

**State of South Dakota
State Board of Elections
Petition for Declaratory Rulings**

Pursuant to the provisions of SDCL [1-26-15](#), I (**Rick Weible**) of (**803 Elk St, Elkton SD 57026**), am (**a resident of Brookings County, SD**), and do hereby petition the South Dakota State Board of Elections for its declaratory ruling in regard to the following:

1. The state statute or State Board of Elections rule or order or form in question is:

-----Start of State Statute-----

[12-17B-2](#). Requirements for automatic tabulating, electronic ballot marking, and election voting equipment systems--Approval of changes or modifications.

Any automatic tabulating or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. No automatic tabulating, electronic ballot marking, or election voting equipment system may be connected to the internet. No ballot marking device may save or tabulate votes marked on any system. Each system shall fulfill the requirements for election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No system may be approved unless the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved system shall be approved by the State Board of Elections prior to distribution and use.

Source: [SL 1994, ch 110](#), § 6; [SL 2005, ch 92](#), § 3; [SL 2018, ch 81](#), § 2, eff. Feb. 5, 2018.

----- End of State Statute-----

2. The facts and circumstances which give rise to the issue to be answered by the board's declaratory ruling are:

ES&S did not abide by our state statute when they sold Minnehaha County a new Dell laptop Model E5540 configured with the ES&S Electionware Results software in 2024 (Exhibit A), which is not listed in the US Election Assistance Commission Certificate of Conformance for the ES&S EVS 6.1.1.0 as part of its certified system to run the Electionware Results (EMS Standalone Workstation) software. The change to the new laptop was not approved by the South Dakota State Board of Elections.

- a. The certificate clearly shows what approved hardware is allowed and certified to run with the voting system, the only laptop certified is the Dell Latitude 5580, and the three desktops are the OptiPlex 5040, 5050, and the 7020:

COTS Hardware

Manufacturer	Hardware	Model/Version
Dell	EMS Server	PowerEdge T430, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, OptiPlex 5040, 5050, 7020
Dell	Trusted Platform Module (TPM) Chip 1.2 and 2.0 (optional)	M48YR

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https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf

- b. ES&S EVS 6.1.1.0 is the most recent certified system that the State Board of Elections approved of for use in the state of South Dakota in August of 2021.
<https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf>
- c. ES&S has not submitted any Engineering Change Orders for any new laptops or desktops for EVS 6.1.1.0, as required by the US Election Assistance Commission Voluntary Voting System Guidelines 1.0 for any new hardware to be considered as part of an approved system.
- d. On page 2 of all ES&S administration manuals it is clear they understand the requirements, and have this notice in the manual:
 - a. **“United States Election Assistance Commission Notification for Approved Voting Systems**
In accordance with the United States Election Assistance Commission (EAC) Testing and Certification Program Manual, Version 2.0, ES&S hereby notifies the purchaser that any changes or modifications to an EAC approved voting system which have not been tested and certified by the EAC will void the EAC certification for such EAC approved voting system.”
- e. I have asked the US Election Assistance Commission about the laptop, and they have confirmed that an Engineering Change Order is common for hardware upgrades and is the most frequently used reasons for submissions. (Exhibit B)
- f. There are no meeting minutes since Aug 2021 by the South Dakota State Board of Elections indicating an application by ES&S seeking approval of any changes or modifications to any prior approved voting system.
- g. ES&S failed to abide by our state law, which clearly requires approval of a change or modification of an already approved configuration by the South Dakota State Board of Elections, before a new a new laptop model is used prior to distribution and use in South Dakota.
- h. The requirement and process is further expanded in the second paragraph of rule **5:02:09:02. Approval of automatic tabulating systems required before distribution.** Where it states; “Any changes or modifications in an approved automatic tabulating or electronic ballot marking system may be certified by the State Board of Elections with or without the demonstration described in this section for initial approval. The modification for the already approved system must have been certified as fulfilling the requirements of the Election Assistance Commission voting system 2015 standards by an independent test authority accredited by the Election Assistance Commission or been certified to meet the national standard by another state. Any change or modification determined to be de minimis by the independent test authority does not need state board of elections certification.”

3. The precise issue to be answered by the board's declaratory ruling is: Is the Dell E5540 laptop in Minnehaha, that was purchased from ES&S in 2024 with HAVA funds, considered part of the equipment certified for use by the US Election Assistance Commission 6.1.1.0 Certificate of Conformance dated July 27th, 2020 and certified by the South Dakota State Board of Elections per the state board of Election meeting minutes dated August 23, 2021?

Dated at (Elkton, SD), this 1st day of August, 2025.

A handwritten signature in black ink, appearing to read "Rick Weible", written over a light blue rectangular background.

Rick Weible
803 Elk St.
Elkton, SD 57026
Signature of petitioner

Exhibit A



Election Systems & Software, LLC
11208 John Galt Blvd
Omaha, NE 68137

EVS 6.1.1.0 Reporting Standard Standalone System Purchase Order

February 05, 2024

Minnehaha County, South Dakota

415 N Dakota Ave
Sioux Falls, SD 57104

Quantity	Part #	Description	Price	Ext. Price
		EMS WORKSTATION		
1	96141	DELL LATITUDE 5540 EMS LAPTOP	\$2,074.00	\$2,074.00
		<ul style="list-style-type: none"> • Dell Latitude E5540 • 12th Generation Intel® Core™ i5-1345U (10 Core, 12MB cache) • TPM Enabled • Dell Power Manager • Dell Data Protection Security Tools Digital Delivery/NB • Dell Backup and Recovery Basic • Dell Data Protection Protected Workspace • Dell Digital Delivery Cirrus Client • Dell Client System Update (Updates latest Dell Recommended BIOS, Drivers, Firmware and Apps), Optiplex • Waves Maxx Audio Royalty • 15.6" FHD (1920x1080) Non-Touch Anti-Glare LCD with Camera and Mic • 16GB (2x8GB) DDR4 Memory • M.2 512GB PCIe Class 35 Solid State Drive • Intel Wi-Fi 6 AX211 2x2 AX+ Bluetooth 5.1 • Internal Dual Pointing Keyboard (US-English) • 65 Watt AC Adaptor, US Power Cord • Primary 3-cell 54Whr Battery • Dell Limited Hardware Warranty Extended Year(s) • Dell Limited Hardware Warranty • ProSupport: 7x24 Technical Support, 5 Years • ProSupport: Next Business Day Onsite, 1 Year • ProSupport: Next Business Day Onsite, 4 Year Extended 		
1	96002	DELL EXTERNAL USB SLIM DVD+/-RW OPTICAL DRIVE	\$70.00	\$70.00
1	96008	*SYMANTEC ENDPOINT PROTECTION 14.2	\$61.00	\$61.00
1	96032	MICROSOFT WIN10 IOT ENT 2019 LTSC VALUE	\$128.00	\$128.00

2	10005	BITLOCKER KEY	\$36.00	\$72.00
		MISCELLANEOUS COMPONENTS		
1	B6400	EMS REPORT PRINTER - BROTHER HL-L6400 B/W DUPLEX LASER PRINTER	\$570.00	\$570.00
1	96016	LD 6' USB 2.0 A-B CABLE,T,IVOTR,RTAL 6' USB CABLE	\$8.00	\$8.00
		SERVICES		
1	510210	STANDALONE EMS INSTALL	\$1,540.00	\$1,540.00
		<ul style="list-style-type: none"> • Staging of EMS workstations at ES&S Technical Services lab. <ul style="list-style-type: none"> ◦ Includes the installation, configuration, and testing of EMS workstation. • Equipment is shipped to customer location. <ul style="list-style-type: none"> ◦ Physical installation of workstation and related hardware (Printer, UPS, etc.) performed by customer. • EMS installation summary documentation provided to customer upon completion of installation. 		
		SHIPPING AND HANDLING		
1	FREIGHT	SHIPPING & HANDLING - EMS EQUIPMENT	\$195.00	\$195.00
		Order Total		\$4,718.00

Invoicing and Payment Terms:

100% of Order Total Due Thirty (30) Calendar Days after the later of (a) Equipment Delivery, or (b) Receipt of corresponding ES&S Invoice.

Note 1: Pricing of purchase order is valid for 30 days due to fluctuating pricing in 3rd party hardware and software. Agreements will need to be updated if not executed within 30 days.


Note 2: In no event shall Customer's payment obligations hereunder, or the due dates for such payments, be contingent or conditional upon Customer's receipt of federal and/or state funds.

Note 3: Any applicable (City & State) sales taxes have not been included in pricing and are the responsibility of the customer.

Note 4: Shipping and Handling is included in the Order Total.

Note 5: Network Cabling is not included.

Customer acknowledges that ES&S is purchasing the third party items set forth herein ("Third Party Items") for resale to Customer, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than ES&S ("Third Parties"). Customer further acknowledges that except for the payment to ES&S for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. ES&S shall provide Customer with copies of all documentation and warranties for the Third Party Items which are provided to ES&S.


 Customer Signature

3-4-2024
 Date



 Title

Exhibit B

 Outlook

RE: EAC Contact Form Submission

From Paul Aumayr <paumayr@eac.gov>
Date Wed 3/27/2024 10:42 AM
To Rick Weible <rick@rgvisions.com>

Good morning

In response to your questions submitted yesterday:

1. If the laptop is being used as part of an EAC certified voting system, then yes, the county should look to have the vendor submit an engineering change order. Adding new models of laptop to an already certified system with an ECO is very common, and is one of the most frequently used reasons for ECO submissions.
2. The ECO process can be used to update antivirus definition files and other security updates to voting systems. This was the subject of a Notification of Clarification (NOC) issued in 2019, which can be found on our website: <https://www.eac.gov/noc-19-01>

Sincerely,

Paul Aumayr | Sr. Election Technology Specialist
Election Assistance Commission
633 3rd Street NW, Suite 200 | Washington, DC 20001
www.eac.gov
| PAumayr@EAC.gov

From: U.S. Election Assistance Commission <no-reply@eac.gov>
Sent: Tuesday, March 26, 2024 10:35 AM
Subject: EAC Contact Form Submission

Caution: This email is from an external source. Please take care when clicking links or opening attachments. If the message looks suspicious, please use the Phish Alert Report button for the security team to review.

Submitted on Tuesday, March 26, 2024
Submitted by: Anonymous

Submitted values are:
First Name: Rick
Last Name: Weible
Address:
Elkton, South Dakota. 57026

Message:

I have a few questions regarding Engineering Change Orders:

- 1) If a model of a laptop being used for election results is not the same manufacturer or model listed in the certificate, should the county ask the vendor to submit an engineering change order to be in compliance?
- 2) With the VVSG 1.0 7.4.2 Protection Against Malicious Software, where it specifically states "Voting systems shall deploy protection against the many forms of threats to which they may be exposed such as file and macro viruses, worms, Trojan horses, and logic bombs. Vendors shall develop and document the procedures to be followed to ensure that such protection is maintained in a current status." Should counties/states ask for Engineering Change Orders to be able to update the Antivirus definition files of the system before an election, to ensure the security of their systems? I see that many jurisdictions are using ES&S 6.1.1.0, and the antivirus of the laptop and desktops are stuck at March 29th, 2019....

Phone Number: 6123064555
Email: rick@rgvisions.com
Concerning: Voting System Testing And Certification