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MAY 03 2024

SD Secretary of State

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 Rule-----

**5:02:09:02. Approval of automatic tabulating systems required before distribution.** Prior to distribution in South Dakota, a company or corporation dealing in automatic tabulating or electronic ballot marking systems shall give written notice to the state board of elections and demonstrate that its system complies with SDCL [12-17B-2](#) and § 5:02:09:02.01 or 5:02:09:02.03 and is certified as fulfilling the requirements of the Election Assistance Commission 2015 voting system standards by an independent test authority accredited by the Election Assistance Commission. If the State Board of Elections approves the system, it shall issue a certificate of approval.

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.

**Source:** 2 SDR 5, effective July 30, 1975; 6 SDR 25, effective September 24, 1979; 16 SDR 203, effective May 28, 1990; 21 SDR 77, effective October 24, 1994; 22 SDR 95, effective January 18, 1996; 29 SDR 113, effective January 30, 2003; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007; 35 SDR 306, effective July 1, 2009; 46 SDR 42, effective September 30, 2019; 47 SDR 37, effective October 6, 2020.

**General Authority:** SDCL [12-17B-17\(1\)](#).

**Law Implemented:** SDCL [12-17B-2](#).

-----End of Rule-----

2. ES&S EVS 6.1.1.0 US Election Assistance Certificate of Conformance under the 2005 standard was issued July 27<sup>th</sup>, 2020. Source - [https://www.eac.gov/sites/default/files/voting\\_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf](https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf)

3. The State Board of Elections on 8/19/2020 updated rule 5:02:09:02 from the 2002 standards to the 2015 standards required for approval of certification of voting systems for use in South Dakota. Source - [https://boardsandcommissions.sd.gov/bcuploads/8.19.20DRAFTRulesHearingBOEMinutes%2020\(2\).pdf](https://boardsandcommissions.sd.gov/bcuploads/8.19.20DRAFTRulesHearingBOEMinutes%2020(2).pdf)

4. Administrative Rule 5:02:09:02 went into effect Oct 6, 2020, requiring the new 2015 standard. Source - <https://sdlegislature.gov/Rules/Administrative/05:02:09:02>

5. July 26-28, 2021 the testing and review for ES&S EVS 6.1.1.0 was conducted, and an application for approval to the State Board of Election was sought, using the EAC Certificate under VVSG 1.0 (2005). Source - [https://boardsandcommissions.sd.gov/bcuploads/2021EVS6110Report%20\(1\).pdf](https://boardsandcommissions.sd.gov/bcuploads/2021EVS6110Report%20(1).pdf)

6. During the Aug 23<sup>rd</sup> 2021 State Board of Elections meeting, the 2005 certificate is presented, not the 2015 certificate, because it was not tested under that standard through the EAC. (Page 2 indicates the 2005 VVSG standard) Source - <https://boardsandcommissions.sd.gov/bcuploads/ES&S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf>

7. During the Aug 23<sup>rd</sup> 2021 State Board of Elections meeting, there was approval of the meeting minutes from Aug 19<sup>th</sup>, 2020 where the administrative rule 5:02:09:02 was updated from 2002 to 2015 standard requirements. Source - [https://www.sdsos.gov/about-the-office/board-of-elections/Assets/boe\\_pastminutes/8.23.21DRAFTRulesHearingBOEMinutes\\_.pdf](https://www.sdsos.gov/about-the-office/board-of-elections/Assets/boe_pastminutes/8.23.21DRAFTRulesHearingBOEMinutes_.pdf)

8. During the Aug 23<sup>rd</sup>, 2021 State Board of Elections, the board improperly certified ES&S EVS 6.1.1.0 on against their own rules requiring the 2015 standard. Source - [https://www.sdsos.gov/about-the-office/board-of-elections/Assets/boe\\_pastminutes/8.23.21DRAFTRulesHearingBOEMinutes\\_.pdf](https://www.sdsos.gov/about-the-office/board-of-elections/Assets/boe_pastminutes/8.23.21DRAFTRulesHearingBOEMinutes_.pdf)

9. Due to this violation, the ES&S EVS 6.1.1.0, should be deemed uncertified for use in this state, and the vendor should reapply with any system that is compliant with VVSG 2015, as required by rule 5:02:09:02.

10. Furthermore if it is determined that any county is intending on running 6.1.1.0 for the primary election, they should be advised they must cease using the uncertified system, and perform a hand count of the primary election, until the State Board of Elections is able to certify a compliant system for use in the State of South Dakota.

Dated at ( Elkton, SD ), this 30th day of April, 2024.



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

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Dated at ( Elkton, SD ), this 30th day of April, 2024.



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Elkton, SD 57026  
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