



NORTH CAROLINA

STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255,
Raleigh, NC 27611
(919) 814-0700 or
(866) 522-4723
Fax: (919) 715-0135

Numbered Memo 2019-04

TO: County Boards of Elections
FROM: Karen Brinson Bell, Executive Director
RE: Voting Systems Certification Procedures
DATE: August 27, 2019

On August 23, 2019 the State Board of Elections met and voted to certify several new voting systems for use in North Carolina's elections. This Numbered Memo details the procedures a county board of elections is required to follow when seeking to use certified voting systems. The procedures a county board of elections must follow when seeking to use a new voting system in the county are the same regardless of when the voting system was certified.

Only voting systems certified by the State Board may be used in North Carolina. North Carolina law and the Elections Systems Certification Program adopted by the State Board establish the role of the county board of elections in selecting a new voting system for that county and impose procedures during and after the adoption and acquisition of a certified voting system for use in the county.

Vendors must also meet certain requirements during the certification process itself and must continue to meet these requirements for as long as the voting system is certified. This office is providing instruction to vendors to ensure they meet all requirements. A copy of those instructions is attached to this Numbered Memo and should be reviewed by the county board of elections.

For detailed information on the certification process and the role of the State Board and vendors, please see the [Elections Systems Certification Program](#).

Voting Systems Certified by the State Board

On August 23, 2019, the State Board certified the following voting systems for use in North Carolina:

- Clear Ballot ClearVote 1.4
 - ClearCast precinct tabulator
 - ClearAccess ballot marking device

- ClearCount central tabulator
- ClearAudit election audit system
- ES&S EVS 5.2.2.0
 - DS200 precinct tabulator
 - DS450 central tabulator
 - DS850 central tabulator
 - ExpressVote ballot marking device
 - AutoMARK ballot marking device
- Hart InterCivic Verity Voting 2.2
 - Verity Scan precinct tabulator
 - Verity Touch Writer ballot marking device
 - Verity Central Workstation central tabulator
 - Verity Print ballot on demand

The following voting systems continue to be certified for use in North Carolina:

- ES&S Unity 3.0.1.1
 - M100 precinct tabulator
 - M650 central tabulator
 - AutoMARK ballot marking device
 - iVotronic voter terminal *
 - iVotronic ADA terminal *
- ES&S Unity 3.4.1.1
 - M100 precinct tabulator
 - DS200 precinct tabulator
 - M650 central tabulator
 - DS850 central tabulator
 - AutoMARK ballot marking device

*** Starting in 2020, all voting systems must produce a paper ballot, which will serve as the official record of a voter's selections. Direct Record Electronic (DRE) machines will be decertified by statute on December 1, 2019 and may not be used in any election after that date.**

Requirements for the Adoption and Acquisition of a Certified Voting System

Ultimately, the county board of commissioners (with the recommendation and approval of the county board of elections) must adopt and acquire a voting system that is certified by the State Board for use in some or all voting places in the county for some or all elections. Before the

board of county commissioners approves the adoption and acquisition of a voting system, the county board of elections must do the following:¹

- **Step 1: Witness a demonstration of the recommended type of voting system plus at least one other certified type of voting system. The demonstration can take place in the county or at a site designated by the State Board.**
 - The demonstration should be organized as part of a public meeting with invitations sent to the county board of commissioners, the county manager, the county attorney, and the political parties in the county.
 - The county board should give public notice of the demonstration and meeting, as it does for all other board meetings.
 - A majority of county board members voting on the recommendation must have witnessed a demonstration. All board members of the county board of elections should witness a demonstration if possible.

- **Step 2: Make a preliminary recommendation to the board of county commissioners as to which type of voting system should be acquired by the county.**
 - Official action to preliminarily recommend to the board of commissioners can be taken as soon as the same meeting during which the demonstration is conducted, provided the meeting is properly noticed. Alternatively, the meeting to preliminarily recommend a voting system may be noticed prior to the demonstration as long as the meeting is held after the demonstration.
 - The Board can document its recommendation by resolution, letter, presentation, or other official action.

- **Step 3: The county board must instruct the county board staff to test the proposed voting system in at least one precinct where the voting system would be used if adopted. The test must take place during an election.**
 - County board staff must notify State Board voting systems staff of its intent to test the recommended voting system.
 - The voting systems election management system and the components of the system must undergo Logic & Accuracy testing prior to use in the test election.
 - After completing canvass, the county board must determine that the recommended voting system has met the requirements for voting in that county.
 - Specific to procurement of a voting system prior to 2020 primaries and elections, the test must occur on Election Day for the November 2019 election. Due to administrative and timing constraints, testing at a one-stop voting site for the November 2019 election will not be permitted.

¹ See G.S. 163A-1117 and Section 3.3.2 of the Certification Program.

- **Step 4: Seek State Board approval to replace the current voting system.**
 - The county board of elections cannot replace any voting system, or any portion thereof, without approval of the State Board.²
 - The form to request approval is attached.
- **Step 5: Make a final recommendation to the board of county commissioners.**
 - The board of commissioners can decline to adopt or acquire any voting system recommended by the county board of elections, but it cannot adopt and acquire a voting system that has not been approved by the county board of elections.³
 - The public contracting and procurement statutes do not apply to the purchase of a certified voting system.
 - Along with the final recommendation, the CBE must submit the proposed vendor contract to the State Board of Elections for review and approval.

Upcoming Regional Public Demonstration Dates and Locations

As provided by G.S. 163A-1117(b)(2), the State Board of Elections is coordinating demonstrations at the following locations and tentative dates:

- Haywood County: September 12 or 13
- Guilford County: September 12 or 13
- Brunswick County: September 17
- Mecklenburg County: September 23
- Pitt County: September 18 or 19

Additional information will be provided within a few business days. Counties may still conduct demonstrations in their county provided that requirements for demonstration are met and the demonstration is held no later than September 23 in order to allow for adequate time to prepare for a November 2019 test election.

Requirements After the County Has Adopted and Acquired a Certified Voting System

The county board of elections must comply with any requirements of the State Board regarding training and support of the voting system by completing all of the following:⁴

- The CBE must comply with all of the vendor's specifications for ballot printers. The CBE can contract with noncertified ballot printer vendors as long as that vendor meets all of the specifications and the State Board's quality assurance requirements.

² See G.S. 163A-1117(b)(3).

³ See G.S. 163A-1116.

⁴ See G.S. 163A-1117(b).

- The CBE must maintain annual software license agreements.
- The CBE must uphold annual maintenance agreements necessary to maintain the warranty of the voting system or employ qualified personnel to maintain a voting system in lieu of entering into maintenance agreements.
- Before entering into any maintenance agreement, the CBE shall ensure the vendor agrees to operate a training program for qualified personnel hired by the CBE.
- The CBE must notify the State Board at the time of every repair, according to State Board guidelines.
- The CBE must continue to comply with the [Voting Systems Vendor Code of Ethics](#).

Accessibility Requirement

The Help America Vote Act mandates that a voting system provide the same opportunity for access and participation to voters with disabilities as it does to voters without disabilities. Federal law requires that each voting place have an accessible voting option for voters with disabilities to vote independently. A county board may choose to use any of the certified ballot marking devices to meet this requirement, but due to limitations in tabulation software, a county may not acquire voting systems from more than one vendor.

In selecting the voting system that will be used, county boards should be mindful of the requirement that they must make available at each voting place “an adequate quantity of official ballots or equipment.” Similarly, county commissioners shall provide “for each of those voting places sufficient equipment of the approved voting system.” G.S. § 163A-1119. County boards should consider the expected turnout in their county and each voting place, including One-Stop early voting, central transfer location, and Election Day, in future elections, including the 2020 presidential election when turnout is anticipated to be high, and the need to reduce long lines whenever possible.



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Request for Replacement of County Voting System

The _____ County Board of Elections (“Board”), having met on _____ hereby seeks the approval of the State Board of Elections to replace its voting system, or a portion thereof. Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

STEP 1: DEMONSTRATION

Witness a demonstration of the recommended type of voting system plus at least one other certified type of voting system. The demonstration can take place in the county or at a site designated by the State Board.

- The demonstration should be organized as part of a public meeting with invitations sent to the county board of commissioners, the county manager, the county attorney, and the political parties in the county.
- The county board should give public notice of the demonstration and meeting, as it does for all other board meetings.
- A majority of county board members voting on the recommendation must have witnessed a demonstration. All five members of the county board of elections should be present at the demonstration if possible.

County Board member 1: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Clear Ballot ClearVote 1.4	<input type="checkbox"/> ES&S Unity 3.4.1.1
	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Voting System 5.2.2.0
County Board member 2: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Clear Ballot ClearVote 1.4	<input type="checkbox"/> ES&S Unity 3.4.1.1
	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Voting System 5.2.2.0
County Board member 3: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Clear Ballot ClearVote 1.4	<input type="checkbox"/> ES&S Unity 3.4.1.1
	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Voting System 5.2.2.0
County Board member 4: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Clear Ballot ClearVote 1.4	<input type="checkbox"/> ES&S Unity 3.4.1.1
	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Voting System 5.2.2.0
County Board member 5: _____	Demo Location: _____	Date: _____
Voting Systems Reviewed:	<input type="checkbox"/> Clear Ballot ClearVote 1.4	<input type="checkbox"/> ES&S Unity 3.4.1.1
	<input type="checkbox"/> Hart InterCivic Verity 2.2	<input type="checkbox"/> ES&S Voting System 5.2.2.0

STEP 2: PRELIMINARY RECOMMENDATION

Make a preliminary recommendation to the board of county commissioners as to which type of voting system should be acquired by the county.

- Official action to preliminarily recommend can be taken as soon as the same meeting during which the demonstration is conducted, provided the meeting is properly noticed. Alternatively, the meeting to preliminarily recommend a voting system may be noticed prior to the demonstration as long as the meeting is held after the demonstration.
- The Board can recommend by resolution, letter, presentation, or other official action.

<p>Following the demonstration, the Board recommended:</p> <p><input type="checkbox"/> by resolution dated _____</p> <p><input type="checkbox"/> by letter dated _____ signed by _____</p> <p><input type="checkbox"/> by presentation given on _____</p> <p><input type="checkbox"/> by nature of an official action taken on _____</p>
<p>that _____ County adopt and acquire the:</p> <p><input type="checkbox"/> Clear Ballot ClearVote 1.4 Voting System</p> <p><input type="checkbox"/> ES&S Voting System 5.2.2.0 Voting System</p> <p><input type="checkbox"/> ES&S Unity 3.4.1.1 Voting System</p> <p><input type="checkbox"/> Hart InterCivic Verity 2.2 Voting System</p>

STEP 3: TEST IN A REAL ELECTION

The county board must instruct the county board staff to test the proposed voting system in at least one precinct where the voting system would be used if adopted. The test must take place during an election.

- County board staff must notify State Board voting systems staff of its intent to test the recommended voting system.
- The voting systems election management system and the components of the system must undergo Logic & Accuracy testing prior to use in the test election.
- After completing canvass, the county board must determine that the recommended voting system has met the requirements for voting in that county.
- Specific to procurement of a voting system prior to 2020 primaries and elections, the test must occur on Election Day for the November 2019 election. Testing at a one-stop voting site for the November 2019 election will not be permitted.

<input type="checkbox"/>	On _____, the county board staff notified the State Board of Elections voting systems staff of its intent to test the recommended voting system.
<input type="checkbox"/>	The recommended voting system was tested during the _____ election. The voting systems election management system and all of the components of the system were subject to Logic & Accuracy testing prior to use in the test election.
<input type="checkbox"/>	The recommended voting system was tested in _____ one-stop absentee voting site(s) and/or _____ Election Day precinct(s).
<input type="checkbox"/>	The Board, having completed its canvass of the election in which the recommended voting system was tested, has determined that the recommended system meets the requirements for voting in the county.

STEP 4: SBE APPROVAL

The county board of elections cannot replace any voting system, or any portion thereof, without approval of the State Board.

The Board seeks the approval of the State Board of Elections to replace its current voting system, or a portion there of with the following voting system:

Clear Ballot ClearVote 1.4 Voting System ES&S Unity 3.4.1.1 Voting System
 Hart InterCivic Verity 2.2 Voting System ES&S Voting System 5.2.2.0 Voting System

The Board proposes to adopt and acquire the voting system’s election management system (EMS) and the following components of the system:

Component Type	Model	Quantity
<i>Precinct Ballot Tabulator (PBT)</i>		
<i>Central Ballot Tabulator (CBT)</i>		
<i>Ballot Marking Device (BMD)</i>		
<i>BMD Printer</i>		
<i>Ballot on Demand (BOD) Printers</i>		

The Board proposes to use the _____ ballot marking device and its accessible peripherals to meet ADA requirements to allow for accessible voting.

STEP 5: ADOPTION AND ACQUISITION OF NEW VOTING SYSTEM BY BOARD OF COUNTY COMMISSIONERS

The board of county commissioners, with the approval of the county board of elections, may adopt and acquire only a voting system of a type, make, and model certified by the State Board for use in some or all voting places in the county at some or all elections. The board of county commissioners may decline to adopt and acquire any voting system recommended by the county board of elections but may not adopt and acquire any voting system that has not been approved by the county board of elections. Following SBE approval, the County Board understands that it may then proceed to ask its Board of County Commissioners for the approval and funding to acquire the recommended voting system.

Along with this request, the Board is submitting the proposed vendor contract to permit the State Board of Elections to review and approve the terms of the vendor’s contract.

Board Chair _____ *Date*

Board Secretary _____ *Date*

Board Member _____ *Date*

Board Member _____ *Date*

Board Member _____ *Date*

State Board of Elections use Only		
The proposed voting system replacement <input type="checkbox"/> IS <input type="checkbox"/> IS NOT approved.		
Approved by:		Date:



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Notice of Certification to Voting System Vendors

At its August 23, 2019 meeting, the State Board of Elections certified the following voting systems for use in elections in this State pursuant to G.S. 163A-1115 and the Elections Systems Certification Program (Program):

- Clear Ballot ClearVote 1.4
- ES&S EVS 5.2.2.0
- Hart InterCivic Verity Voting 2.2

This notice provides a summary of certain key post-certification requirements and is provided as a courtesy to vendors. It does not excuse any vendor from the independent duty to comply with all requirements in North Carolina General Statutes Chapter 163A and the Elections Systems Certification Program. By applying for and accepting certification in North Carolina, vendors have expressly consented to these requirements.

Upon Certification:

1. By August 30, 2019, provide to the Executive Director the statewide uniform price for each unit of equipment.
 - See G.S. 163A-1115(a)(7) and Section 3.3.4.15 of the Program.
2. Provide demonstrations to counties.
 - See G.S. 163A-1117(a)(2).
 - Please see the attached Numbered Memo for a list of tentative demonstration sites and dates being coordinated by the State Board in accordance with G.S. 163A-1117(b)(2).
 - County boards may request additional demonstrations.
3. Place in escrow all required information.
 - See G.S. 163A-1115(a)(6), 163A-1115(f)(9), and 163A-1118(a)(1). Among other things, this includes a copy of the system's source code. See 08 NCAC 04.0302(a)(5). A separate attachment is provided with information on the escrow agent.

- The items listed in G.S. 163A-1118(a)(1) must also be available for examination by the State Board, the Department of Information Technology, the State chairs of each political party, the purchasing county board of elections, and designees. See Section 3.3.4.10 of the Program.
4. Provide a signed, sworn affidavit from the CEO that the source code and other material in escrow is the same as that used in its voting systems in North Carolina.
 - See G.S. 163A-1118(a)(3) and Section 3.3.4.10 of the Program.
 5. Provide the Executive Director the vendor's plan for coding and printing ballots, including a list of printers the vendors has authorized.
 - See G.S. 163A-1117(b). A noncertified ballot printing vendor may be used provided the vendor meets all specifications and quality assurance requirements set by the State Board and signs the required the Ballot Printer Attestation Form. Contact the State Board to request a copy of the form.
 - In order to be used in a test precinct during the November 2019 election, with the intent to use countywide in 2020, this plan must be received by the State Board by September 12, 2019. The plan must include at least the following information:
 - All information the vendor will request from the State Board;
 - The names and physical locations of ballot coders; and
 - A description of the secure means the vendor will use to transmit ballot proofs and coding.

Upon Securing a Contract to Provide a Voting System to a County:

6. Immediately post a performance bond or letter of credit.
 - See G.S. 163A-1115(a)(1) and Section 3.3.4.1 of the Program for additional information. ***Vendors are fully expected to post the bond as early as possible in the process, preferably prior to testing of the voting system in a precinct, to provide county boards of elections with assurances that the contract can be performed.***
 - Currently, the State Board has set the bond at \$17,092,000.
7. Enter into an agreement with the purchasing county providing that if the vendor fails to debug, modify, repair, or update the software as agreed or files for bankruptcy, the vendor agrees that the escrow agent will turn over source code to the purchasing county.
 - See G.S. 163A-1115(a)(8) and Section 3.3.4.10 of the Program.

8. Open and maintain an office in North Carolina with staff to service the contract.
 - See G.S. 163A-1118(a)(5) and Section 3.3.4.1 of the Program. Provide information about the office to the Executive Director as soon as it is available.
9. Incorporate the Program by reference in every contract between you and any elections official, county, or jurisdiction within North Carolina.
 - See Section 3.3.4.13 of the Program.
10. Transmit a copy of your standard purchase contract to the State Board.
 - See Section 3.3.4.14 of the Program.

Select Ongoing Requirements to Maintain Certification Status:

11. Furnish the State Board with copies of sales receipts for all purchases of certified voting systems by any jurisdiction within North Carolina.
12. Notify the State Board and county boards of any decertification or defect as follows:
 - “The vendor shall promptly notify the State Board and the county board of elections of any county using its voting system of any decertification of the same system in any state, of any defect in the same system known to have occurred anywhere, and of any relevant defect known to have occurred in similar systems.” G.S. 163A-1118(a)(4) and Section 3.3.4.8 of the Program.
13. Submit any modifications or enhancements of the voting systems for approval by the Executive Director of the State Board of Elections.
 - See 08 NCAC 04.0302(b) and Section 3.3.4.12 of the Program.
14. Notify the State Board of any change in an item required to be held in escrow.
 - See G.S. 163A-1118(a)(2). Substitution of source code into an operating voting system without notification is a Class I felony (G.S. 163A-1118(b)).
15. Continue to comply with all federal and state requirements and voting systems standards for voting systems.
 - See G.S. 163A-1115(a)(2) and 08 NCAC 04 .0301(7).

16. Abide by the [Voting Systems Vendor Code of Ethics](#) and other rules governing contractors in North Carolina.

17. Provide the State Board with a copy of its software and firmware.

- See Section 3.3.4.7 of the Program.

Select Additional Information for Voting System Vendors:

- In general, documents provided to the State Board and county boards of elections are public record.
 - If vendors believe certain information is eligible to remain non-public, the vendor must designate that information as confidential or a trade secret pursuant to G.S. 132-1.2 and specifically identify how it meets the relevant statutory exception. See also Section 3.3.4.3 of the Program.
- Voting systems certification is NOT equivalent to a “license” in North Carolina.
 - “Neither certification of electronic poll books, ballot duplication systems, or voting systems under this section shall constitute a license under Chapter 150B of the General Statutes.” G.S. 163A-1115(h).
- The State Board of Elections must have privity of contract in order, at its option, to enforce the terms of or recover under any contract between a certified vendor and any elections official, county, or governmental unit within North Carolina.
 - See Section 3.3.4.2 of the Program.
- Willful violation of any of the duties in G.S. 163A-1118(a) is a Class G felony. Violations are also subject to a civil penalty of up to \$100,000 per violation.
 - See G.S. 163A-1118(b).
- Vendors must not attempt to sell any voting system that has not been certified by the State Board.
 - See G.S. 163A-1115 and Section 3.3.4.4 of the Program.

Please contact the State Board office if you have any questions about these requirements. Information required to be sent to the Executive Director may be emailed to votingsystems.sboe@ncsbe.gov.

A copy of [Numbered Memo 2019-04](#), which was sent to county boards of elections detailing mandatory procedures for county boards of elections, is attached.