

**DIRECTIVE CONCERNING THE CONDUCT OF ELECTRONIC VOTING SYSTEM
EXAMINATIONS BY THE COMMONWEALTH OF PENNSYLVANIA ISSUED BY THE
SECRETARY OF THE COMMONWEALTH**

Pursuant to Section 1105-A of the Pennsylvania Election Code, at 25 P. S. §3031.5, and revised as required by Act 150 of 2002, the following Directive is issued by the Secretary of the Commonwealth for all electronic voting system examinations conducted in the Commonwealth of Pennsylvania.

1. Vendors interested in having an electronic voting system (system) examined in the Commonwealth of Pennsylvania must submit a written request to the Secretary of the Commonwealth. Each request shall be accompanied by an examination fee of \$ 3,000.00, established by the Secretary and payable to the Commonwealth of Pennsylvania, for each system to be examined. Any stand-alone equipment, which can be sold separately, constitutes a system for the purposes of examination and requires a separate fee.

2. The Department will review a system(s) **if** the system(s) either:
 - (a) Has been qualified by a federally recognized independent testing authority (ITA) or authorities for compliance with the 2002 Federal Election Commission Voting Systems Performance and Test Standards as deemed adopted by the United States Election Assistance Commission (EAC) under Section 222(e) of the Help America Vote Act of 2002, 42 U.S.C. § 15362(e). (If so, each request for a system examination shall also include a copy of the most recent ITA testing report(s) qualifying the system.);

or

 - (b) Has been submitted for examination by a federally recognized ITA(s) using the most recent testing standards (the 2002 Standards). (If so, the vendor must submit a copy of its request for examination to the federally recognized ITA(s) for the most recent testing standards.).

3. Upon application for an examination, the vendor must submit to the Secretary of the Commonwealth and his designated representative(s), i.e. examiner or examiners, a detailed Representation Affidavit, including (a) a list of all components (including hardware and software, as well as the software version and number, if any); (b) a copy of the most recent ITA testing report(s) qualifying the system or evidence indicating submission of the system to a federally recognized ITA; (c) a statement that the system is available in sufficient quantity to meet the needs of voters in the various counties in the Commonwealth; and (d) complete documentation for each system to be examined, including source codes, the technical data package (TDP), operating manuals, training manuals, setup manuals, repair manuals, procedures manuals and programming instructions. (A copy of the Outline of the Content and Format for a Representation Affidavit is enclosed as Attachment A.) The Commonwealth will retain the examination fee, without conducting an examination, if any false statement is provided in the Representation Affidavit. The Secretary will schedule the examination upon receipt of the examination fee, the Representation Affidavit, and the ITA approvals or evidence indicating submission of the system to recognized ITAs, pursuant to paragraph 2.

4. Upon receipt of the application for examination, the examination fee, and the documentation referred to in paragraphs 2 and 3 above, the Secretary will forward to the vendor a copy of Article XI-A of the Pennsylvania Election Code, 25 P.S. §3031.1 *et seq.* and other relevant information.
5. The Secretary will forward the ballot simulation to be used at the examination and any further instructions to the vendor no later than twenty (20) days prior to the scheduled examination.
6. The Secretary may schedule examinations at his discretion. The vendor shall supply to the Department the examination fee, the Representation Affidavit and all system documentation referenced in paragraphs 2 and 3 above at least thirty (30) days before the examination, unless otherwise authorized by the Secretary.
7. The examination fee will be returned to the vendor when a vendor cancels a scheduled examination more than 20 days prior to the scheduled examination. The examination fee will not be returned to the vendor when a vendor cancels an examination less than 20 days before the scheduled examination or if any false statement is provided in the Representation Affidavit or documentation, as specified in paragraphs 2 and 3 above.
8. The examination will be conducted in accordance with Article XI-A of the Pennsylvania Election Code. A demonstration may be videotaped at the sole discretion of the Secretary. Any feature that the vendor wants to have approved for use in the Commonwealth must be presented for examination. The vendor must present the system to the Secretary and his designated representative(s) in a condition that enables them to manipulate and examine the system including election definition and ballot setup, if appropriate. The vendor must also provide to the Secretary and his designated representative(s) the ability to program and set up an election of their own design should it be deemed necessary. The Pennsylvania Standardized Test will be used to verify that the system complies with the criteria established in section 1107-B of the Pennsylvania Election Code, at 25 P.S. § 3031.7, including the "Pennsylvania method" at section 1107-B(3), at 25 P.S. § 3031.7(3). (See the Explanation of the Pennsylvania Method at Attachment B.) Based on prior experience, the Department strongly recommends that each vendor bring a skilled technician who can answer technical questions regarding the system to be examined.
9. The system under review must meet all of the criteria set forth in the Pennsylvania Election Code at the scheduled examination. If the Secretary does not approve the system, and another examination or demonstration of the same system is required, the Secretary of the Commonwealth shall determine the fee.
10. Either at the time of the examination or as soon thereafter as is practicable, the vendor, by its duly authorized officer, shall execute an indemnification and warranty in the form provided by the Secretary. See Attachment C. Thereafter, if the vendor's system has been approved by the Secretary, the vendor or its successor shall re-execute the prescribed indemnification every three (3) years or within ninety (90) days of (a) any change in ownership of the vendor, the vendor's assets, or the structure of the vendor's organization; (b) the filing for bankruptcy protection by the vendor; or (c) an assignment for the benefit of the vendor's creditors.
11. Each designated representative(s) of the Secretary will submit a written report to the Secretary no later than 30 days after the date of the examination, unless otherwise directed by the Secretary. The

report shall describe whether the system examined can be safely used by voters at elections as provided in the Pennsylvania Election Code and whether it meets all of the requirements specified in the Election Code.

12. The Secretary will issue an official examination report after all of the reports of the designated representative(s) have been received. For those systems reviewed under Item 2(b), the Secretary must receive a copy of the ITA approval letter or report(s) confirming compliance with the most recent standards before the Secretary issues a certification report. The Secretary will forward to the vendor a copy of the official examination report as soon as it is issued.
13. The Secretary's report will specify (a) the capacity of the components of the system; (b) the number of voters who may reasonably be accommodated by the voting devices and automatic tabulating equipment that comprise the system; and (c) the number of clerks and machine inspectors required, if any, based on the number of registered electors in any election district in which the system is to be used.
14. Any change that affects the accuracy, efficiency or capacity of an approved system must be presented to the Secretary. At his discretion, the Secretary may request a demonstration or an examination of the system with any changes. In addition, the Secretary may, at any time and at his discretion, reexamine any system previously examined and approved by him.
15. Subject to the terms and conditions below, this Directive shall be binding upon any vendor and its respective successors and assigns.
 - a. The vendor may not assign, in whole or in part, its rights, duties, obligations, or responsibilities with respect to development, service and maintenance of a system approved by the Secretary without written notification to the Secretary. For the purposes of this Directive, the term "assign" shall include, but shall not be limited to, the sale, gift, assignment, pledge or other transfer of any ownership interest in the system approved by the Secretary.
 - b. Any assignment shall be evidenced by a written agreement executed between the vendor and its assignee, in which the assignee agrees to be legally bound by all of the terms and conditions of this Directive, as well as the requirements for systems contained in the Pennsylvania Election Code, and to assume the duties, obligations and responsibilities being assigned.
16. Failure by a vendor to adhere to any of the terms and conditions contained in this Directive may result in delay or termination of the certification process if the Secretary has not yet approved the system. Failure by a vendor or its assignee to adhere to any of the terms and conditions contained in this Directive may result in the revocation of the certification of the system if the Secretary has already approved the system of the vendor. If the Secretary revokes the certification of the system when a vendor or its assignee fails to adhere to any of the terms and conditions contained in this Directive and the vendor or its assignee has sold the system to a county within the Commonwealth of Pennsylvania or to the Commonwealth of Pennsylvania, then the vendor or its assignee must reapply for certification with the Secretary.

17. In the event that a system previously approved by an ITA is later found by the ITA or its successor not to be in compliance with the federal standards and the system has been certified by the Secretary of the Commonwealth, the Secretary of the Commonwealth reserves the right to reexamine the system.

Attachments:

Attachment A: A copy of the Outline of the Content and Format for a Representation Affidavit, referenced in paragraph 4.

Attachment B: Explanation of the Pennsylvania Method, referenced in paragraph 9.

Attachment C: Indemnification and Warranty, referenced in paragraph 11.