county executive committee, in a separate primary. (Sec. 42.009).
 - The county election officer, in a joint primary. (Sec. 172.126(b)).

Combining Precincts (Sec. 42.0051)

- County election precincts may only be combined in a general election or a special election. It is not permissible to combine county election precincts in a primary election. (Sec. 42.0051(a-1)).
- The combining of precincts is only available in counties with a population of less than 1.2 million that do not participate in the countywide polling place program. (Sec. 42.0051(a)).
- Precincts may only be combined if the commissioners court cannot secure a suitable polling location for the precinct under Section 43.031 of the Code and the combined

polling location adequately serves the voters of the combined precinct. (Sec. 42.0051(a-1)).

- Voter check-in paperwork is completed separately for each individual precinct contained in the combined precinct.
- Precinct returns are prepared separately for each individual precinct contained in the combined precinct.
- The combination of precincts is performed by the commissioners court, on recommendation of the county election board.

As an example, for the primary election, if a county had 100 voter registration precincts which resulted in 100 unique ballot styles, the county would be required to have 100 polling locations.

For more information on the rules related to consolidating and combining precincts, please see [Texas Secretary of State Election Advisory No. 2023-11](#).

Countywide Polling Places Are Not Permitted in a Hand Count

Because precinct returns are prepared at each polling place, it is not permissible to utilize countywide polling places for hand-counted elections. In a primary election, the county may establish countywide polling places only if: (a) the county chair or county executive committee of each political party participating in a joint primary election under Section 172.126 of the Code agrees to the use of countywide polling places; or (b) the county chair or county executive committee of each political party required to nominate candidates by primary election agrees to use the same countywide polling places. (Sec. 43.007(a)(4)). Therefore, if one party is conducting a hand count for that party's primary election, both parties are required to conduct precinct-based voting. Neither party would be permitted to use countywide polling places for its individual primary election.

Requirements for Accessible Voting Equipment

State and federal law require the entity conducting the election to provide at least one unit of accessible voting system equipment at each election day polling location and each early voting location to allow voters with disabilities to independently mark a secret ballot. (Sec. 61.012).

Although the Election Code provides limited exemptions to this requirement for entities located in counties with a population less than 20,000, those exemptions are only available for elections in which there is no federal office on the ballot. (Sec. 61.013).

Ballot Arrangement Requirements for a Hand Count

The Texas Election Code outlines the requirements for the format of a ballot in Chapter 52, Subchapter C of the Texas Election Code.

broken or solid line shall be provided for a write-in vote below the names of the candidates for each office. If more than one candidate is to be elected to an office, write-in spaces shall be provided in a number equal to the number of candidates to be elected. (Sec. 52.066(c)). If the length of the ballot arranged as one column would exceed 18 inches, the office titles may be arranged in parallel vertical columns. (Sec. 52.066(d)).

Voting System Equipment

The Secretary of State may prescribe the form and content of a ballot for an election using a voting system, including an electronic voting system or a voting system that uses direct recording electronic voting machines or ballot marking devices, to conform to the formatting requirements of the system. Ballot format modifications for ballot marking devices are approved during the certification process for electronic voting systems and may vary slightly from the requirements dictated above. (Sec. 52.075).

Ballot Marking Methods in a Hand Count

In a hand count, there are several ways that a ballot may be marked by a voter.

Pre-Printed Ballots

The entity conducting the election may choose to use pre-printed ballots that are marked by the voter with an indelible marking instrument. (Sec. 62.015). Each person who prints ballots or other election supplies for a primary election or general election must file a statement with the Secretary of State. (Sec. 51.013). A list of registered printers can be accessed on the Secretary of State's [website](#). Vendors that wish to be identified on the Secretary of State's website may contact the SOS at elections@sos.texas.gov to complete the necessary paperwork.

Ballot on Demand Systems

The entity conducting an election may choose to use a ballot on demand system that allows the polling place worker to select the ballot style that corresponds with the voter's precinct and print the ballot from the device at the polling location. These ballots are then marked by the voter with an indelible marking instrument. (Sec. 62.015).

Ballot Marking Devices

The entity conducting the election may choose to use ballot marking devices for all ballots. In this scenario, the voter would insert blank ballot stock into the ballot marking device. The voter would make selections on the screen of the ballot marking device and the voter's choices would be printed on the ballot. These ballots would then be deposited into a ballot box for hand tallying at the appropriate time.

Polling Place Requirements for Ballots in a Hand Count

At the polling location, election officers shall follow the procedures outlined in Chapter 62 related to setting up the polling location. These provisions include the following requirements:

- Examining ballot boxes prior to the start of voting (Sec. 62.007)
- Signing of ballots by presiding judge for election day (Sec. 62.008)
 - **NOTE:** For early voting, the early voting clerk's initials shall be placed on each ballot or the deputy early voting clerk shall stamp a facsimile of the initials on each ballot. (Sec. 85.0311).
- Disarranging ballots for voters' selections (Sec. 62.009)
- Placing indelible marking instruments in voting stations (Sec. 62.015)
- Providing voting booths that assure privacy for voters while marking their ballots. (Sec. 51.032)
 - **NOTE:** A voting booth may be used without prior approval from the Secretary of State if the booth complies with the requirements outlined in Section 51.032 of the Code.

Officers Who Perform Counting

In a hand count, the ballots are counted by one or more team(s) of election officers assigned by the presiding judge. Each team must consist of two or more election officers. (Sec. 65.001).

- For **election day ballots**, a hand count of ballots is performed by the presiding judge, alternate judge, and clerks at each of the election day polling locations. (Sec. 65.001).
- For **early voting in person ballots**, the hand count is performed by the presiding judge, alternate judge, and members of the early voting ballot board (EVBB). (Sec. 87.061).
- For **ballots by mail**, the hand count is performed by the presiding judge, alternate judge, and members of the EVBB. (Sec. 87.061).

Chapter 65 of the Texas Election Code provides that a member of a counting team may not be replaced after vote tallying is begun unless each existing discrepancy among the three tally lists is corrected before the replacement is made. (Sec. 65.006). (Tallying procedures are described in further detail below.) Although additional clerks may be brought in to supplement or replace counting team members, there is no legal authority to replace the appointed presiding judge. Because the presiding judge must be present to resolve voter intent questions and sign the precinct returns, the presiding judge must be present throughout the entire counting process.

Counting While the Polls are Open on Election Day

The Election Code does not provide specific space and distance limitations for the arrangement of the polling place when counting is occurring during voting hours. However, the Code contains general guidelines for the setup of the polling place and the availability of certain results information that impacts the options for setting up a polling place.

Counting activities should occur in a separate room in the polling place. It is important to physically separate the area in which the ballots are counted from the area in which voters are voting to prevent counting activities from interfering with voting activities and to prevent the release of results before the time the polls close. It is a Class A misdemeanor for an election officer, watcher, or other person serving at a polling place in an official capacity to reveal information about the results of the election before the polls close or the last voter has voted, whichever is later. (Sec. 61.007).

If it is impossible to conduct counting activities in a separate room at the polling place, the counting should at least be conducted in a separate area that is out of the sight range or hearing range of the voters at that location. However, the voting stations and ballot boxes at the polling place must still remain within plain view of one or more election officers at the polling location, who must be able to continue processing voters while other election officers are conducting the counting process. The counting process should occur in a manner that does not interfere with voters in the polling place and which prevents the release of results before the time the polls close. Because the Election Code requires a member of the counting team to verbally announce the name of a candidate for whom a vote has been received or whether a vote has been received for or against a measure, the counting area must be situated in a manner that prevents a voter from seeing or hearing the activities of the counting team when the voter is located in the polling place. (Secs. 61.007, 62.004, 62.006, 65.005).

The ballots and ballot boxes in the polling place must remain in plain view of at least one election officer from the time the polls open for voting until the precinct returns have been certified. If counting is occurring while the polls are open, at least one election officer must be able to monitor the ballots and ballot boxes in the counting area and in the voting area during that timeframe. (Sec. 61.005).

If it is not possible to organize the polling place in this manner, counting at that location should occur after the time that the polls have closed or the last voter has voted, whichever is later.

Time for Counting

The time for counting ballots is strictly controlled by the Texas Election Code. Election day ballots are counted on election day. (Sec. 65.002). In a primary election in which ballots are hand-counted, early voting in person ballots and early voting by mail ballots may not be counted until

the polls open on election day. (Sec. 87.0241(b)). NOTE: In a county with a population of 100,000 or more where the county executive committee contracts with the county election officer to run the election, the early voting ballot board may only count ballots early if the county is using an electronic voting system. (Sec. 87.0241(c); 1 Tex. Admin. Code § 81.36).

The counting of ballots shall be conducted continuously until all ballots are counted. (Secs. 65.002, 87.062). Upon completion of counting, the presiding judge shall prepare the precinct returns. The precinct returns MUST be delivered to the general custodian of election records no later than 24 hours after the polls close. (Sec. 66.053). An election officer commits a Class B misdemeanor if the officer fails to make the delivery of the precinct returns to the general custodian or if the officer fails to make the delivery by the prescribed 24-hour deadline. (Secs. 66.054, 87.062(b)).

There is no legal authority to count ballots beyond the 24-hour deadline for delivering precinct returns. If counting has not been completed and precinct returns have not been delivered to the general custodian by 24 hours after the polls close, the authority conducting an election would need to seek a court order to extend the authorized time for counting ballots so that the election officers who are counting ballots are not subject to potential criminal charges.

Below are certain specific rules related to the timing of hand-counting ballots:

- **Election Day Ballots:** For election day ballots, the presiding judge of the polling place may direct the counting of ballots to occur at any time after the polls have been open for one hour. If counting at the election day polling location begins while the polls are open, the ballot box may not be opened for the purpose of counting those ballots unless there are at least 10 ballots in the box. (Sec. 65.002). If counting begins while the polls are open, two ballot boxes shall be used on a rotating basis. When one ballot box is delivered to the counting teams at the polling place, the other box must be made immediately available for the deposit of voted ballots by voters. Before the ballot box is positioned for the receipt of marked ballots, an election officer must examine it, remove its contents, and lock the box. (Sec. 65.003).
- **Early Voting In-Person Ballots and Ballots by Mail:** For early voting in person and ballot by mail, the early voting ballot board may begin counting once the polls open on election day. (Sec. 87.0241(b)(1)). On the direction of the presiding judge, the EVBB shall open the containers containing the early voting ballots that are to be counted, remove the contents from each container, and remove any ballots contained in ballot envelopes from their envelopes. The EVBB shall count the ballots and prepare the returns in the same manner as hand-counted ballots on election day. Early voting in-person ballots shall be tabulated and stored separately from ballots by mail and shall be separately reported on the returns. (Sec. 87.062).

- For late-arriving mail ballots, provisional ballots, and mail ballots that were corrected through the corrective action process after election day, the EVBB must convene to count those ballots no later than the 9th day after election day (for most elections) or the 13th day after election day (for the general election for state and county officers). (Sec. 87.125).

Procedures for Hand-Counting

The procedures for hand-counting are dictated by Chapter 65 of the Texas Election Code. There is no legal authority to hand-count ballots using a method that is inconsistent with, or different from, the procedures prescribed by the Texas Election Code.

- **Tallying Procedures**

- On each counting team, one member will act as a “caller,” while the other members of each counting team will act as “talliers.” The caller will clearly announce the name of each candidate for whom a vote has been received or whether a vote has been received for or against a measure. The talliers will record the votes on the tally list as they are announced. (Sec. 65.005(a)).
 - Three tally lists will be maintained for each counting team. The counting team will periodically compare the tally lists to determine whether there are any discrepancies between them. If a discrepancy is discovered, then the ballots must be recounted and the necessary corrections must be made on the lists. (Sec. 65.005(b)).
 - After the completion of the count, each tallier will compute the total number of votes tallied on the member’s list and enter the totals on the tally list. After verifying that the three tally lists are in agreement, each counting officer must sign the tally list that the officer has kept. (Sec. 65.005(c)).
- **Write-In Votes:** In an election where write-in voting is permitted, the name of a write-in candidate shall be entered on the tally list and votes for that candidate will be tallied in the same manner as votes for a candidate whose name appears on the ballot. Unless the race is one in which open write-in voting is authorized, the write-in candidate’s name must appear on the list of declared write-in candidates for votes to be counted for that candidate. (Secs. 65.008, 146.022, 146.051, 146.081).
 - **Irregularly Marked Ballots – Resolving Voter Intent:** A voter’s failure to mark the ballot in strict conformity with the Election Code does not invalidate the ballot. If the voter’s ballot is irregularly marked, the ballot must be counted according to the voter’s intent. (Sec. 65.009). The presiding judge is responsible for resolving any ambiguous questions of voter intent. (Sec. 65.009).
 - The Election Code provides that a voter’s intent may be determined by:

- A distinguishing mark adjacent to the name of a candidate or political party or a voting choice associated with a proposition;
 - An oval, box, or similar marking clearly drawn around the name of a candidate or political party or a voting choice associated with a proposition;
 - A line drawn through the names of all candidates in a manner that indicates a preference for the candidates not marked if the names of the candidates not marked do not exceed the number of persons that may be elected to that office;
 - A line drawn through the name of each political party except one in a manner that clearly indicates a preference for the political party not marked;
 - A line drawn through a voting choice associated with a proposition in a manner that clearly indicates a preference for the other voting choice associated with the proposition; or
 - Any other evidence that clearly indicates the intent of the voter in choosing a candidate or political party or deciding on a proposition.
- If the voter marks the ballot for more candidates for an office than the number of persons to be elected for that office, that is treated as an overvote and none of the votes for that office may be counted on the voter's ballot. (Sec. 65.011).

Additional guidelines and examples for resolving voter intent questions can be found in the Secretary of State's [Election Judges and Clerks Handbook](#).

Preparing Precinct Returns

The presiding judge of the election day polling location is responsible for preparing precinct returns for that precinct. (Sec. 65.014). The presiding judge of the early voting ballot board is responsible for preparing precinct returns for early voting in person and early voting by mail. (Sec. 87.062).

- **Election Day Ballots:** On completion of the vote count, the presiding judge shall prepare the returns for the precinct.
 - Those precinct returns must state:
 - The total number of voters who voted at the polling place (as indicated by the poll list);
 - The total number of votes counted for each candidate; and
 - The total number of votes counted for and against each measure.
 - The returns must be prepared as an original and three copies. On completing the returns, the presiding judge shall sign the original and the copies of the returns to certify their accuracy. (Sec. 65.014).

- **Early Voting In-Person Ballots and Ballots by Mail:** On completion of the vote count, the presiding judge of the EVBB shall prepare the returns for each precinct. Early voting in-person ballots shall be tabulated and stored separately from ballots by mail and shall be separately reported on the returns. (Secs. 87.062, 87.1231).
 - Those precinct returns must state:
 - The total number of voters who voted at the polling place, if applicable (as indicated by the poll list);
 - The total number of votes counted for each candidate; and
 - The total number of votes counted for and against each measure.
 - The returns must be prepared as an original and three copies. On completing the returns, the presiding judge shall sign the original and the copies of the returns to certify their accuracy. (Secs. 65.014, 87.062).
 - The EVBB shall prepare the returns in the same manner for late-arriving mail ballots, provisional ballots, and mail ballots that were corrected through the corrective action process after election day. Provisional ballots should be reported as election day or early voting in-person results, depending on the date on which the voter cast the provisional ballot. These returns shall be provided to the canvassing authority in the same manner as the other precinct returns. (Secs. 65.014, 87.062; 1 Tex. Admin. Code § 81.37).

Delivery of Precinct Returns to the General Custodian

The precinct returns and other precinct election records must be delivered to the appropriate authorities immediately after the precinct returns are completed. (Sec. 66.053(a)). This delivery must occur within two hours after the closing of the polls or the last voter has voted, whichever is later, or as soon as practicable after the two-hour deadline. (Sec. 68.032).

If the presiding judge determines that the ballots will not be counted in time to allow delivery of the precinct election records by 2:00 a.m. of the day after election day, the presiding judge must contact the general custodian of election records between midnight and 1:00 a.m. to inform the general custodian of the following information by telephone:

- The total number of voters who voted at the polling place as indicated by the poll list;
- The vote totals tallied for each candidate at the time of the notification;
- The vote totals tallied for and against each measure at the time of the notification; and
- The expected time of finishing the count. (Sec. 66.053(b)).

The precinct election records **MUST** be delivered no later than 24 hours after the polls close. (Sec. 66.053). An election officer commits a Class B misdemeanor if the officer fails to make the delivery of those records or if the officer fails to do so by the 24-hour deadline. (Sec. 66.054).

The presiding judge must deliver the original precinct returns to the presiding officer of the local canvassing authority with the other records contained in Envelope #1. If the presiding officer of the local canvassing authority is unavailable, the envelope shall be delivered to the general custodian of election records, who shall deliver it to the local canvassing authority before the canvass. (Sec. 66.051(a)).

The presiding judge must deliver a copy of the precinct returns to the general custodian of election records with the other records contained in Envelope #2. The presiding judge must also place a copy of the precinct returns in Ballot Box #3, which is delivered to the general custodian of election records with the other materials in that ballot box. (Sec. 66.051(b)).

The presiding judge will retain a copy of the precinct returns with the other records contained in Envelope #3. (Sec. 66.051(c)).

Election Night Tabulation and Reporting

On election night, the general custodian prepares an **unofficial** tabulation that contains vote totals of all votes cast during early voting in person, early voting by mail, and election day ballots. (Sec. 66.056(a)). The official tabulation comes from the canvass that occurs after the election has concluded and all late-arriving mail ballots, provisional ballots, and corrected mail ballots have been processed. On election night, the general custodian shall periodically make a public announcement of the current state of the tabulation. (Sec. 66.056(b)).

The type of election dictates who serves as the general custodian of election records for that election:

- For an **election ordered by the governor or by a county authority**, the general custodian is the county clerk.
- For a **primary election**, the general custodian is the county clerk.
- For an **election ordered by a city authority**, the general custodian is the city secretary.
- For an **election ordered by an authority of a political subdivision other than a county or city**, the general custodian is the secretary of the political subdivision's governing body.

The general custodian prepares the unofficial tabulation from the precinct returns that are delivered to the general custodian on election night. Upon receipt of the precinct returns, the general custodian shall open the envelopes containing the returns and prepare a tabulation stating:

- The total number of votes received in each precinct for each candidate;
- The total number of votes received in each precinct for and against each measure;
- The sum of the precinct totals for each candidate; and
- The sum of the precinct totals for and against each measure. (Sec. 66.056(a)).

Rosters and Voting History Submission

The early voting clerk for the general election for state and county officers and for a primary election shall submit to the Secretary of State, for posting on the Secretary of State's website, the roster containing the name, precinct, and voter registration number of the voters who voted on election day. This roster shall be posted not later than 11:00 a.m. on the day after the election. (Sec. 87.121(k)).

In a hand count, if the counting of ballots at a polling location extends into the next morning after election day, the early voting clerk may be unable to comply with the above requirement as precinct returns and the accompanying records (including the signature roster and poll list) are not to be delivered until the counting is finished and precinct returns have been completed.

Poll Watchers

Poll watchers are entitled to observe the activities of the counting team in the polling place and the early voting ballot board. At the polling place, poll watchers should be allowed to move freely between the voting area and the counting area. (Sec. 33.056). However, if the watcher is present at the polling place when ballots are counted, the watcher may not leave until the counting is complete. (Sec. 33.052).

Poll watchers do not have poll watching capabilities when the general custodian of election records is creating the unofficial tabulation of results on election night. This is not a defined area in which poll watchers may be present; nor is there a presiding judge present who can receive the certificate of appointment from a poll watcher.

It is a Class A misdemeanor for a watcher to reveal any information about the results of the election before the polls close or the last voter has voted, whichever is later. (Sec. 61.007).

Logistical Considerations for Hand-Counting Elections

An entity that is considering a hand count for an election should consider the following factors:

- Number of election precincts (election day polling places) required for the election
 - For the general election for state and county officers and the primary election, this figure can be determined by looking at the number of county voter registration precincts.
- Number of election workers and availability of workers required for the hand count

- Each election day polling location must have a minimum of three election workers. The presiding judge and election clerks who are appointed for each polling location are the only persons authorized to tally election ballots at that polling location. Although election workers may be replaced or additional workers may be brought in, it is imperative that workers understand the time commitment involved in a hand tally. The presiding judge, in particular, must be available to continue performing duties as a presiding judge until the counting of ballots has been completed at the election day polling location. This will generally result in the presiding judge working in excess of 12-14 hours on election day.
- Locations used as polling places
 - Every election precinct must have a polling place. When securing voting locations, the authority that controls the building must be informed of the time commitment required for use of that building during a hand count. If counting is conducted after the time the polls close, the locations may be needed overnight and into the next day depending on the length of the ballot for the given election. The authority conducting the election may need to secure additional rooms or space within each polling location for the hand count, if counting is to occur while the polls are open.
- Necessary supplies for a hand count
 - Each election day polling place will need four ballot boxes, tables and chairs for the counting team(s), and an adequate number of tally sheets, marking instruments, and seals for ballot boxes. (Sec. 51.031, 51.033, 51.034).
 - For early voting, only one box per location is necessary but the box must be equipped with two locks, each with a different key. (Sec. 85.032). The early voting ballot board will need ballot boxes and storage cases for the storage of accepted and rejected ballots. (Sec. 87.062).
 - ADA-accessible voting system equipment must be provided in each election day or early voting polling place.

EXAMPLE: A county that has 100 election day polling locations will require a minimum of 400 ballot boxes for election day.

- Length of time necessary for tallying votes
 - It is necessary to estimate the amount of time required to conduct a hand count to accurately determine the number of workers needed and the expected number of hours that each individual will work. These calculations will help the entity in determining the expected personnel costs associated with an election.
 - The SOS recommends that an entity considering a hand-count look to a recent similar election to calculate these figures and provide a proper estimate. When calculating an estimate, the entity should also consider the length of the ballot and the voter turnout from the most recent similar election.

Frequently Asked Questions

Q: Can we appoint election workers specifically to conduct the hand count?

A: In general, anyone who will be performing the hand count will need to be appointed as a presiding judge, alternate judge, or member of the EVBB (for ballots by mail or early voting in person ballots), or as an election judge or clerk for the election day precinct in which the count will be performed (for election day ballots). (Secs. 65.001, 87.061).

With regard to election day workers, the presiding judge of the polling place shall designate the working hours and duties of the clerks serving at the polling place, and the judge may assign the clerks to work for different lengths of time or to begin work at different hours. (Sec. 32.072).

However, the presiding judge and clerks who are on duty at the polling place at the time of any hand count of ballots before the polls close must remain on duty without leaving the polling place while the polls are open. The presiding judge may allow temporary absences for meals or must permit meals to be brought or delivered to those workers at the polling place. In general, when the presiding judge is assigning duties, setting working hours, or authorizing temporary absences, the judge must treat all workers uniformly. (Sec. 32.073).

Q: Can we replace members of the counting teams after counting has begun?

A: Yes, but specific procedures must be followed when a member of the counting team is replaced after counting has begun. A member of the counting team may not be replaced after vote tallying is begun unless each existing discrepancy among the three tally lists is corrected before the replacement is made. After any discrepancy between the tally lists is resolved, the officer who is being replaced must certify the accuracy of the tally list kept by that officer, as of the time of the replacement, by signing the tally list. (Sec. 65.006).

Q: Can poll watchers participate in counting activities?

A: There is no legal authority for a poll watcher to participate in the tallying and counting of votes. Additionally, poll watchers are only permitted to observe the election process; they should not be used to verify that votes are tallied and read correctly.

Q: Can student election clerks participate in hand-counting activities?

A: A person may be appointed as a student election clerk if the person: is at least 16 years of age; has the consent of the student's principal (or parent or legal guardian, if the student is home-schooled); is a U.S. citizen; and has completed any training required by the entity holding the election. In general, nothing in the Election Code prohibits a student election clerk from serving as a member of a counting team, as the student is generally authorized to perform the duties

that an election clerk would normally perform at the polling place. For precinct-based counties, the maximum number of student election clerks who may be appointed at each polling place is two. (Sec. 32.0511).



UNITED STATES
ELECTION ASSISTANCE
COMMISSION



Certified Voting Systems

About the Testing & Certification Program

HAVA mandates that EAC accredit voting system test laboratories and certify voting equipment, marking the first time the federal government has offered these services to the states. Participation by states in EAC's certification program is voluntary. The EAC's full accreditation and certification program became effective in January 2007. For more information, view the [Voting System Testing and Certification Program Manual](#).

Voting systems will be tested against the [2005 voluntary voting system guidelines \(VVSG\)](#), which are a set of specifications and requirements to determine if the systems provide all of the basic functionality, accessibility and security capabilities required.

View system information for each manufacturer below.

Voting System Name

Manufacturer

West Inter Civic, Inc.

Testing Standard

- Any -

Certification Date From

01/01/2000

Election Code. Additionally, the electronic media that contains the vote totals must also be preserved for the duration of the preservation period.

Countywide Polling Place Program

Section 43.007(d)(4) of the Texas Election Code provides that the Secretary of State shall only select counties to participate in the countywide polling place program that use DRE systems. Section 43.007(d)(5) of the Texas Election Code further provides that the Secretary of State can only select counties to participate in the program that "have the appropriate technological capabilities." As a result of KP-0170, DRE systems under the expanded, Texas-specific definition of a DRE system, which have a paper-based component, are now available for use in the countywide polling place program.

For new applicants to the countywide polling place program: The Secretary of State will review new applications to determine whether a county is using traditional DREs or a DRE system under the expanded, Texas-specific definition of a DRE system, and whether the setup described in the application demonstrates that the county has the "appropriate technological capabilities" to successfully participate in the program.

For counties that have already achieved "successful" status in the countywide polling place: If a county wishes to purchase new equipment that falls under the expanded, Texas-specific definition of a DRE system (and use that system as a DRE system), the purchase contract will be reviewed by the Secretary of State in the ordinary course in accordance with Section 123.035 of the Texas Election Code. If the purchase contract for the system which meets the expanded, Texas-specific definition of a DRE system is approved (which presumes the system has been certified as a DRE system through the modification procedure referenced in Subchapter C of Chapter 122 of the Texas Election Code), then the county's successful designation will not be affected and no further action is needed to use the DRE system in the countywide polling place program.

KI:CA

Certification Date To

08/22/2023

Apply

Reset

Voting System (Name/Version)	Manufacturer	Testing standard	Date Certified
<u>Verity Voting 1.0</u>	<u>Hart InterCivic, Inc.</u>	VVSG 1.0 (2005)	2015-05-12
<u>Verity Voting 2.4</u>	<u>Hart InterCivic, Inc.</u>	VVSG 1.0 (2005)	2020-02-21
<u>Verity Voting 2.5</u>	<u>Hart InterCivic, Inc.</u>	VVSG 1.0 (2005)	2020-09-09
<u>Verity Voting 2.6</u>	<u>Hart InterCivic, Inc.</u>	VVSG 1.0 (2005)	2021-04-20
<u>Verity Voting 2.7</u>	<u>Hart InterCivic, Inc.</u>	VVSG 1.0 (2005)	2022-06-07



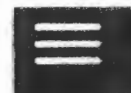
U.S. Election Assistance Commission

633 3rd Street NW, Suite 200,
Washington, DC 20001

**Contact the EAC**



UNITED STATES
ELECTION ASSISTANCE
COMMISSION



Testing and Certification Program

Friday, March 11, 2022

[Share](#)



The U.S. Election Assistance Commission's (EAC) Testing and Certification Program assists state and local election officials by providing voting machine testing and certification. This program is a requirement of the Help America Vote Act (HAVA) of 2002, legislation that created the EAC and mandated that the Commission provide certification, decertification, and recertification of voting systems, as well as the accreditation of voting system testing laboratories. This legislation marked the first time the federal government provided oversight for these activities, a step that allowed states to procure new certified voting systems without the added expense of independent testing and certification. While states are not required to

participate in the program, some have enacted laws or have regulations that require a level of participation.

Prior to the passage of HAVA, voting systems were assessed and qualified by the National Association of State Election Directors (NASD), a nonpartisan association consisting of state level election directors nationwide. These voting systems were tested against the 1990 and 2002 voting system standards developed by the Federal Election Commission (FEC). With HAVA's enactment, the responsibility for developing voting system standards was transferred from the FEC to the EAC and their new iterations are now the EAC Voluntary Voting System Guidelines.

[EAC Testing & Certification Program \(Full PDF Version\)](#)



U.S. Election Assistance Commission

633 3rd Street NW, Suite 200,
Washington, DC 20001



Contact the EAC

Phone: 1 (866) 747-1471 (toll free)

Email: clearinghouse@eac.gov

Website: [Contact Us](#)

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UNITED STATES
ELECTION ASSISTANCE
COMMISSION



Terminated Systems

Voting System Name

Voting System Name

Manufacturer

Hart InterCivic, Inc.

Testing Standard

- Any -

Certification Date (from)

yyyy/mm/dd

Certification Date (to)

yyyy/mm/dd



Voting System (Name/Version)	Manufacturer	Testing Standard	Date Terminated
System - -	Hart InterCivic, Inc.	VSS 2002	2008-06-23
Verity Voting 3.1.0	Hart InterCivic, Inc.	VVSG 1.1	2018-06-19



U.S. Election Assistance Commission

633 3rd Street NW, Suite 200,
Washington, DC 20001



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United States Election Assistance Commission

Certificate of Accreditation

**SLI Compliance,
Division of Gaming Laboratories International, LLC
Wheat Ridge, Colorado**

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2002 Voting Systems Standards, the Voluntary Voting Systems Guidelines versions 1.0 and 1.1 under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. SLI Compliance is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Effective Through

January 10, 2021

A handwritten signature in dark ink, appearing to read "B. Newby", is positioned above the signature line.

Date: 1/10/18

Brian Newby,
Executive Director, U.S. Election Assistance Commission

EAC Lab Code: 0701



United States Election Assistance Commission

Certificate of Accreditation

SLI Compliance **Division of Gaming Laboratories International, LLC** **Wheat Ridge, Colorado**

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2005 and 2015 Voluntary Voting Systems Guidelines (VVSG 1.0 & 1.1) under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. SLI Compliance is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Original Accreditation Issued on: 2/28/2007

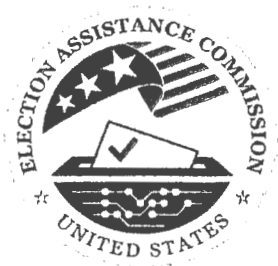
**Accreditation remains effective until revoked
by a vote of the EAC pursuant to 52 U.S.C. §
20971(c)(2).**

Mona Harrington

Date: 2/1/21

Mona Harrington
Executive Director, U.S. Election Assistance Commission

EAC Lab Code: 0701



United States Election Assistance Commission

Certificate of Accreditation

SLI Compliance
Division of Gaming Laboratories International, LLC
Wheat Ridge, Colorado

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the Voluntary Voting Systems Guidelines VVSG 1.0, 1.1 & 2.0 under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. SLI Compliance is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Original Accreditation Issued on: 2/28/2007

*Accreditation remains effective until revoked
by a vote of the EAC pursuant to 52 U.S.C. §
20971(c)(2).*

Date: 11/15/22

Mark A. Robbins
Interim Executive Director, U.S. Election Assistance Commission

EAC Lab Code: 0701



United States Election Assistance Commission

Certificate of Accreditation

Pro V&V, Inc.
Huntsville, Alabama

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2005 Voluntary Voting Systems Guidelines under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. Pro V&V is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Effective Through

February 24, 2017

A handwritten signature in dark ink, appearing to read "G. S. Miller", is written over a horizontal line.

Date: 2/24/15

Acting Executive Director, U.S. Election Assistance Commission

EAC Lab Code: **1501**



United States Election Assistance Commission

Certificate of Accreditation

Pro V&V, Inc. Huntsville, Alabama

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2005 and 2015 Voluntary Voting Systems Guidelines (VVSG 1.0 & 1.1) under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. Pro V&V is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Original Accreditation Issued on: 2/24/2015

*Accreditation remains effective until revoked
by a vote of the EAC pursuant to 52 U.S.C. §
20971(c)(2).*

Mona Harrington

Date: 2/1/21

Mona Harrington
Executive Director, U.S. Election Assistance Commission

EAC Lab Code: 1501



United States Election Assistance Commission

Certificate of Accreditation

Pro V&V, Inc.
Huntsville, Alabama

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the Voluntary Voting Systems Guidelines VVSG 1.0, 1.1 & 2.0 under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. Pro V&V is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Original Accreditation Issued on: 2/24/2015

**Accreditation remains effective until revoked
by a vote of the EAC pursuant to 52 U.S.C. §
20971(c)(2).**

Date: 12/21/22

Mark A. Robbins
Interim Executive Director, U.S. Election Assistance Commission

EAC Lab Code: 1501

42. This implies that a certification lapsed or would lapse because it had an expiration date.

Due to administrative error during 2017-2019, the EAC did not issue an updated certificate to Pro V&V causing confusion with some people concerning their good standing status. Even though the EAC failed to reissue the certificate, Pro V&V's audit was completed in 2018 and again in early 2021 as the scheduled audit of Pro V&V in 2020 was postponed due to COVID-19 travel restrictions. Despite the challenges outlined above, throughout this period, Pro V&V and SLI Compliance remained in good standing with the requirements of our program and retained their accreditation. In addition, the EAC has placed appropriate procedures and qualified staff to oversee this aspect of the program ensuring the continued quality monitoring of the Testing and Certification program is robust and in place.

Figure 2. Portion of EAC Letter, July 22, 2021.

43. The EAC (see Figure 2) admitted to “administrative error” (the Accardi doctrine), therefore violating the laws set by HAVA; “Applying the Accardi doctrine to the facts, the Court in Heffner said: ‘An agency of the government must scrupulously observe rules, regulations, or procedures which it has established. When it fails to do so, its actions cannot stand and courts will strike it down ...’” (*United States v. Toussaint*, 456 F. Supp. 1069, 1074 (S.D. Tex. 1978)).

44. The EAC used both administrative error and Covid-19 as an excuse for an expired accreditation certificate for Pro V&V from 2017 and an invalid accreditation certificate for SLI Compliance from 2018.^{13 14} (EAC Letters at Exhibit J).

45. Despite recent claims that accreditation does not expire, the EAC currently has a list on its website of expired VSTL accreditations¹⁵. (Exhibit K).

46. On March 19, 2019, Deputy Secretary of State Jose A Esparza illegally certified ES&S EVS 6.0.2.0 for use in Texas elections without the legal number of examiners required to

¹³https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Accreditation_Renewal_delay_memo012721.pdf (last viewed May 23, 2023)

¹⁴https://www.eac.gov/sites/default/files/voting_system_test_lab/files/VSTL%20Certificates%20and%20Accreditation_0.pdf (last viewed May 23, 2023)

¹⁵ <https://www.eac.gov/voting-equipment/accredited-laboratories> (last viewed May 23, 2023).

modified to comply with applicable standards or to not deviate from an approved system or equipment.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 484, Sec. 3, eff. Sept. 1, 1987.

Sec. 122.004. PREPARATION OF SOFTWARE BY SECRETARY OF STATE. (a) The secretary of state may prepare any type of software for use with an electronic voting system.

(b) The software is subject to the standards and examination procedures applicable to voting systems.

Added by Acts 1987, 70th Leg., ch. 484, Sec. 3, eff. Sept. 1, 1987.

Sec. 122.005. VENUE FOR OFFENSES. Venue for prosecution of an offense under this chapter is in the county in which the offense was committed.

Added by Acts 1993, 73rd Leg., ch. 728, Sec. 31, eff. Sept. 1, 1993.

SUBCHAPTER B. APPROVAL OF VOTING SYSTEM AND EQUIPMENT

Sec. 122.031. APPROVAL OF SYSTEM AND EQUIPMENT REQUIRED. (a) Before a voting system or voting system equipment may be used in an election, the system and a unit of the equipment must be approved by the secretary of state as provided by this subchapter.

(b) The secretary of state may seek a temporary restraining order or a writ of injunction obtained through the attorney general to prevent the use of any part of a voting system or voting system equipment that has not been approved.

(c) A person commits an offense if the person executes a contract to sell, lease, or otherwise provide a voting system or voting system equipment that the person knows has not been approved. An offense under this subsection is a Class A misdemeanor.

(d) This section does not prohibit a person from exhibiting a voting system or unit of voting system equipment that has not been approved.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 484, Sec. 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 728, Sec. 32, eff. Sept. 1, 1993.

ELECTION CODE

TITLE 8. VOTING SYSTEMS

CHAPTER 123. ADOPTION AND ACQUISITION OF VOTING SYSTEM

SUBCHAPTER A. ADOPTION OF VOTING SYSTEM

Sec. 123.001. ADOPTION OF VOTING SYSTEM REQUIRED. (a) Before a voting system may be used in elections, the authority designated by this section, by resolution, order, or other official action of the authority, must adopt the system for use in the elections.

(b) The decision on whether to adopt a voting system is made by the following authority:

(1) for general elections for state and county officers, the commissioners court;

(2) for primary elections, the county executive committee of the political party holding the primary; and

(3) for any other elections:

(A) the commissioners court, if ordered by the governor or by a county authority; or

(B) the governing body of the political subdivision served by the authority ordering the elections, if ordered by an authority serving a political subdivision other than a county.

(c) If a voting system is adopted for use in elections, the voting system shall be used in the elections in accordance with the terms and conditions stated in the official action adopting the system, subject to this title.

(d) Repealed by Acts 2005, 79th Leg., Ch. 1107, Sec. 2.21(1), eff. January 1, 2006.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 2001, 77th Leg., ch. 1054, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1107 (H.B. 2309), Sec. 2.21(1), eff. January 1, 2006.

Sec. 123.002. MODIFICATION OF ADOPTION ACTION. The official action adopting a voting system for use in elections may be modified or rescinded at any time by the adopting authority.

References

EAC Voting System Test Laboratory Program Manual v 3.0

EAC Testing and Certification Program Manual v 3.0

<https://www.eac.gov/voting-equipment/manuals-and-forms>

VSTL Accreditation Certificates

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl>

Texas Election Code Chapters 122 and 123

3.6.1. Certificate of Accreditation. A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission and state:

3.6.1.1. The name of the VSTL;

3.6.1.2. The scope of accreditation, by stating the Federal standard or standards to which the VSTL is competent to test;

3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years; and

3.6.1.4. The technical standards to which the laboratory was accredited.

3.6.2. Post Information on Web Site. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):

3.6.2.1. NIST's Recommendation Letter;

3.6.2.2. The VSTL's Letter of Agreement;

3.6.2.3. The VSTL's Certification of Conditions and Practices;

3.6.2.4. The Commissioner's Decision on Accreditation; and

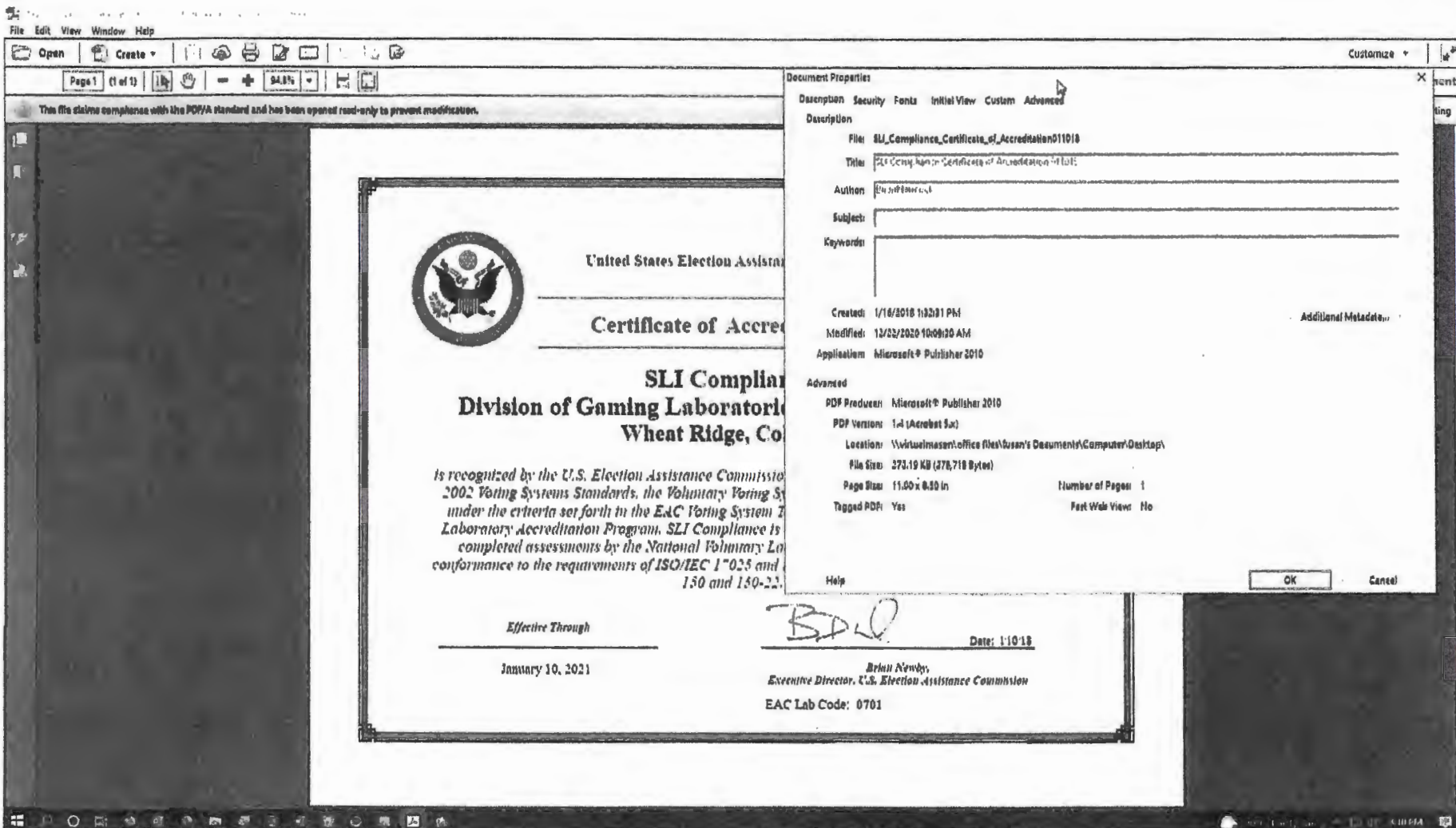
3.6.2.5. The Certificate of Accreditation.

3.7. **Effect of Accreditation**. Receipt of an EAC Accreditation indicates that a laboratory has met the applicable technical, procedural, management and staffing requirements and may serve as a Voting System Test Laboratory (VSTL) under EAC's Testing and Certification Program.

3.7.1. Scope of Accreditation. A laboratory shall operate within the limits of the scope of accreditation as stated on its Certificate of Accreditation.

3.7.2. Representation. No VSTL may make representations regarding its accreditation beyond its scope of accreditation.

3.7.3. No Endorsement. A Certificate of Accreditation is **not** an endorsement of the recipient laboratory. A VSTL may not state or imply EAC endorsement.





U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

FROM: Jerome Lovato, Voting System Testing and Certification Director

SUBJECT: SLI Compliance EAC VSTL Accreditation

DATE: 1/27/2021

SLI Compliance, a division of Gaming Laboratories International, LLC (SLI) has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, SLI retains its EAC VSTL accreditation.



U.S. ELECTION ASSISTANCE COMMISSION

633 3rd St. NW, Suite 200
Washington, DC 20001

Notice of Clarification

NOC 21-01: VSTL Accreditation Status

Issued by Program Director on July 23, 2021

Section of Manual to Be Clarified:

Voting System Test Laboratory Manual, version 2.0:

3.8. Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

Purpose:

The Voting System Test Lab (VSTL) accreditation process is an essential component of the EAC's testing and certification program. It consists of two assessments: one by the National Institute of Standards and Technology's (NIST) National Voluntary Laboratory Accreditation Program (NVLAP) and one by the EAC.

NVLAP accreditation is the primary means by which the EAC ensures that each VSTL meets and continues to meet the technical requirements of the EAC program. It sets the standards for each VSTL's technical, physical, and personnel resources, as well as its testing, management, and quality assurance policies and protocols. NVLAP reviews VSTLs one year after their initial accreditation and biennially thereafter.

The EAC VSTL assessment takes additional steps to ensure that laboratory policies are in place regarding compliance management and issues like conflict of interest, record maintenance, and financial stability. It also ensures that the VSTL is willing and capable to work with EAC in its Testing and Certification Program. This is performed by regularly working closely with the labs and performing audits biennially and generating certificates.



U.S. ELECTION ASSISTANCE COMMISSION

633 3rd St. NW, Suite 200

Washington, DC 20001

The EAC is the sole Federal authority for the accreditation and revocation of accreditation of VSTLs.

Clarification:

The intent of section 3.8 in the Voting System Test Laboratory Manual, version 2.0 is to make clear that the VSTL accreditation is subject to reassessment by NVLAP and the EAC with a period of approximately two years, at the discretion of the EAC. It is not intended to describe the EAC VSTL accreditation revocation process, which is described in chapter 5 of the Voting System Test Laboratory Manual, version 2.0.

Federal law (HAVA) provides that EAC accreditation of a voting system test laboratory may not be revoked unless the EAC Commissioners vote to revoke the accreditation.

52 U.S. Code § 20971(c)(2). APPROVAL BY COMMISSION REQUIRED FOR REVOCATION - The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

The VSTL Certificate of Accreditation that is issued after the EAC performs the audit, and the expiration date listed on the certificate relates to the EAC program requirement to reassess VSTLs periodically to ensure conformance to the requirements of the testing and certification program for a VSTL. For that reason, the EAC has removed the expiration date from the certificate and instead will track the reassessment period separately.

Conclusion:

As of the date of this document, section 3.8 in the Voting System Test Laboratory Manual, version 2.0 is replaced with the following:

3.8. VSTL Accreditation Reassessment. The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission consistent with Chapter 5 of this manual. Reassessment of VSTLs shall occur two years from the date their most recent Certificate of Accreditation was issued, or at the discretion of the EAC. VSTLs in good standing shall request reassessment their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before and no later than 30 days prior to the reassessment date, or a date chosen at the discretion of the EAC. VSTLs in good standing shall retain their accreditation while the review and processing of their application is pending and should circumstances leave the EAC without a quorum to conduct the vote as specified under Section 3.5.5.

guideline or the contents of any guideline (or any modification to any guideline) adopted by the Commission under this chapter.

(f) Publication of recommendations in Federal Register

At the time the Commission adopts any voluntary voting system guideline pursuant to section 20962 of this title, the Development Committee shall cause to have published in the Federal Register the recommendations it provided under this section to the Executive Director of the Commission concerning the guideline adopted.

(Pub. L. 107-252, title II, § 221, Oct. 29, 2002, 116 Stat. 1682.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(3), was in the original "this Act", meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1686, known as the Help America Vote Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 15361 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

§ 20962. Process for adoption

(a) General requirement for notice and comment

Consistent with the requirements of this section, the final adoption of the voluntary voting system guidelines (or modification of such a guideline) shall be carried out by the Commission in a manner that provides for each of the following:

- (1) Publication of notice of the proposed guidelines in the Federal Register.
- (2) An opportunity for public comment on the proposed guidelines.
- (3) An opportunity for a public hearing on the record.
- (4) Publication of the final guidelines in the Federal Register.

(b) Consideration of recommendations of Development Committee; submission of proposed guidelines to Board of Advisors and Standards Board

(1) Consideration of recommendations of Development Committee

In developing the voluntary voting system guidelines and modifications of such guidelines under this section, the Executive Director of the Commission shall take into consideration the recommendations provided by the Technical Guidelines Development Committee under section 20961 of this title.

(2) Board of Advisors

The Executive Director of the Commission shall submit the guidelines proposed to be adopted under this subpart (or any modifications to such guidelines) to the Board of Advisors.

(3) Standards Board

The Executive Director of the Commission shall submit the guidelines proposed to be

adopted under this subpart (or any modifications to such guidelines) to the Executive Board of the Standards Board, which shall review the guidelines (or modifications) and forward its recommendations to the Standards Board.

(c) Review

Upon receipt of voluntary voting system guidelines described in subsection (b) (or a modification of such guidelines) from the Executive Director of the Commission, the Board of Advisors and the Standards Board shall each review and submit comments and recommendations regarding the guideline (or modification) to the Commission.

(d) Final adoption

(1) In general

A voluntary voting system guideline described in subsection (b) (or modification of such a guideline) shall not be considered to be finally adopted by the Commission unless the Commission votes to approve the final adoption of the guideline (or modification), taking into consideration the comments and recommendations submitted by the Board of Advisors and the Standards Board under subsection (c).

(2) Minimum period for consideration of comments and recommendations

The Commission may not vote on the final adoption of a guideline described in subsection (b) (or modification of such a guideline) until the expiration of the 90-day period which begins on the date the Executive Director of the Commission submits the proposed guideline (or modification) to the Board of Advisors and the Standards Board under subsection (b).

(e) Special rule for initial set of guidelines

Notwithstanding any other provision of this subpart, the most recent set of voting system standards adopted by the Federal Election Commission prior to October 29, 2002, shall be deemed to have been adopted by the Commission as of October 29, 2002, as the first set of voluntary voting system guidelines adopted under this subpart.

(Pub. L. 107-252, title II, § 222, Oct. 29, 2002, 116 Stat. 1683.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 15362 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

PART B—TESTING, CERTIFICATION, DECERTIFICATION, AND RECERTIFICATION OF VOTING SYSTEM HARDWARE AND SOFTWARE

§ 20971. Certification and testing of voting systems

(a) Certification and testing

(1) In general

The Commission shall provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.

(2) Optional use by States

At the option of a State, the State may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.

(b) Laboratory accreditation**(1) Recommendations by National Institute of Standards and Technology**

Not later than 6 months after the Commission first adopts voluntary voting system guidelines under subpart 3 of part A of this subchapter, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section.

(2) Approval by Commission**(A) In general**

The Commission shall vote on the accreditation of any laboratory under this section, taking into consideration the list submitted under paragraph (1), and no laboratory may be accredited for purposes of this section unless its accreditation is approved by a vote of the Commission.

(B) Accreditation of laboratories not on Director list

The Commission shall publish an explanation for the accreditation of any laboratory not included on the list submitted by the Director of the National Institute of Standards and Technology under paragraph (1).

(c) Continuing review by National Institute of Standards and Technology**(1) In general**

In cooperation with the Commission and in consultation with the Standards Board and the Board of Advisors, the Director of the National Institute of Standards and Technology shall monitor and review, on an ongoing basis, the performance of the laboratories accredited by the Commission under this section, and shall make such recommendations to the Commission as it considers appropriate with respect to the continuing accreditation of such laboratories, including recommendations to revoke the accreditation of any such laboratory.

(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

(d) Transition

Until such time as the Commission provides for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories under this section, the accreditation of laboratories

and the procedure for the testing, certification, decertification, and recertification of voting system hardware and software used as of October 29, 2002, shall remain in effect.

(Pub. L. 107-252, title II, §231, Oct. 29, 2002, 116 Stat. 1684.)

Editorial Notes**CODIFICATION**

Section was formerly classified to section 15371 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

PART C—STUDIES AND OTHER ACTIVITIES TO PROMOTE EFFECTIVE ADMINISTRATION OF FEDERAL ELECTIONS**§ 20981. Periodic studies of election administration issues****(a) In general**

On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which—

(1) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services and overseas voters, individuals with disabilities, including the blind and visually impaired, and voters with limited proficiency in the English language;

(2) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(3) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and

(4) will be efficient and cost-effective for use.

(b) Election administration issues described

For purposes of subsection (a), the election administration issues described in this subsection are as follows:

(1) Methods and mechanisms of election technology and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

(2) Ballot designs for elections for Federal office.

(3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that registered voters appear on the voter registration list at the appropriate polling site.

(4) Methods of conducting provisional voting.

(5) Methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.



U.S. ELECTION
ASSISTANCE
COMMISSION



ACCREDITED LABORATORIES

The following voting system test laboratories have been accredited by EAC to test voting systems. For more information about the test laboratory accreditation process, visit the **National Institute of Standards and Technology**.
(<http://www.nist.gov/itl/vote/>)

Accredited Test Labs

NTS Huntsville (<http://www.nts.com/locations/huntsville>) (formally Wyle Laboratories)

7800 U.S. Highway 20 West

Huntsville, AL 35806

Ryan Chambers, Voting Systems Program Manager

Phone: 256-716-4225

03/05/14 -- **NTS completes acquisition of Wyle Laboratories, Inc.**

04/11/12 -- **Wyle Quality Assurance Letter of Agreement**

04/11/12 -- **Wyle Quality Assurance Letter**

05/04/10 -- **Wyle Accreditation Certificate**

10/14/09 -- **Wyle Quality Assurance Letter**

10/04/07 -- **Wyle Accreditation Certificate**

09/25/07 -- **Wyle Quality Assurance Letter**

01/11/07 -- **EAC letter to Wyle Laboratories on partisanship in the workplace**

Pro V&V (<http://www.provandv.com/>)

700 Boulevard South, Suite 102

Huntsville, AL 35802

Jack Cobb, President
Phone: 256-713-1111

02/24/15 -- **Pro V&V Accreditation Certificate**

SLI Compliance, a Division of Gaming Laboratories International, LLC
(<http://www.slicompliance.com/>) (formerly SLI Global Solutions/SysTest Labs)
4720 Independence Street
Wheat Ridge, CO 80033
Traci Mapps, Director of Operations
Phone: 303-422-1566

01/11/16 -- **Letter on Company Name/Address Change**

10/01/10 -- **Letter on Company Name Change**

07/29/09 -- **SysTest Response to EAC on Site Assessment**

07/16/09 -- **SysTest Accreditation Certificate**

06/18/09 -- **Final SysTest Policy and Procedures Laboratory Audit Report**

03/05/09 -- **EAC Notice to SysTest Labs Lifting Suspension of Accreditation**

02/05/09 -- **SysTest notifies EAC: Premier files suit against SysTest**

11/19/08 -- **EAC Approval of SysTest Remedial Action Plan**

11/05/08 -- **SysTest Cure Plan**

11/05/08 -- **SysTest Labs Request to Cure EAC Program Non-Compliance**

10/31/08 -- **SysTest Labs letter to EAC Regarding Suspension Notice**

10/31/08 -- **EAC Suspension of Accreditation Notice to SysTest Labs**

10/08/08 -- **EAC letter to SysTest Labs**

08/11/08 -- **EAC letter to SysTest Labs**

08/08/08 -- **NVLAP letter to SysTest Labs**

08/04/08 -- **SysTest Labs Letter to EAC**
(/sites/default/files/eac_assets/1/Page/SysTest%20Labs%20Letter%20to%20EAC%20August%204%202008.doc) -

07/25/08 -- **EAC letter to SysTest Labs**

07/03/08 -- **EAC letter to SysTest Labs**

11/20/07 -- Correspondence between EAC, Sequoia, SysTest and iBeta (Notice of Non-compliance update): **File 1** , **File 2** , **File 3**

09/12/07 -- **SysTest Labs response to EAC**

09/11/07 -- **EAC letter to SysTest Labs**

02/28/07 -- **SysTest Accreditation Certificate**

02/08/07 -- **SysTest Quality Assurance Letter**

01/11/07 -- **EAC letter to Systest Labs on partisanship in the workplace**

Expired Accreditation Test Labs

CIBER, Inc. (<http://www.ciber.com/>)

7800 Madison Blvd.

Suite 206

Huntsville, AL 35806

Phone: 256-895-2525

10/07/08 -- **CIBER Accreditation Certificate**

(/sites/default/files/eac_assets/1/6/CIBER_Accreditation_Certificate.jpg)

07/30/08 -- **CIBER Certification of Laboratory Conditions and Practices**

06/13/07 -- **EAC Letter to Election Officials and Congress Terminating CIBER Interim Accreditation** (Congress)

06/13/07 -- **EAC Letter to CIBER Terminating Interim Accreditation**

06/12/07 -- **EAC Memo & Tally Vote to Terminate CIBER's Interim Accreditation**

05/15/07 -- **CIBER Response to EAC Request**

05/18/07 -- **EAC Letter to CIBER**

02/01/07 -- **EAC Letter to CIBER Requesting Action**

01/26/07 -- EAC Letter to CIBER Explaining Close of Interim Accreditation Program

01/26/07 -- EAC Letter to CIBER Regarding Incomplete Assessment Records not Posted to EAC Website

01/03/07 -- Letter from CIBER to EAC Seeking Clarification for Not Recieving Accreditation

12/06/06 -- CIBER Follow-up Interim Accreditation Assessment

09/15/06 -- EAC Letter to CIBER Concerning Quality

07/17/06 -- EAC Assessment of CIBER and Wyle, Huntsville, AL

07/10/06 -- EAC Assessment of Systest Labs and Percept Technology Labs

iBeta Quality Assurance (<http://www.ibeta.com/>)

3131 South Vaughn Way, Suite 650

Aurora, CO 80014

Mike Stark, Director of Sales and Marketing

Phone: 303-627-1110

11/29/10 -- iBeta's Intention to Withdraw from EAC VSTL Program

07/28/09 -- Final iBeta Policy and Procedures Audit Assessment Report

07/16/09 -- iBeta Accreditation Certificate

02/28/07 -- iBeta Accreditation Certificate

02/07/07 -- iBeta Quality Assurance Letter

InfoGard Labs (<http://www.infogard.com/>)

641 Higura St., Second Floor

San Luis Obispo, CA 93401

Tom Caddy, General Manager and Laboratory Director

Phone: 805-783-0889

11/05/08 -- NVLAP Letter Regarding Expiration of InfoGard Accreditation

06/20/07 -- InfoGard Accreditation Certificate

- 1.6.2. State officials have responsibility for testing voting systems to ensure the system will support the specific requirements of each individual state. States may use EAC-accredited VSTLs to perform testing of voting systems to unique state standards while the systems are being tested to the VVSG. However, the EAC does not certify voting systems to state standards.
- 1.6.3. State or local officials are responsible for deciding if an EAC-certified voting system complies with state laws and making the final acquisition decision based on which voting system offers the best fit and value for their specific state or local jurisdiction.
- 1.7. **Conformity Assessment, Generally.** According to ISO/IEC 17000, conformity assessment is the "demonstration that specified requirements relating to a product, process, system, person or body are fulfilled." Conformity assessments exist to protect the quality and ensure compliance with standards of products and services, and attempt to answer a variety of questions:
 - 1.7.1. *What specifications need to be met for a system to be in compliance?* For voting systems, the VVSG and its associated test assertions need to be met. States and local jurisdictions also have supplemental standards and legislative requirements.
 - 1.7.2. *How are systems tested against required specifications?* The Program is a central element of the larger conformity assessment and provides for the testing and certification of voting systems to versions of the VVSG adopted by EAC Commissioners and deemed current.
 - 1.7.3. *Are the testing authorities qualified to make an accurate evaluation?* The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed, and approved, their technical competence and lab practices to ensure the test authorities are fully qualified. Furthermore, the EAC reviews and approves all test plans and test reports from VSTLs to ensure an accurate and complete evaluation.
 - 1.7.4. *Will manufacturers deliver units within manufacturing tolerances equivalent to those tested?* This manual requires manufacturers to have appropriate change management and quality control processes to monitor the quality and configuration of their products. The Program provides mechanisms for the EAC to verify manufacturer quality processes through field system testing and manufacturing site audits. States have implemented policies for acceptance of delivered units.
- 1.8. **Test Assertions.** Many of the VVSG requirements focus on design at a high level and may be open to interpretation. In order to thoroughly test these requirements, manufacturers and VSTLs need the ability to break down each VVSG requirement into unambiguous, specific, and testable conditions. Test assertions are a method to accomplish this. The test assertions contain granular conditions that must be tested to determine conformance to specific VVSG requirements. The overall goal of the assertions is to ensure that the VSTLs test each requirement in the VVSG correctly and comprehensively. EAC staff will regularly review and revise the test assertions with feedback from VSTLs, manufacturers, election officials, NIST, and other stakeholders and will