

Questions About Electronic Voting Equipment Certification

There is a baseless claim being circulated that modem-capable voting equipment was not lawfully certified for use in Wisconsin. This claim is false.

No electronic voting equipment may be offered for sale or utilized in Wisconsin unless first approved by the Wisconsin Elections Commission pursuant to Wis. Stat. § 5.91. Wisconsin law grants exclusive certification authority to the Commission and does not require certification by any other entity. The WEC has also adopted administrative rules detailing the approval process in Wis. Admin. Code Ch. EL 7.

Modem-capable equipment in Wisconsin includes the following systems:

1. DOMINION DEMOCRACY SUITE 5.5

Approved June 10, 2021

Documentation: <https://elections.wi.gov/event/wec-june-2021-regular-meeting>

Commission Materials: A 61-page description of the equipment, testing, and certifications starting at page 39 of the materials expressly notes that though the modeming components are not federally certified (no modems are) the underlying system is federally certified.

Approval: The Commission voted to approve DVS voting system's Application for Approval of Democracy Suite 5.5-C and 5.5-CS on June 10, 2021. The two page, thirteen-point motion expressly states that the systems must be configured in the same manner as they were tested.

2. ES&S EVS 5341

Approved December 2, 2019

Documentation: <https://elections.wi.gov/event/wisconsin-elections-commission-december-2019-meeting>

Commission Materials: A 38-page description of the equipment, testing, and certifications starting at page 107 of the materials includes a detailed section on modem testing and expressly notes that though the modeming components are not federally certified (no modems are) the underlying system is federally certified.

Approval: The Commission voted unanimously to approve ES&S voting system's Application for Approval of EVS 5.3.4.1 on December 2, 2019. The two page, nine-point motion expressly states that the systems must be configured in the same manner as they were tested.

3. ES&S EVS 6050

Approved September 24, 2019

Documentation: <https://elections.wi.gov/event/wisconsin-elections-commission-september-2019-meeting>

Commission Materials: A 64-page description of the equipment, testing, and certifications starting at page 57 of the materials includes a detailed section on modem testing and expressly notes that though the modeming components are not federally certified (no modems are) the underlying system is federally certified.

Approval: The Commission voted unanimously to approve ES&S voting system's Application for Approval of EVS 6.0.5.0 on September 24, 2019. The ten-point motion expressly states that the systems must be configured in the same manner as they were tested.

4. ES&S EVS 5340

Approved June 11, 2019

Documentation: <https://elections.wi.gov/event/wisconsin-elections-commission-june-2019-meeting>

Commission Materials: A 59-page description of the equipment, testing, and certifications starting at page 25 of the materials includes a detailed section on modem testing and expressly notes that though the modeming components are not federally certified (no modems are) the underlying system is federally certified.

Approval: The Commission voted unanimously to approve ES&S voting system's Application for Approval of EVS 5.3.4.0 on June 11, 2019.

5. ES&S EVS 5320

Approved June 20, 2017

Documentation: <https://elections.wi.gov/event/wisconsin-elections-commission-june-2017-meeting>

Commission Materials: A 52-page description of the equipment, testing, and certifications starting at page 15 of the materials includes a detailed section on modem testing and expressly notes that though the modeming components are not federally certified (no modems systems are) the underlying system is federally certified.

Approval: The Commission voted unanimously to approve ES&S voting system's Application for Approval of EVS 5.3.2.0 on June 20, 2017.

6. DOMINION D-SUITE 4.14

Approved by the Government Accountability Board on June 18, 2015

Documentation: Go to <https://elections.wi.gov/approved-voting-equipment>, select Dominion voting, then Democracy Suite 4.14–D and 4.14–DS. G.A.B. meeting minutes and materials are available through the public records request process.

G.A.B. Materials: A 37-page description of the equipment, testing, and certification contains a detailed discussion of all modem components and the modem testing requirements.

Approval: The GAB voted unanimously to approve Dominion Voting System’s Application for Approval of Democracy Suite 4.14-DS Voting System.

REFERENCES

Wis. Stat. § 5.91 REQUISITES FOR APPROVAL OF BALLOTS, DEVICES AND EQUIPMENT. No ballot, voting device, automatic tabulating equipment, or related equipment and materials to be used in an electronic voting system may be utilized in this state unless it is certified by the commission. The commission may revoke its certification of any ballot, device, equipment, or materials at any time for cause. The commission may certify any such voting device, automatic tabulating equipment, or related equipment or materials regardless of whether any such item is approved by the federal election assistance commission, but the commission may not certify any ballot, device, equipment, or material to be used in an electronic voting system unless it fulfills the following requirements:

- (1) It enables an elector to vote in secrecy and to select the party for which an elector will vote in secrecy at a partisan primary election.
- (3) Except in primary elections, it enables an elector to vote for a ticket selected in part from the nominees of one party, and in part from the nominees of other parties, and in part from independent candidates and in part of candidates whose names are written in by the elector.
- (4) It enables an elector to vote for a ticket of his or her own selection for any person for any office for whom he or she may desire to vote whenever write-in votes are permitted.
- (5) It accommodates all referenda to be submitted to the electors in the form provided by law.
- (6) The voting device or machine permits an elector in a primary election to vote for the candidates of the recognized political party of his or her choice, and the automatic tabulating equipment or machine rejects any ballot on which votes are cast in the primary of more than one recognized political party, except where a party designation is made or where an elector casts write-in votes for candidates of more than one party on a ballot that is distributed to the elector.
- (7) It permits an elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; to vote for or against any question upon which the elector is entitled to vote; and it rejects all choices recorded on a ballot for an office or a measure if the number of choices exceeds the number which an elector is entitled to vote for on such office or on such measure, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (8) It permits an elector, at a presidential or gubernatorial election, by one action to vote for the candidates of a party for president and vice president or for governor and lieutenant governor, respectively.
- (9) It prevents an elector from voting for the same person more than once for the same office, except where an elector casts excess write-in votes upon a ballot that is distributed to the elector.
- (10) It is suitably designed for the purpose used, of durable construction, and is usable safely, securely, efficiently and accurately in the conduct of elections and counting of ballots.

(11) It records correctly and counts accurately every vote properly cast and maintains a cumulative tally of the total votes cast that is retrievable in the event of a power outage, evacuation or malfunction so that the records of votes cast prior to the time that the problem occurs is preserved.

(12) It minimizes the possibility of disenfranchisement of electors as the result of failure to understand the method of operation or utilization or malfunction of the ballot, voting device, automatic tabulating equipment or related equipment or materials.

(13) The automatic tabulating equipment authorized for use in connection with the system includes a mechanism which makes the operator aware of whether the equipment is malfunctioning in such a way that an inaccurate tabulation of the votes could be obtained.

(14) It does not employ any mechanism by which a ballot is punched or punctured to record the votes cast by an elector.

(15) It permits an elector to privately verify the votes selected by the elector before casting his or her ballot.

(16) It provides an elector with the opportunity to change his or her votes and to correct any error or to obtain a replacement for a spoiled ballot prior to casting his or her ballot.

(17) Unless the ballot is counted at a central counting location, it includes a mechanism for notifying an elector who attempts to cast an excess number of votes for a single office that his or her votes for that office will not be counted, and provides the elector with an opportunity to correct his or her ballot or to receive and cast a replacement ballot.

(18) If the device consists of an electronic voting machine, it generates a complete, permanent paper record showing all votes cast by each elector, that is verifiable by the elector, by either visual or nonvisual means as appropriate, before the elector leaves the voting area, and that enables a manual count or recount of each vote cast by the elector.

History: 1979 c. 311; 1983 a. 484; 1985 a. 304; 2001 a. 16; 2003 a. 265; 2005 a. 92; 2011 a. 23, 32; 2015 a. 118 s. 266 (10); 2015 a. 261; 2017 a. 365 s. 111.

Cross-reference: See also ch. EL 7, Wis. adm. code.

REFERENCES

Wisconsin Administrative Code

Chapter EL 7

APPROVAL OF ELECTRONIC VOTING EQUIPMENT

EL 7.01 Application for approval of electronic voting system.

(1) An application for approval of an electronic voting system shall be accompanied by all of the following:

- (a) A signed agreement that the vendor shall pay all costs, related to approval of the system, incurred by the elections commission, its designees and the vendor.
- (b) Complete specifications for all hardware, firmware and software.
- (c) All technical manuals and documentation related to the system.
- (d) Complete instruction materials necessary for the operation of the equipment and a description of training available to users and purchasers.
- (e) Reports from an independent testing authority accredited by the national association of state election directors (NASSED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission.
- (f) A signed agreement requiring that the vendor shall immediately notify the elections commission of any modification to the voting system and requiring that the vendor will not offer, for use, sale or lease, any modified voting system, if the elections commission notifies the vendor that the modifications require that the system be approved again.
- (g) A list showing all the states and municipalities in which the system has been approved for use and the length of time that the equipment has been in use in those jurisdictions.

(2) The commission shall determine if the application is complete and, if it is, shall so notify the vendor in writing. If it is not complete, the elections commission shall so notify the vendor and shall detail any insufficiencies.

(3) If the application is complete, the vendor shall prepare the voting system for three mock elections, using offices, referenda questions and candidates provided by the elections commission.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1) (a), (f), (2), (3) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

EL 7.02 Agency testing of electronic voting system.

(1) The elections commission shall conduct a test of a voting system, submitted for approval under s. EL 7.01, to ensure that it meets the criteria set out in s. 5.91, Stats. The test shall be conducted using a mock election for the partisan primary, a mock general election with both a presidential and gubernatorial vote, and a mock nonpartisan election combined with a presidential preference vote.

(2) The elections commission may use a panel of local election officials and electors to assist in its review of the voting system.

(3) The elections commission may require that the voting system be used in an actual election as a condition of approval.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1) to (3) made under s. 13.92 (4) (b) 6., Stats., and correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

EL 7.03 Continuing approval of electronic voting system.

(1) The elections commission may revoke the approval of any existing electronic voting system if it does not comply with the provisions of this chapter. As a condition of maintaining the elections commission's approval for the use of the voting system, the vendor shall inform the elections commission of all changes in the hardware, firmware and software and all jurisdictions using the voting system.

(2) The vendor shall, at its own expense, furnish, to an agent approved by the elections commission, for placement in escrow, a copy of the programs, documentation and source code used for any election in the state.

(3) The electronic voting system must be capable of transferring the data contained in the system to an electronic recording medium, pursuant to the provisions of s. 7.23, Stats.

(4) The vendor shall ensure that election results can be exported on election night into a statewide database developed by the elections commission.

(5) For good cause shown, the elections commission may exempt any electronic voting system from strict compliance with this chapter.

History: Cr. Register, June, 2000, No. 534, eff. 7-1-00; correction in (1), (4), (5) made under s. 13.92 (4) (b) 6., Stats. and corrections in (5) made under s. 13.92 (4) (b) 7., Stats., and s. 35.17, Stats., Register June 2016 No. 726.