

**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. Feb 10th, 2021 the US Election Assistance Commissioners unanimously adopted the newest VVSG 2.0 (2021) standard. The EAC no longer accepts submissions to test new voting systems to previous major versions 12 months after new major VVSG standards are ready to be used for testing. With the accreditation of the first VSTL to test to VVSG 2.0 on November 15, 2022, VVSG 1.0 and VVSG 1.1 are now no longer used by the EAC to certify voting systems as of November 16, 2023. Source - <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>

3. Voting systems are not automatically decertified by the EAC nor the South Dakota State Board of Elections as the result of VVSG migration. VVSG migration only affects the

standards manufacturers may use to obtain future EAC certifications, not systems previously certified to past standards. Source - <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>

4. 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%20%20\(2\).pdf](https://boardsandcommissions.sd.gov/bcuploads/8.19.20DRAFTRulesHearingBOEMinutes%20%20(2).pdf)

5. 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>

6. During the Aug 23rd 2021 State Board of Elections meeting, there was approval of the meeting minutes from Aug 19th, 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

7. Due to this change from the US Election Assistance Commission (EAC) VSSG update, the State Board of Elections should meet to update rule 5:02:09:02 from version 2015 to 2021 to reflect the new standards of the EAC.

8. As of 4/30/2024, there are 2 vendors currently in various stages of getting systems approved for the new VVSG 2.0 (2021). Source - <https://www.eac.gov/voting-equipment/voting-systems-under-test>

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



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