

**STATE OF COLORADO**

**Department of State**

1700 Broadway  
Suite 250  
Denver, CO 80290

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**Mike Coffman**  
Secretary of State

**William A. Hobbs**  
Deputy Secretary of State

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February 25, 2008

VIA EMAIL AND U.S. MAIL

Mr. Steve M. Pearson  
Vice President, Certification  
Election Systems & Software  
11208 John Galt Blvd.  
Omaha, NE 68137

Re: Colorado Voting System

Dear Mr. Pearson:

Your company submitted a voting system to the Colorado Secretary of State to be tested and considered for certification for use in Colorado elections. On December 17, 2007, I notified you of the decertification of the ES&S Unity Software, Version Number 3.0.1.1; M100 Precinct Optical Scanner, Version Number 5.2.1.0; M650 Central County Optical Scanner, Version Number 2.1.0.0, Green Light Only.

On February 11, 2008, Governor Bill Ritter signed House Bill 08-1155 into law. This legislation extends my authority over the 2007 testing process and allows for additional testing and communication with the vendors and the counties. The legislation authorizes me to amend or rescind any of the orders I issued on December 17, 2007 decertifying a voting system if I re-test the system or otherwise demonstrate that the major deficiencies identified in my December 17 order have been resolved or mitigated. In deciding to amend or rescind an order, the legislation requires me to consider county accuracy and security procedures, audits, processing functions, and other relevant procedures in accordance with the laws governing the conduct of elections.

The major deficiencies of the voting system, as identified by my office, included a failure to detect election programming changes and errors; inability to determine if tabulation software works correctly; inability to complete testing threshold of 10,000 ballots due to vendor programmer errors; system vulnerable to security attack; and failure to provide auditable data to detect security violations. These failures represent security, audit and accuracy needed to protect the voter.

At the time of the December 17 order to decertify, the Testing Board raised concerns about the security of the DRE; more specifically, the ability to power up and down the voting machine through the use of a magnet. In response to those concerns, the Testing Board proposed the attachment of a device to the DRE whereby mitigating the risk of the introduction of a magnet and recommended each county create a copy of their election database to ensure no alteration in programming occurs.

Although the Testing Board tested voting systems for strict compliance with state law and the Secretary of State Election Rules, a voting system may be certified as long as it substantially complies with the requirements of the Colorado Election Code, the Secretary's Rules, and any additional testing required by this office. Section 1-1-103(3), C.R.S. (2007); Election Rule 45.3.2; Election Rule 45.6.3.1. A system substantially complies with the law if the purpose of the law is achieved despite the failure to strictly comply with each and every requirement.

I recognize that additional issues were identified by the Testing Board with respect to all components of the ES&S voting system. However, in accordance with HB1155, I have considered additional information which I conclude has brought all components of the voting system into substantial compliance with Colorado law. I therefore rescind my December 17, 2007 order decertifying the DRE, and now order that the DRE is conditionally certified for use in the State of Colorado.

For the components and software listed above as conditionally certified, please review the conditions set out in the certification report "Election Systems & Software Project Overview – A.3" (Project Overview), which is posted on the Secretary of State's website and is incorporated into this decision by reference, for information regarding the necessary conditions to be fulfilled in order for such equipment to be used.

This order does not preclude additional discussion regarding the conditions listed in the Project Overview. I encourage you, the vendor, and the counties using this equipment to submit alternate suggestions for mitigating the risks the conditions address.

Sincerely,



Mike Coffman  
Secretary of State

cc: Representative Paul Weissmann, Chairman, House Committee on State, Veterans, & Military Affairs  
Senator Abel Tapia, Chairman, Senate Committee on State, Veterans & Military Affairs  
County Clerk and Recorders of counties using ES&S voting systems:  
Pamela Anderson, Jefferson County Clerk and Recorder  
Janice Rich, Mesa County Clerk and Recorder