

NOTICE OF INTENT

Department of State

Procurement and Certification of Voting Equipment (LAC 31.III.Chapter 3)

Under the authority of R.S. 18:1353, et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend Department of State regulations, LAC 31.III Chapter 3.

The revisions are necessary to comply with Act 480 of the Regular Session of the 2021 Louisiana Legislature. The proposed amendments update rules that are outdated or have been superseded by statute and remove provisions that simply restate statutes. They also add rules regarding standards and procedures for usability, accessibility, durability, accuracy, efficiency, and capacity of voting systems to be procured and used in Louisiana, as well as for the control and auditability of voter-verified paper records.

Chapter 3. Certification and Procurement of Voting Systems **Subchapter A. Competitive Sealed Bidding**

§301. Procurement and Use of Voting Systems in Louisiana

A. All voting systems or system components for use in connection with voting or elections in Louisiana must be procured by the Secretary of State in accordance with R.S. 18:1362(A).

B. Voting systems or system components offered for bid in Louisiana must be certified in accordance with the provisions of R.S. 18:1361(A) and Section 303 of this Chapter. Such certification must be completed prior to any award pursuant to any procurement for voting systems or system components for use in connection with voting or elections in Louisiana.

C. All versions of voting systems and system components certified under previous rules and statutes and currently in use in Louisiana prior to the adoption of these rules shall be considered certified.

D. Election supporting technologies, including voter registration portals and databases, election night reporting systems, electronic poll books, and ballot delivery systems, may be used in the state at the discretion of the secretary of state.

AUTHORITY NOTE: Promulgated in accordance 18:1353, R.S. 18:1361, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 19:176 (February 1993), amended by the Department of State, LR 51:

§303. Voting System Certification Standards and Procedures

A. In accordance with La. R.S. 18:1361(A) of the Louisiana Election Code, the secretary of state will examine voting systems or system components for certification and use in the state as to usability, accessibility, durability, accuracy, efficiency, and capacity, and for the control and auditability of voter-verified paper records.

1. If the voting system or system component complies with the certification standards herein, that voting system or system component will be approved for use in this state and the secretary of state will issue a certificate of approval thereof.

2. Upon request of the maker or supplier, or at the direction of the secretary of state, the Department of State will set a date and time for the examination, which will include a system demonstration, review of documentation, and functionality testing.

3. Technical advisors and qualified independent experts selected by the Secretary of State pursuant to R.S. 18:1361(C) will assist in making the examination and will provide the Secretary of State with a report and recommendation for or against certification.

4. Each maker or supplier shall pay a one-time uniform fee for each application for certification. This fee will include all fees and expenses of independent experts and shall be paid prior to the examination by the person applying for certification.

5. Each maker or supplier shall provide documentation and demonstrations sufficient to show that the voting system or system component meets or exceeds the standards in Subsection B of this Section for certification and use in this State.

6. Upon written request of the maker or supplier, or at the direction of the secretary of state, the Department of State may examine for administrative certification any minor modification to a previously certified voting system that is in use in the State. The request shall contain sufficient information to identify the modifications to the previously certified voting system. The secretary of state retains sole discretion in determining whether the proposed minor modification may be examined by the Department of State for administrative certification without payment of a certification fee.

B. The Secretary of State sets the following standards for any new voting system to be tested and certified for use in Louisiana.

1. The voting system shall:

a. Comply with all applicable federal and state laws and administrative rules, including but not limited to R.S. 18:1366.

b. Be capable of producing a manually auditable voter verified paper record. For purposes of this Section, "manually auditable" means capable of being audited by humans by hand, without use of electronic devices.

c. Provide a combined report of early voting results and absentee results, with the capability to report results by voting method and by precinct.

d. Provide a combined report of all election day precinct results as one total.

e. Provide for customization of unofficial and official reports, including absentee voting, early voting, election day voting, and total vote counts.

f. Provide the ability to produce custom designed reports or tests as required by the Secretary of State. Provide that each portion of data is imported and assigned to the corresponding data field on the applicable components of the voting system, then propagated to the removable memory devices used at a voting location.

g. Create redundant backups of election definitions, ballot images, cast vote record, and necessary logs to eliminate loss of data due to the failure of a data storage device. These redundant backups must be recorded to more than one persistent storage system.

h. Prevent and detect tampering of hardware, software, election configuration, and election results during any period of the election cycle. It must also supply evidence of attempted and actual unauthorized access.

- i. Provide for the customizable import from the statewide voter registration system into the Election Management System (EMS) before programming begins as required by the Secretary of State.
 - j. Provide password protection and multi-factor user authentication on every device used for tabulation.
 2. The Election Management System (EMS) shall:
 - a. Provide that the import process can be done during election programming and does not require repetitive manual entry.
 - b. Be able to export a results file compatible with the statewide voter registration system. This results file shall have the ability to be encrypted and sent electronically by each parish to the statewide voter registration system through an existing private network.
 - c. Run on an operating system that falls under mainstream support and allow for critical security patches at request of the Secretary of State.
 - d. Be capable of uploading bulk audio files.
 3. Any ballot marking device or voter-facing vote capture device shall:
 - a. Secure secrecy of the ballot throughout the in-person voting process.
 - b. Be capable of printing multiple zero reports at the opening of polls and multiple results reports after polls are closed.
 - c. Provide functionality for voting for or against a question or proposition included on a ballot.
 - d. Provide functionality to allow a voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more. However, when a voter is allowed to cast a vote for multiple candidates in one race, the system must also count each vote cast for an individual candidate in the event the voter chooses to vote for fewer candidates than permitted by law.
 - e. Provide each voter an opportunity to modify their selections before the voter's ballot is cast only by first de-selecting the incorrect vote and then making the corrected selection.
 - f. Notify the voter of undervotes before his ballot is cast.
 - g. Prevent the voter from overvoting or casting a blank ballot.
 - h. Have the ability to exclude any contest from a given ballot style in which the voter is prohibited from voting because of residence address or political party registration.
 - i. Accurately register, record, and count all votes cast for each candidate and for or against each question.
 - j. Be capable of complying with La. R.S. 18:1259 for presidential general elections.
 - k. Contain a sound creating device which will audibly indicate that a voter has cast their ballot or a clear visual cue that the ballot has been cast.
 - l. Must prevent unauthorized applications from being installed and executed.
 - m. Be capable of printing for each voter the voter's selections to a voter verified paper record for the voter to view the printed selections before casting a ballot.
 - n. Be capable of physically securing, retaining, and preserving the voter-verified paper record.
 - o. Be configurable such that write-in voting is disabled and not visible to voters.

p. Be accessible for individuals with disabilities, including nonvisual accessibility for voters who are blind or visually impaired in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

q. Provide alternative language accessibility, if required at a future date.

r. Prevent printing of election results prior to the closing of polls.

s. Include securely closed cases for transportation, storage, and prevention of damage and tampering.

4. The tabulation software must:

a. Be capable of processing at least 200 contests, at least 250 candidates per contest, 1000 different ballot types, and 1000 precincts in each parish.

b. Support manual data entry of the election definition to define the ballot tabulation criteria for a specific election.

c. Be capable of producing pre-marked or hand-marked logic and accuracy test ballots and be able to complete a logic and accuracy test to ensure full system accuracy.

d. Be capable of manual entry of results.

e. Remove, during the early voting tally process, challenged or voided ballots cast on early voting machines as required by law and in a way that protects the secrecy of that ballot.

f. Be capable of scanning each ballot, creating a signed digital image file containing an image of both sides of the ballot, and a record indicating how the ballot was read by the software.

g. Be capable of producing the following on one report: summary totals for printing, accumulation of blank and over-votes for each contest (which must be available for optional printing on reports), and the percentage of votes cast for each selection in a contest.

h. Be capable of producing a full ballot processing audit trail, indicating for each precinct processed, the total number of each type of ballot and other relevant statistics.

i. Be capable of operating multiple tabulating devices without experiencing system degradation.

j. Be capable of re-scanning ballots and separately storing the ballot images for auditing, recounts, or other necessary election integrity measures.

5. An absentee ballot tabulation system shall utilize a document scanner and software capable of:

a. Scanning all ballots.

b. Reading marks on the ballot made with a pencil or with a blue or black ink pen.

c. Scanning both sides of the ballot in a single pass through the scanner.

d. Automatically feeding ballots through the scanner from an input tray that holds at least 100 ballot pages.

e. Reading at least 60 ballot pages per minute.

f. Automatically detecting the feeding of two or more ballot pages simultaneously.

g. Recognizing, flagging, and segregating for adjudication of blank ballots, ballots containing ambiguous marks by the voter, and ballots containing overvotes. The state must be able to dictate and adjust parameters for ambiguous marks.

h. Being easily transported and stored.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1353, R.S. 18:1361, R.S. 18:1366, and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 19:176 (February 1993), amended by the Department of State, LR 51:

Family Impact Statement

The proposed Rule should not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule should have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule via U.S. Mail, hand-delivery, or email. Written submissions must be directed to Tray Wood, General Counsel, legal@sos.la.gov, Department of State, P.O. Box 94125, Baton Rouge, Louisiana 70804-9125 and must be received no later than 4:30 p.m. on January 3, 2025. All written comments must be signed and dated.

Hearing

A hearing on the proposed rule will be held on January 3, 2025 at 10:00 A.M. at the Division of Administrative Law, located at 1020 Florida Street, Baton Rouge, Louisiana 70802. Interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Fiscal and Economic Impact Statement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change may intermittently increase the workload of Department of State Elections Division staff and other election officials involved in voting system certification examinations, which may result in state or local governmental unit liability for payment of overtime or accrual of compensatory leave. These potential costs will be offset, however, by the fees paid by the voting system makers or suppliers requesting certification.

Pursuant to Act 480 for the 2021 RS, the proposed rule removes outdated language and updates the process for the certification and procurement of voting systems. The proposed rule change provides for the following:

- Removes and/or updates references to revised statute.
- Updates the procedures for the procurement of voting systems and system components.
- Provides that the use of election support technologies is at the discretion of the Secretary of State.
- Updates voting system certification standards and procedures.
- Requires the Secretary of State to examine voting systems or system components for certification and use in the state for usability, accessibility, durability, accuracy, efficiency, and capacity, and for the control and auditability of voter-verified paper records.
- Allows for makers or suppliers to request an examination of the systems, which will require a one-time fee from the maker or supplier to cover the expenses of independent experts.
- Codifies various requirements for new voting systems.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change may result in an increase in fee collections by the Secretary of State to offset the costs of voting system examination. The fee amounts are indeterminable at this time, but will be uniform once expert contracts are finalized. The fees are intended to cover the necessary expenses to retain independent experts to assist in the voting system certification, as authorized by R.S. 18:1362. Such fees depend on several factors that can only be evaluated at the time requests for examination are received. Such factors include but are not limited to type of equipment to be tested,

testing duration, preparation of reports and recommendations, and travel and lodging expenses.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

Voting system makers or suppliers applying for certification will be charged a certification fee. Although the certification fees are indeterminable at this time, they are intended to cover the necessary expenses to retain independent experts to assist in the voting system certification. Such fees depend on several factors that can only be evaluated at the time requests for certification are received, including but not limited to the type of equipment to be tested, testing duration, preparation of reports and recommendations, and travel and lodging expenses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is not anticipated to have any impacts on competition and employment.



Nancy Landry
Secretary of State