

# State of Wisconsin \ Government Accountability Board

212 East Washington Avenue, 3<sup>rd</sup> Floor  
Post Office Box 7984  
Madison, WI 53707-7984  
Voice (608) 266-8005  
Fax (608) 267-0500  
E-mail: [gab@wisconsin.gov](mailto:gab@wisconsin.gov)  
<http://gab.wi.gov>



JUDGE WILLIAM EICH  
Chairperson

KEVIN J. KENNEDY  
Director and General Counsel

---

**DATE:** March 10, 2010

**TO:** Wisconsin County Clerks  
Wisconsin Municipal Clerks  
City of Milwaukee Election Commission  
Milwaukee County Election Commission

**FROM:** Nathaniel E. Robinson  
Elections Division Administrator  
Government Accountability Board

**SUBJECT:** ES&S and Premier Divestiture: U.S.A., *et al.* v. ES&S

As many of you may be aware, the United States Department of Justice (US-DOJ) had been investigating Election Systems and Software, Inc.'s (hereafter "ES&S"), September 2009 purchase of Premier Election Solutions, Inc. (hereafter "Premier").

The purchase resulted in ES&S' control of a 70% market share of voting systems used in the United States. To view the U.S. Department of Justice press release regarding a lawsuit filed on March 8, 2009, please see this link: <http://www.prnewswire.com/news-releases/justice-department-requires-key-divestiture-in-election-systems--software-premier-election-solutions-merger-86973937.html>

This lawsuit may impact any counties or municipalities currently using Premier voting systems or the ES&S AutoMARK.

U.S.A., *et al.* v. ES&S:

On March 8, 2010, the US-DOJ and nine states filed a Complaint against ES&S, alleging antitrust violations as a result of ES&S's purchase of Premier, which was filed in Federal District Court for the District of Columbia and may be viewed at: <http://www.justice.gov/atr/cases/f256200/256275.pdf>

Along with the Complaint, the US-DOJ also filed a Competitive Impact Statement, which may be viewed at: <http://www.justice.gov/atr/cases/f256200/256273.pdf>

Apparently, ES&S and the US-DOJ have reached a consent decree, which has been reduced to an Asset Preservation Stipulation and Order, as well as a proposed Final Judgment, which may be viewed respectively at: <http://www.justice.gov/atr/cases/f256200/256271.pdf> and at: <http://www.justice.gov/atr/cases/f256200/256269.pdf>

Impact for Premier and AutoMARK Users:

The precise impact of this lawsuit and the proposed divestiture settlement are not entirely known at this time. However, it appears imminent that ES&S will divest all Premier assets to a completely separate company. In addition, ES&S must provide a broad license for the AutoMARK products to the purchaser of the Premier assets. This divestiture could occur as soon as 5 days from entry of a court order, or as late as 60 days from March 8, 2010.

If the proposed Final Judgment is entered by the Court, ES&S will no longer own the Premier voting systems and the purchaser of those systems will also have the legal right to service and improve AutoMARK equipment. While the terms of the proposed Final Judgment includes language to promote a smooth transition, it is possible that some disruption in service may occur.

Most importantly, the lawsuit and impending divestiture likely will delay application for G.A.B. approval of Premier voting systems upgrades. The purchaser of the Premier assets will be responsible for submitting an application to G.A.B. for approval of any upgrades.

Conclusion:

We will attempt to keep you informed on this rapidly developing situation. If you have questions, please contact Ross Hein, Elections Specialist, at (608) 266-8005 or [Ross.Hein@wi.gov](mailto:Ross.Hein@wi.gov). Thank you.

cc: Kevin J. Kennedy  
Director and General Counsel  
Government Accountability Board

Ross Hein  
Elections Specialist/Voting Systems Lead  
Government Accountability Board

Shane W. Falk  
Staff Counsel  
Government Accountability Board