

# **Board of County Commissioners**

Leon County, Florida

## **Workshop on Consideration of Voting Elections Equipment Purchase and Related Issues**

*March 14, 2006*

**1:30 – 3:00 P.M.**

**Leon County Board of County Commissioner Chambers  
Leon County Courthouse, 5<sup>th</sup> Floor**

**This document distributed: March 8, 2006**

## **Board of County Commissioners Workshop**

Date of Meeting: March 14, 2006

Date Submitted: March 7, 2006

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator  
Herbert W. A. Thiele, County Attorney  
Vincent S. Long, Assistant County Administrator  
Alan Rosenzweig, Director, Office of Management and Budget

Subject: Consideration of Voting Elections Equipment Purchase and Related Issues

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### **Statement of Issue:**

The purpose of this workshop is to review the Supervisor of Elections voting equipment recommendations, review funding options for the purchase of the equipment, and for the Board to fully understand the Supervisor's contingency plan for conducting an election prior to the purchase of the new system.

### **Background:**

On February 2, 2006, the Secretary of State sent a letter to the Leon County Supervisor of Elections (Attachment #1 page 10). In summary, the letter states the following:

- 1) The Supervisor of Elections office has to return a \$564,421.95 voting assistance grant to the State of Florida for failing to comply with the terms of the grant agreement.
- 2) If Leon County's voting systems are not accessible to the disabled for any upcoming elections, the Department of Justice can enforce the law by declaratory and injunctive relief.
- 3) If the Supervisor of Elections office is not in compliance with the law, the Florida Department of State may consider exercising enforcement authority.
- 4) The Supervisor of Elections has until February 16, 2005, 5 p.m. to provide to the Secretary of State a detailed, written plan, including a timeline, of the actions he intends to take to ensure that an accessible voting system will be in place for the next federal election.

At the February 14, 2006 meeting, the Board considered an agenda item (Attachment #1 page 6) addressing the Secretary of State's memo to the Supervisor of Elections dated February 2, 2006. During the meeting, the Board discussed with the Supervisor of Elections the gravity of the current

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March 14, 2006

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situation as it relates to being in compliance with both State and Federal law and with the loss of the \$564,422 state grant. The Board voted to allow the Supervisor of Elections the time to respond to the Secretary of State and to present options to the Board at the February 28, 2006 meeting.

At the February 28, 2006 meeting, staff presented the Board an agenda item outlining the situation as it related to the purchase of voting equipment and the return of the state grant funds (Attachment #1).

At the time of the meeting the Supervisor was still in negotiations with Sequoia for the acquisition of the voting equipment. During the meeting the Supervisor relayed to the Board that a proposal from Sequoia should be available soon. As part of the discussion, the Supervisor stated the cost for the equipment would be somewhere between \$2 and \$5 million.

At the February 28 meeting, the Board directed staff to schedule this workshop to allow the Supervisor time to finish negotiations with Sequoia. The Board directed staff to develop funding options and to also have the County Attorney review with the Supervisor, and if necessary, the Secretary of State, the Supervisor's contingency plan for conducting an election.

Attachment #2 is a March 3, 2006, letter from the Secretary of State to the Supervisor of Elections. The letter requests the Supervisor of Elections provide specific information relating to his contingency plan with Polk County and an update on his negotiations to purchase new equipment. The letter restates the States position that the Department of State may need to pursue legal enforcement action to enforce the election law and may do so prior to May 1, 2006 if they deem necessary. The letter requests the Supervisor of Elections respond with all relevant documentation by March 10, 2006, 5:00 P.M.

Attachment #3 is a March 3, 2006 memo from the County Attorney to the Board relating to the meeting the County Attorney had with the Supervisor of Elections counsel discussing the existing Diebold contact.

Attachment #4 is a March 3, 2006 memo from the County Attorney to the Supervisor of Elections regarding the Supervisor's special election contingency plan.

Attachment #5 is a letter Chairman Proctor sent on March 6, 2006 requesting additional information relating to concerns raised by the Secretary of State, as well as, additional information.

### Analysis

The analysis portion of the workshop item is divided into the following sections:

- Statutory Requirements
- Voting Equipment
- Funding Alternatives
- Supervisor of Elections Contingency Plan

- Senate Bill 1910 – requirement for official paper record of vote cast
- Department of Justice
- Conclusion

***Statutory Requirements***

The Board's responsibility as it relates to the purchase of voting equipment is defined in Florida Statute 101.5604:

The board of County commissioners of any county, at any regular meeting or special meeting called for the purpose, may, upon consultation with the supervisor of elections, adopt, purchase or otherwise procure, and provide for the use of any electronic or electromechanical voting system approved by the Department of State in all or a portion of the election precincts of that County.

Florida Statute 101.294 (1) states in part:

No governing body shall purchase or cause to be purchased any voting equipment unless such equipment has been certified for use in this state by the Department of State.

In addition, the actual process by which the vendor is selected for the purchase of the voting equipment is outlined in Section 101.293. The section of the statutes discusses how a competitive procurement process is required for the acquisition of the voting equipment. However, a competitive process can be waived based on sections 101.293 (1) (a) and (b):

- (a) If a majority of the governing body agrees by vote that an emergency situation exists in regard to the purchase of such equipment to the extent that the potential benefits derived from competitive sealed bids or competitive sealed proposals are outweighed by the detrimental effects of a delay in the acquisition of such equipment; or
- (b) If a majority of the governing body finds that there is but a single source from which suitable equipment may be obtained.

If such conditions are found to exist, the chair of the governing body shall certify to the Division of Elections the situation and conditions requiring an exception to the competitive sealed bidding and competitive sealed proposal requirements of this section. Such certification shall be maintained on file by the division.

The section of the statute should be utilized to address the situation the Board is currently resolving. Based on final action to be taken by the Board, the Chairman should be authorized to certify to the Division of Elections the situation and conditions that have required the Board to acquire the voting equipment without a competitive process.

### ***Voting Equipment***

The following provides a brief summary of the three vendors certified by the State of Florida and their status with Leon County:

- ES&S has determined they do not want to do business with the Supervisor. If ES&S had agreed to sell the equipment, the cost would have been approximately \$1.8 million.
- Diebold has determined they do not want to do business with the Supervisor. If Diebold had agreed to sell the needed software and equipment to the County, the cost would have been approximately \$700,000 to \$800,000.
- Sequoia in negotiations with the Supervisor

At the time this workshop item was distributed, the Supervisor had not provided any materials relating to a proposed contract with Sequoia.

### ***Funding Alternatives***

The following provides a summary of the funding allocations for the purchase of voting elections equipment currently available:

- At the December 13, 2005, per the Supervisor of Elections request, the Board realigned \$750,000 in capital project funding to support the purchase of the Elections System Software's (ESS) optical scan voting system and Automark device. This request would have replaced all of Leon County's voting equipment as well as the purchase of the new ADA equipment. As a result of this equipment not being certified by the State, the Board rescinded the Supervisor's authority to purchase this equipment.
- Including in the adopted FY2006 budget is \$443,578 in general revenues to support the purchase of voting equipment.
- Attachment #1 page 4 is a resolution and budget amendment reducing the funds available for the purchase of voting system equipment by \$564,422. This is the direct result of the Supervisor returning the grant funds to the State. The Board did not take any action on this amendment at the February 28, 2006 meeting.
- **TOTAL AVAILABLE:** \$1,193,578 (\$750,000 + \$443,578)

Based on the Supervisor's statements at the February 28 meeting, the cost of the new Sequoia equipment will be between \$2 and \$5 million. As shown above, the County has approximately \$1.2 million allocated for voting equipment. The current shortfall is between \$800,000 and \$3.8 million, depending upon the final Sequoia agreement.

Staff recommends reducing funding for an existing capital project(s) that is currently not active and attempt to appropriate the funds back to the project(s) as part of the FY2006/2007 budget process. This approach is the same the Board took during last fiscal year when the County needed mid-year funds to make an emergency repair to the columns at the Main Library.

The following is a list of projects and current appropriation that could be reallocated to fund the elections equipment:

- Southeast Branch Library (Apalachee Parkway) - \$3,267,000
- Lake Jackson Branch Library - \$3,000,000
- Woodville Community Center - \$876,000
- Sheriff Work Camp - \$600,000
- Northeast Community Park - \$416,000
- Miccosukee Community Center - \$365,000
- Ft. Braden Community Center - \$175,000
- Chaires Community Park - \$50,000
- Tower Road Park - \$35,000

Chairman Proctor's March 5, 2006 (Attachment #5) memorandum requested staff provide information on what millage rates would need to be levied to generate between \$1.0 and \$7.0 million:

Funds to be Generated	Millage Required
\$1,000,000	0.09
\$2,000,000	0.17
\$3,000,000	0.25
\$4,000,000	0.34
\$5,000,000	0.42
\$6,000,000	0.51
\$7,000,000	0.59

***Supervisor Contingency Voting Plan***

Included in the Supervisor of Elections response to the Secretary of State was a contingency plan for voting until the County acquires a new system (Attachment 1 page 45). In response to the Supervisor of Elections letter to the State, the State has requested additional information (Attachment 2). The letter from the Secretary of State is requesting the following as it relates to the contingency voting plan: specifics of the arrangement with Polk County including how the loaned certified equipment will be delivered and set up with Leon County's system and what software and licensure agreements must be satisfied. The letter is requesting a response from the Supervisor of Elections by March 10, 2006 5:00 PM. The County Attorney has also requested this information from the Supervisor by March 6, 2006 (Attachment #4).

***Senate Bill 1910***

Senator Smith has introduced a bill during the current legislative session that amends section 101.5606 of the Florida Statutes. This section of the law outlines the requirements for approval of voting systems by the Department of State. The amendment reads that for all voting systems:

It produces an individual, discrete, and permanent paper ballot or paper record of the ballot cast by the voter, and preserves the paper ballot or paper record as an official record available for use in any recount. The permanent paper ballot or paper record shall be used by the state or its contractor to check the accuracy of a machine count or the count itself, shall a recount be used in proceeding, and, in case of a discrepancy, the permanent paper ballot or paper record shall be considered the true and correct record of the voter's choices.

If approved, the amendment would go into effect July 1, 2006.

Sequoia makes two models of touch screen equipment: the Edge I and the Edge II. The Edge I does not currently have a printer capable of complying with the intent of Senate Bill 1910. The Edge II is not currently certified by the State of Florida, but does have a printer ("Vcrivote") capable of complying with the intent of Senate Bill 1910.

Based on discussions with the Division of Elections, it appears that Sequoia is intending to submit requests for the following certifications: 1) adding a printer to the Edge I and 2) the entire Edge II system which includes a printer. However, there is a strong possibility that as a result of the requirements associated with the certification process, Sequoia could ultimately withdraw the Edge I with the printer configuration for certification.

Based on the above, and depending upon the final contract presented by the Supervisor, there is a possibility the following could occur:

- 1) The County, in consultation with the Supervisor of Elections, purchases the currently State certified Sequoia Edge I without a printer capable of producing a paper ballot or paper record for the purposes of a recount.
- 2) Sequoia does not proceed with the certification process for adding a printer to the Edge I.
- 3) Senate Bill 1910, or a similar bill, is passed that requires a verifiable paper trail for recount purposes.
- 4) The County would then need to purchase a completely new system capable of complying with the new law.

***Department of Justice***

On Monday, March 6, 2006, County staff attended the HAVA compliance seminar at the National Association of Counties Legislative Conference in Washington, D.C. The seminar's keynote speaker, Mr. John Tanner, Voting Section Chief of the U.S. Department of Justice Civil Rights Division (DOJ) provided an overview of the key steps counties could take to avoid legal intervention by the federal government. In addition to adhering to any HAVA compliance advisories made by DOJ in general, Mr. Tanner strongly recommended that counties advise DOJ of any issues that may arise as early as possible. He suggested that cooperating with the federal government toward resolution of these issues, including through Memorandum of Understanding, would be key to avoiding federal intervention in the elections process. Significantly, Mr. Tanner cautioned that HAVA compliance issues identified by DOJ without advance notification by counties were usually addressed by the federal government in a more intrusive and litigious manner.

***Conclusion***

The following summarizes the recommendations:

1. In accordance with Florida Statute 101.293 (1), direct the Chairman to notify the Division of Elections why the situation and conditions which required the Board to not proceed with a competitive bidding process.
2. Approve the resolution and associated budget amendment reducing the County budget by \$564,422 for the loss of the State ADA Voting Systems grant funding.
3. Provide direction regarding which current year capital project(s) funding should be reallocated to the voting equipment project with the intent of the Board to attempt to reallocate the funds during the FY2006/2007 budget cycle.
4. Determine what assurances can be made that if the County proceeds with purchasing equipment from Sequoia that the County will be able to add a printer capable of complying with the intent of a paper recount.
5. Direct staff to provide an update to the Department of Justice on the County's progress in coming into compliance with all relevant Federal laws.

**Options:**

1. In accordance with Florida Statute 101.293 (1), direct the Chairman to notify the Division of Elections why the situation and conditions which required the Board to not proceed with a competitive bidding process.
2. Approve the resolution and associated budget amendment reducing the County budget by \$564,422 for the loss of the State ADA Voting Systems grant funding.
3. Provide direction regarding which current year capital project(s) funding should be reallocated to the voting equipment project with the intent of the Board to attempt to reallocate the funds during the FY2006/2007 budget cycle.

4. Request the Supervisor of Elections to determine what assurances can be made that if the County proceeds with purchasing equipment from Sequoia that the County will be able to add a printer capable of complying with the intent of a paper recount.
5. Direct the County Administrator to advise the Department of Justice of the HAVA compliance issues that the County is currently facing and our efforts to come into compliance with all relevant Federal laws.
6. Board direction.

**Recommendation:**

Options #1 through #5

**Attachments:**

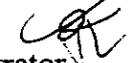
1. February 28, 2006 Agenda Item
2. March 3, 2006 Letter from the Secretary of State
3. March 3, 2006 County Attorney memorandum re Diebold contract
4. March 3, 2006 County Attorney memorandum re Special Election Contingency Plan
5. March 5, 2006 Chairman Proctor memorandum
6. Additional Information

## Board of County Commissioners Agenda Request

Date of Meeting: February 28, 2006

Date Submitted: February 22, 2006

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator   
Herbert W. A. Thiele, County Administrator   
Vincent S. Long, Assistant County Administrator  
Alan Rosenzweig, Director, Office of Management and Budget 

Subject: Consideration of Voting Elections Equipment Purchase and Reduction to the Adopted Budget Recognizing the Return of Grant Funds to the State of Florida

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### **Statement of Issue:**

For the Board to consider the purchase of appropriate voting elections equipment to be in compliance with State and Federal law and to adopt the appropriate budget resolution and amendment reducing the funds available for the purchase of elections equipment as the result of the Supervisor of Elections having to return a \$564,421.95 grant to the State of Florida (Attachment #1).

### **Background:**

At the February 14, 2006 meeting, the Board considered an agenda item (Attachment #2) addressing the Secretary of State's memo to the Supervisor of Elections dated February 2, 2006. During the meeting, the Board discussed with the Supervisor of Elections the gravity of the current situation as it relates to being in compliance with both State and Federal law and with the loss of the \$564,422 state grant. The Board voted to allow the Supervisor of Elections the time to respond to the Secretary of State and to present options to the Board at the February 28, 2006 meeting.

### **Analysis:**

Subsequent to the Board's February 14<sup>th</sup> meeting, the following events have occurred:

- February 16, 2006: The Supervisor of Elections responded to the Secretary of State's letter of February 2, 2006 (Attachment #3).
- February 16, 2006: Diebold Election Systems, Inc. distributes a letter to the Chairman and Leon County Board of County Commissioners refuting a number of comments made by the Supervisor at the February 14<sup>th</sup> Board meeting and offers to discuss their concerns. (Attachment #4)

**Agenda Request: Consideration of Voting Elections Equipment Purchase and Reduction to the Adopted Budget Recognizing the Return of Grant Funds to the State of Florida**  
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- February 17, 2006: Chairman Proctor sends a letter to Diebold Election Systems, Inc. (Attachment #5)
- February 20, 2006: County staff attended a meeting between the Supervisor of Elections, senior elections staff and Mr. Paul Griego, Regional Manager for Sequoia Voting Systems. Sequoia is one of three companies certified by the State of Florida as a vendor of HAVA compliant voting systems (in addition to ES&S and Diebold).
- February 23, 2006: Janet Olin, Assistant Supervisor of Elections distributes e-mail stating the Sequoia precinct based optical scan equipment is not certified by the State of Florida. (Attachment 6)
- February 24, 2006: County staff meets with the State Division of Elections to determine exact voting machine requirements for Leon County. Division of Elections reviews the various vendors and the options available. Division of Elections refers County staff to previous recommendation made to the Supervisor of Elections to augment the County's existing Diebold equipment with Diebold ADA touchscreens (Page 11 Attachment 2).
- February 24, 2006: Janet Olin, Assistant Supervisor of Elections distributes equipment needs to Sequoia. (Attachment #7)
- February 27, 2006: Based on Diebold's letter to the Chairman and copied to the Commission, County staff meets with senior officials from Diebold to determine their interest in maintaining a relationship with Leon County. Based on staff's understanding of the Supervisor's Sequoia negotiations, staff wanted to proceed with providing an alternative for the Board to consider. Diebold officials would only meet with the County without the Supervisor present at the initial meeting. Diebold officials state clearly that they appreciate their long standing relationship with the County and that the taxpayers and voters of Leon County should not need to suffer fiscally through the purchase of unneeded equipment. However, as a business decision, Diebold could not proceed with selling the ADA equipment to Leon County. Their concerns rested mainly on the unauthorized testing the Supervisor performed last year.

At the point in time this item was being prepared, the County had not received any proposal from the Supervisor of Elections.

The following provides a brief summary of the equipment purchase options:

- Florida has certified three vendors to sell voting equipment
- ES&S has determined they do not want to do business with the Supervisor. If ES&S had agreed to sell the equipment to the County, the cost would have been approximately \$1.8 million.
- Diebold has determined they do not want to do business with the Supervisor. If Diebold had agreed to sell the needed software and equipment to the County, the cost would have been approximately \$700,000 to \$800,000.
- Sequoia in negotiations with the Supervisor

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**Funding**

The following provides a summary of the funding allocations for the purchase of voting elections equipment currently available:

- At the December 13, 2005, per the Supervisor of Elections request, the Board realigned \$750,000 in capital project funding to support the purchase of the Elections System Software's (ESS) optical scan voting system and Automark device. This request would have replaced all of Leon County's voting equipment as well as the purchase of the new ADA equipment. As a result of this equipment not being certified by the State, the Board rescinded the Supervisor's authority to purchase this equipment.
- Including in the adopted FY2006 budget is \$443,578 in general revenues to support the purchase of voting equipment.
- Attachment #1 is a resolution and budget amendment reducing the funds available for the purchase of voting system equipment by \$564,422. This is the direct result of the Supervisor returning the grant funds to the State.
- **TOTAL AVAILABLE:** \$1,193,578 (\$750,000 + \$443,578)

**Options:**

1. Approve the resolution and associated budget amendment reducing the County budget by \$564,422 for the loss of the State ADA Voting Systems grant funding.
2. An option relating to the purchase of ADA voting equipment can not be completed pending the receipt of information from the Supervisor of Elections.
3. Board Direction

**Recommendation:**

Option #1 and Board Direction pending the receipt of information from the Supervisor of Elections

**Attachments:**

1. Resolution and associated budget amendment
2. February 14, 2006 agenda item
3. Supervisor's February 16, 2006 response to the Division of Elections
4. February 16, 2006 letter from Diebold
5. February 17, 2006 letter from Chairman Proctor to Diebold
6. February 23, 2006 Janet Olin e-mail
7. February 24, 2006 Janet Olin e-mail

RESOLUTION NO.

WHEREAS, the Board of County Commissioners of Leon County, Florida, approved a budget for fiscal year 2005/2006; and,

WHEREAS, the Board of County Commissioners, pursuant to Chapter 129, Florida Statutes, desires to amend the budget.

NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Leon County, Florida, hereby amends the budget as reflected on the Departmental Budget Amendment Request Form attached hereto and incorporated herein by reference.

Adopted this 28<sup>th</sup> day of February, 2006.

Leon County, Florida

by: \_\_\_\_\_  
Bill Proctor, Chairman  
Board of County Commissioners

Attest: Bob Inzer, Clerk of the Court  
Leon County, Florida

by: \_\_\_\_\_

Approved as to Form:  
Leon County Attorney's Office

by: \_\_\_\_\_  
Herbert W. A. Thiele, Esq.  
County Attorney

**FISCAL YEAR 2005/2006  
BUDGET AMENDMENT REQUEST**

Request No: B-047  
Request Date: 2/22/2006

Agenda Item No: \_\_\_\_\_  
Agenda Item Date: 2/28/2006

County Administrator

Office of Management & Budget Director

Alan Rosenzweig

Alan Rosenzweig

**Request Detail:  
Revenues**

Account Information					Current Budget	Change	Adjusted Budget
Fund	Org	Acct	Prog	Title			
305	000	399900	000	State Grant Reduction (from appropriated Fund Balance*)	9,460,719	(564,422)	8,896,297

The current proceeds were originally awarded to the County in a prior fiscal year. As a result of this the grant funds were brought into the new year as fund balance.

Subtotal: (564,422) 8,896,297

**Expenditures**

Account Information					Current Budget	Change	Adjusted Budget
Fund	Org	Acct	Prog	Title			
305	096012	56400	513	ADA Voting System Equipment	564,422	(564,422)	-

Subtotal: (564,422)

**Purpose of Request:**

Pursuant Florida Department of State's February 2, 2006 letter regarding the failure to comply with the requirements of section 301(a) of Title III HAVA by January 1, 2006, and the returning of grant funds to the state. This amendment reduces the capital project funding for the purchase of ADA compliant voting equipment by \$564,422.

Program Director

Group Director

Approved By: Resolution  Motion  Administrator  23

## Board of County Commissioners Agenda Request

Date of Meeting: February 14, 2006

Date Submitted: February 8, 2006

To: Honorable Chairman and Members of the Board

From: Parwez Alam, County Administrator   
Herbert W. A. Thiele, Esq., County Attorney   
Alan Rosenzweig, Director, Office of Management and Budget 

Subject: Board Review of the Secretary of State's Direction to the Leon County Supervisor of Elections

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### **Statement of Issue:**

For the Board to review the Secretary of State's February 2, 2006 letter to the Supervisor of Elections (Attachment #1) and address the Supervisor of Election's anticipated response to the Secretary of State setting forth how the Supervisor of Elections intends to come into compliance with both State and Federal elections law.

### **Background:**

On February 2, 2006, the Secretary of State sent a letter to the Leon County Supervisor of Elections (Attachment #1). In summary, the letter states the following:

- 1) The Supervisor of Elections office has to return a \$564,421.95 voting assistance grant to the State of Florida for failing to comply with the terms of the grant agreement.
- 2) If Leon County's voting systems are not accessible to the disabled for any upcoming elections, the Department of Justice can enforce the law by declaratory and injunctive relief.
- 3) If the Supervisor of Elections office is not in compliance with the law, the Florida Department of State may consider exercising enforcement authority.
- 4) The Supervisor of Elections has until February 16, 2005, 5 p.m. to provide to the Secretary of State a detailed, written plan, including a timeline, of the actions he intends to take to ensure that an accessible voting system will be in place for the next federal election.

On February 3, 2006, Chairman Proctor distributed a copy of the Secretary of State's letter to the Board of County Commissioners (Attachment #2). Chairman Proctor has requested the Supervisor of Elections provide a report to the County Commission at the February 14, 2006 Board meeting (Attachment #3).

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**Analysis:**

Florida Statute 101.5604 states:

The board of County commissioners of any county, at any regular meeting or special meeting called for the purpose, may, upon consultation with the supervisor of elections, adopt, purchase or otherwise procure, and provide for the use of any electronic or electromechanical voting system approved by the Department of State in all or a portion of the election precincts of that County.

In addition, Florida Statute 101.294 (1) states in part:

No governing body shall purchase or cause to be purchased any voting equipment unless such equipment has been certified for use in this state by the Department of State.

Consistent with Florida Statutes, the Board has repeatedly approved the purchase of certain elections equipment as recommended by the Supervisor of Elections. However, as noted below, certain systems as recommended by the Supervisor of Elections have not been approved by the Secretary of State. The following is a synopsis of the Board's recent actions in support of the funding of the Supervisor of Elections American's with Disability Act (ADA) voting systems.

- FY2005 Adopted Budget (Attachment #4): The adopted budget includes \$425,000 for the ADA voting system equipment to be supported by a state grant. The budget document notes that all Federal and State mandates must be in place by January 1, 2006.
- November 30, 2004 (Attachment #5): The Board approves a budget amendment realizing \$139,422 in additional grant proceeds from the State for the purchase of ADA voting machines. This action brings the total state grant to \$564,422. The agenda item notes that Title III, Section 301 of the Help America Vote Act requires that by January 1, 2006 the required equipment must be secured.
- FY2006 Adopted Budget (Attachment #6): The adopted budget includes an additional \$347,578 in additional County revenues (non-grant) to support the purchase of ADA voting system equipment. The budget document notes that all Federal and State mandates must be in place by January 1, 2006.
- December 13, 2005 (Attachment #7): Per the Supervisor of Elections request, the Board realigns \$750,000 in capital project funding to support the purchase of the Elections System Software's (ESS) optical scan voting system and Automark device. This request would have

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replaced all of Leon County's voting equipment as well as the purchase of the new ADA equipment. The Supervisor of Election's memo notes that the ADA requirement must be met by January 1, 2006.

Subsequent to the Board's December 13, 2005 action, the following actions have taken place:

- January 13, 2006 (Attachment #8): The Supervisor of Elections notifies the State Division of Elections that ES&S will not sell equipment to Leon County.
- February 1, 2006 (Attachment #9): The State of Florida, Division of Elections notifies ES&S that they cannot recommend certification of the Automark device.
- February 2, 2006 (Attachment #1): Secretary of State sends letter to the Supervisor.
- February 7, 2006 (Attachment #10): The Secretary of State notifies the Civil Rights Division-Voting Section of the U.S. Department of Justice that the Supervisor of Elections of Leon County is not in compliance with Title II of the Help America Vote Act (page 4 of Attachment #10). In addition, the Secretary of State's letter to the Department of Justice states that Leon County is the only County in the State of Florida that does not own or have under contract to be purchased the necessary equipment to be in compliance with State and Federal law (page 8 of Attachment #10).

The Supervisor of Elections has until February 16, 2006 to respond to the Secretary of State. To afford the Supervisor of Elections the opportunity to respond, the Board could schedule a special meeting prior the its next regularly scheduled meeting or place on its next regular meeting an item to review the Supervisor's plan and the Secretary of State's response. In addition, at the meeting the Board will be able to determine what funding requirements and specific equipment purchases will be required. As ES&S is no longer a viable solution for the County's voting equipment, the Board's actions (as recommended by the Supervisor of Elections) of December 13, 2005 can not be implemented.

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**Options:**

1. Rescind the Board's actions of December 13, 2005 authorizing the Supervisor of Elections to purchase the ES&S and Automark equipment as a direct result of the Automark equipment not being certified by the Department of State.
2. Direct an agenda item be placed on the February 28<sup>th</sup>, 2006 meeting addressing the Supervisor of Election's anticipated February 16<sup>th</sup> response to the Secretary and to authorize the purchase of certain voting equipment.
3. Direct the scheduling of a special meeting prior to the Board's next regularly scheduled meeting to address the Supervisor of Election's anticipated February 16<sup>th</sup>, 2006 response to the Secretary of State and to authorize the purchase of certain voting equipment.
4. Board Direction

**Recommendation:**

Options #1 & #2

**Attachments:**

1. February 2, 2006 letter from the State of Florida Department of State to the Supervisor of Elections
2. February 3, 2006 letter from the Chairman to the Board of County Commissioners
3. February 3, 2006 letter from the Chairman to the Supervisor of Elections
4. FY2005 Adopted ADA Voting System CIP
5. November 30, 2004 Agenda Item
6. FY2006 Adopted ADA Voting System CIP
7. December 13, 2005 Agenda Item
8. January 13, 2006 letter from Ion Sancho to the Division of Elections
9. February 1, 2006 letter from the Division of Elections to ES&S
10. February 7, 2006 letter from the Florida Secretary of State to the US Department of Justice

PA/HWAT/AR/ar



**STATE OF FLORIDA  
DEPARTMENT OF STATE**

**JEB BUSH**  
Governor

**SUE M. COBB**  
Secretary of State

February 2, 2006  
Certified Mail Return Receipt

The Honorable Ion V. Sancho  
Supervisor of Elections for Leon County  
315 South Calhoun Street, Suite 100  
Tallahassee, FL 32301

Dear Mr. Sancho:

On January 13, 2006, the Department of State received written notice from you that Leon County failed to comply with the terms of the "Memorandum of Agreement For Receipt And Use Of Voting Systems Assistance Grant" entered between you and the department and executed by you on October 18, 2004 (Attachment "A"). This letter serves as a demand for the immediate return of the Title II HAVA (Help America Vote Act) funds provided to you under the terms of that agreement.

In November 2004, you received \$564,421.95 in Title II HAVA funds from the Department pursuant to the agreement to assist you with the purchase of a certified voting system that would meet the federal standards for voting systems accessibility by January 1, 2006, under section 301(a) of Title III of HAVA. This amount was based on a certification that you had provided on August 10, 2004, in which you stated a need for 125 HAVA compliant voting machines to satisfy the federal requirement that there be at least one accessible voting system in each polling place. See Attachment "B."

It is important to note that certified accessible voting system options, the purchase of which would have brought your county into compliance, were available to you well in advance of the deadline set forth in the agreement. For example, by letter dated March 17, 2005, the Division of Elections' Bureau of Voting Systems Certification informed you directly of those options. See Attachment "C."

Under the terms of the agreement, you must return to the Department all the Title II HAVA funds you received due to failure to comply with the accessibility requirements of section 301(a) of Title III by January 1, 2006. Please remit to the Department of State the Title II HAVA funds totaling \$564,421.95 no later than Thursday, February 16, 2006, 5 p.m.

We recognize that the consequence of your failure to comply with the terms of the agreement places Leon County in a financial predicament. However, the specific legislative appropriation 28711 of the 2004-05 Appropriations Act (s. 6 of chapter 2004-268, Laws of Florida) upon which

Office of the Secretary

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125 • <http://www.dos.state.fl.us>

Letter to The Honorable Ion Sancho  
Date: February 2, 2006  
Page 2 of 2

Attachment # 1  
Page 11 of 57

the agreement was based is unambiguous and does not provide for the funds to be encumbered after January 1, 2006. We will make every effort to seek legislative re-appropriation of these Title II HAVA funds to assist you with the purchase of accessible voting systems in compliance with federal law. However, the Department does not dictate or predict the terms and conditions under which funds may be re-appropriated.

In the interim, please recognize that a failure to have your county's voting system accessible to the disabled if it is used in any federal election held after January 1, 2006, would be in violation of section 301(a) of Title III of HAVA. Under Title IV of HAVA, the Department of Justice is responsible for enforcing HAVA which it may do by seeking declaratory and injunctive relief.

Such a failure to have your county's voting system accessible to the disabled if it is used in any federal election held after July 1, 2005, would also be in violation of section 101.56062, Florida Statutes. The Department of State has new authority pursuant to section 97.012(14), Florida Statutes (effective January 1, 2006), to enforce compliance by a county supervisor of elections or any official performing duties with respect to chapter 97-102 and chapter 105 of the Florida Election Code or with a rule of the department. Therefore, if Leon County fails to prepare for and meet state accessibility standards for voting systems used in any federal election, the department will have to consider exercising the enforcement authority authorized by section 97.012(14), Florida Statutes. If timely and appropriate actions are taken to ensure procurement of an accessible voting system, poll worker training, and voter education activities, such enforcement action by the State may not be necessary.

Please provide to Dawn K. Roberts, Director of the Division of Elections, by Thursday, February 16, 2006, 5 p.m., a detailed, written plan, including a timeline, of the actions you intend to take to ensure that an accessible voting system will be in place and ready for use in your county's next election for federal office in accordance with the requirements of federal and state law.

Respectfully,

*Sam W. Cobb*

Secretary of State

Attachments

Cc: Bill Proctor, Chair, Board of County Commissioners  
Herbert W.A. Thiele, County Attorney  
Dawn K. Roberts, Director, Division of Elections

SMC/mim

**FILE COPY** 12 of 57

**MEMORANDUM OF AGREEMENT FOR RECEIPT AND USE OF  
VOTING SYSTEMS ASSISTANCE GRANT**

18th

This agreement effective as of the 18th day of October, 2004, is by and between the State of Florida, Department of State, Division of Elections ("Department"), an agency of the State of Florida, the address of which is The R.A. Gray Building, 500 South Bronough Street, Room 316, Tallahassee, FL 32399-0250 and Leon County Supervisor of Elections Ion V. Sancho ("Supervisor"), 301 South Monroe Street, Suite 301, Tallahassee, Florida 32301.

**I. Governing Law**

Pursuant to Specific Appropriation 2871I of the 2004-2005 General Appropriations Act, a. 6 of chapter 2004-268, Laws of Florida, the Department of State shall disburse funds appropriated to it from the Grants and Donations Trust Fund to the county supervisors of elections to assist in the purchase of accessible voting systems. The Department is authorized to distribute a total of eleven million six hundred thousand dollars (\$11,600,000) in the state fiscal year 2004-2005 for the purpose outlined under the specific appropriation.

Specifically, the appropriation allows for the purchase of Direct Recording Equipment (DRE) or other state approved equipment that meets the standards for accessibility for persons with disabilities by ensuring that each county has one accessible voting system for each polling place. This specific appropriation is also to ensure compliance with the accessibility requirements of Section 301(a)(3) Title III of the Help America Vote Act (HAVA) which is effective January 1, 2006. In addition to the federal law, Section 101.56062, Florida Statutes, requires accessible voting systems effective July 1, 2005.

**II. Disbursement**

The Supervisor under this agreement shall receive the amount specified in Attachment A for the respective county for the purpose outlined in Specific Appropriation 2871I.

**III. Certification**

The Supervisor shall not receive funds pursuant to Section II until the Supervisor submits to the Department a completed Certificate of 2004 Voting Systems Assistance Grants which certifies the information required by Specific Appropriation 2871I.

**IV. Restrictions**

The Supervisor under this agreement may only use funds received for purposes outlined in Specific Appropriation 2871I of the 2004-2005 General Appropriations Act and

consistent with the provisions of HAVA. If the county is not in compliance with the accessibility requirements in HAVA by January 1, 2006, any funds received under this agreement shall be returned to the Department.

**V. Audits, Monitoring and Reporting**

The administration of funds awarded by the Department to the Supervisor may be subject to audits and monitoring by the Department, as described in this section.

1. Each Supervisor expending \$300,000 or more in funds provided under this agreement may be subject to federal single or program specific audits. See OMB Circular No. A-139 (Revised, June 24, 1997) regarding Audits of States, Local Governments, and Nonprofit Organizations and the Catalog of Federal Domestic Assistance (CFDA) § 39.011, Election Reform Payments.

2. Each Supervisor receiving funds under this agreement shall keep such records with respect to the funds received as are consistent with sound accounting principles, including records which fully disclose the amount and disposition by the supervisor, the total cost of the project or undertaking for which such funds are used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit. The Supervisor agrees to provide copies of and/or access to all such documentation to state and/or federal auditors and the Department upon request.

3. The Supervisor shall provide a report to the Department on or before December 31, 2005 detailing the actual expenditures by the Supervisor of the funds provided under this agreement which shall cover the period from the date of receipt of the funds by the Supervisor through September 30, 2005. The Supervisor shall subsequently provide such a report by December 31 of each and every year thereafter, covering the preceding period of October 1 through September 30, as long as any funds provided for under this agreement remain and/or are expended.

**VI. Report Submissions**

Reports required by SECTION V of this agreement shall be submitted by the Supervisor directly to the Department of State at the following address:

Department of State  
Division of Elections  
500 S. Bronough Street, Suite 316  
Tallahassee, Florida 32399-0250

**VII. Record Retention**

The Supervisor shall keep all records arising pursuant to this Agreement in accordance with the applicable records retention schedule under law.

VIII. Entirety of the Agreement

All terms and conditions of this agreement are fully set forth in this document and no other material terms of agreement exist outside this document. All terms and conditions of this agreement shall be governed by the laws of the State of Florida regardless of any conflict of laws provisions. In any proceeding or action brought under this section, the parties agree that the prevailing party will be entitled to its reasonable attorney's fees from the other party. The parties agree that proper venue will be in Leon County, Florida.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their undersigned officials as duly authorized.

Department of State, Division of Elections:

Supervisor of Elections:

By: *Dawn Roberts*

By: *Ion V. Sancho*

Dawn Roberts, Director  
Typed name and title

Ion V. Sancho, Supervisor of Elections  
Typed name and title Leon County

*[Signature]*  
Witness

*[Signature]*  
Witness

10/13/06  
Date

October 13, 2006  
Date

2004 Voting Systems Assistance Grants

RECEIVED  
DIVISION OF STATE  
TALLAHASSEE, FLORIDA  
04 AUG 11 11:00 AM

Pursuant to 2004-268, Laws of Florida, the Department of State, Division of Elections is authorized to distribute a total of eleven million six hundred thousand dollars (\$11,600,000) among Florida counties. The purpose of the funding, pursuant to the Specific Appropriation 28711 of that chapter law, is to aid counties in the purchase of accessible voting systems in order to comply with the accessibility requirements of Section 301(a)(3) Title III of the Help America Vote Act which is effective January 1, 2006. In addition to the federal law, Section 101.56062, Florida Statutes, requires accessible voting systems effective July 1, 2005.

Receipt of such funds is conditioned upon submission of the following certificate:

CERTIFICATE

I ION SAUNCHO, Supervisor of Elections for LEON County, do hereby certify that:

- 1) The county has a total of 177 precincts, not including any reporting precincts set up exclusively for absentee ballots, provisional ballots and early voting.
- 2) The county has a total of 125 polling places, used on election day and 1 early voting sites.
- 3) The county currently owns a total of 0 voting systems that meet the disability requirements of Section 301(a)(3) Title III of the Help America Vote Act and section 101.56062, F.S.
- 4) The county's plan for purchasing the direct recording equipment (DRE) or other accessible voting system is ~~separate~~ - Vendor not yet determined. Waiting on Paper Audit System or Automark. Plan on purchasing 125-150 machines
- 5) The county anticipates being in compliance with Section 301(a)(3) Title III of the Help America Vote Act on or before 1/1/2006 (date).

  
Supervisor of Elections Signature

8/10/04  
Date

Please return the completed certificate along with the requested materials by August 6, 2004, to:

Florida Department of State, Division of Elections  
Attention: HAVA Section  
500 S. Bronough Street  
Tallahassee, Florida 32399

Attachment "B"

11/30/2006 15:12 8502456236

Attachment 1  
Page 16 of 57



STATE OF FLORIDA  
DEPARTMENT OF STATE  
DIVISION OF ELECTIONS

Jeb Bush  
Governor

Glenda E. Hood  
Secretary of State

March 17, 2005

The Honorable Ion V. Sancho  
Supervisor of Elections-Leon County  
301 South Monroe Street, Suite 301  
Tallahassee, FL 32301

Dear Mr. Sancho:

Section 101.56052, Florida Statutes requires at least one accessible voter interface device installed in each precinct for all elections conducted after July 1, 2005. During our regional conference calls this week, several counties requested that we provide each county with information on the options available to achieve compliance with the requirement.

Our records reflect that you are currently using the Global Election Systems AccuVote Election System 2001 B (blended) as certified October 30, 2001 on certificate #0110GLOBAL-02.

Your immediate, and probably most cost effective, option is to upgrade your voting system to the Diebold Election Systems, Inc. 2003 B (Blended) + (Plus Audio) system as certified October 14, 2004 on certificate #1004Diebold-02. This upgrade requires the acquisition of an upgrade from GEMS Release 1-17-17 to GEMS Release 1-18-19, acquisition of an AccuVote-TS R6 Touch Screen Ballot Station Version 4.3.15D device for each precinct and sufficient copies of Key Card Tool Version 1.0.1, and Voter Card Encoder Version 1.3.2 to support the use of the touch screen units.

We have enclosed a copy of certificate #1004Diebold-02 for your reference. Please do not hesitate to call me at (850) 245-5220 if you have any questions.

Sincerely,

Paul Craft, Chief, Bureau of Voting Systems  
Certification

Enclosure (1)

Copies: Mr. Cliff Thaeil Chairman, County Commissioners  
Mr. Herbert W.A. Thiele County Attorney

Attachment "E"

# Certification

**Diebold Election Systems, Inc.  
DIEBOLD ELECTION SYSTEMS, INC. 2003 B  
(Blended) + (Plus Audio)**

On this date, the Department of State certifies the DIEBOLD ELECTION SYSTEMS, INC. 2003 B (Blended) + (Plus Audio) voting system, submitted by Diebold Election Systems, Inc., for purchase or use by County and Municipal Governments of the State of Florida.

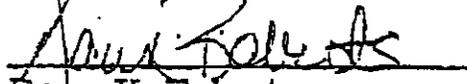
The configuration of this certified voting system consists of Global Election Management System Software (GEMS), Release Level 1-18-19; one or more AccuVote-TS R6 Touch Screen Ballot Station Version 4.3.15D (Windows CE 3.0) devices, one or more AccuVote-OS Optical Scan Tabulators with Hardware Configuration A and/or Hardware Configuration B, Revision 1 used with Firmware 1.94w and VLR firmware 13.9, Key Card Tool Version 1.0.1, Voter Card Encoder Version 1.3.2. The system may be optionally configured with one or more AccuFeed units, Revisions D or E OS (optical scan) Firmware 1.94w.

This certification is granted pursuant to Section 101.015, Florida Statutes, and Rule Chapter 1S-5, Florida Administrative Code

Certification # 1004Diebold-02



Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this fourteenth day of October, A.D., 2004.

  
Dawn K. Roberts

Director

Division of Elections

Department of State

State of Florida



**Bill Proctor**  
*Commissioner • District 1*

February 3, 2005

Dear Commissioners:

Please be advised of the attached letter forwarded to Ion Sancho, Leon County Supervisor of Elections from Secretary of State Sue Cobb.

The seriousness of this advisory from the Secretary of State to Mr. Sancho indicated the possible situation of both the State of Florida and the United States Department of Justice having to administer elections in Leon County this fall.

As you are aware we supported the Supervisor's agenda item on December 13, 2005. In total we authorized his purchase of voting machines in an amount of \$1.8 million dollars; about \$564,421.95 was funded by a state grant towards this purchase of voting machines for the disabled.

While I offer no specific comment on Mr. Sancho's judgment or abilities at this time, I will note that he places Leon County in a difficult situation in failing to comply with Federal and State statutes in the performance of his duties as Supervisor of Elections.

I have requested this matter to come before the Board at our February 14, 2006 meeting.

Sincerely,

*Bill Proctor*  
Bill Proctor

- Cc: Parvez Alam
- Herb Thiele
- Vince Long
- Alan Rosenzweig



# Leon County

## Board of County Commissioners

301 South Monroe Street, Tallahassee, Florida 32301  
(850) 488-4710 www.leoncountyfl.gov

February 3, 2006

Mr. Ion Sancho, Leon County Supervisor of Elections  
301 S. Monroe Street  
Tallahassee, Florida 32301

Dear Supervisor Sancho:

I have attached an extremely disturbing letter from the Secretary of State that I received today. As I read the letter, the following has occurred:

- 1) Your office has to return a \$564,421.95 voting assistance grant to the State of Florida for failing to comply with the terms of the agreement.
- 2) If Leon County's voting systems are not accessible to the disabled for any upcoming elections, the Department of Justice can enforce the law by declaratory and injunctive relief.
- 3) If your office is not in compliance with the law, the Florida Department of State may consider exercising enforcement authority.
- 4) You have until February 16, 2005, 5 p.m. to provide to the Secretary of State "a detailed, written plan, including a timeline, of the actions you intend to take to ensure that an accessible voting system" will be in place for the next federal election.

The above statements are not only alarming, they seriously place in jeopardy our County's long standing tradition of supporting the democratic process in providing open and accessible elections for every citizen.

My anxiety rests mainly in your apparent disregard for the Board's role in funding your entire function. As you may recall, pursuant to your request, the County included \$347,578 in the adopted budget for the purchase of ADA Voting Systems. Pursuant to your request on December 13, 2005, the Board of County Commissioner's reallocated an additional \$750,000 to purchase voting equipment. At no time during any of these communications did you make the Board aware that our \$564,421 state grant was in jeopardy? Nor did you communicate with the Board that your office was positioning the County to be unable to comply with both State and Federal election law?

Page 2

It is very disturbing that the only time the Board hears of these matters is through our local media or a letter from the State of Florida. To bring clarity to all those affected, I am having this matter placed on the Board's February 14<sup>th</sup> 2006 agenda. I am requesting that you please attend and be prepared to address the four bullet points noted above. I would also appreciate you informing the Board of your specific plans to comply with Secretary of State's requests.

I look forward to your report at the Board meeting.

Sincerely,



Bill Proctor  
Chairman, Board of County Commissioners

CC County Commissioners  
Parwez Alam, County Administrator  
Herbert W. A. Thiele, Esq., County Attorney

Attached: Letter of February 2, 2006 from the Secretary of State

# ADA VOTING SYSTEM EQUIPMENT

DEPARTMENT: Supervisor of Elections  
 PROJECT #: 096012  
 SERVICE TYPE: General Government  
 STATUS: New Project

FUNDING: 305 (Capital Improvement Fund)

**PROJECT DESCRIPTION**

This project will provide at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

**FINANCIAL SUMMARY BY FUNDING SOURCE**

Life To Date FY 2003	FY 2004 Adjusted Budget	FY 2004 Year To Date Exp.	FY 2005 Budget	FY 2006 Planned	FY 2007 Planned	FY 2008 Planned	FY 2009 Planned	5 Year Total	Total Project Cost
General			425,000	403,000				828,000	828,000
Gas Tax									
Sales Tax									
Bond									
<b>Sub-total</b>			<b>\$425,000</b>	<b>\$403,000</b>				<b>\$828,000</b>	<b>\$828,000</b>

**LEGISLATIVE / POLICY COMPLIANCE STATEMENT**

This project complies with the Help America Vote Act of 2002 Title III - Uniform and Non-Discriminatory Election Technology and Administration requirements - Subtitle A - Requirements must be implemented for all elections by January 1, 2006; Florida Statute 101.56062 Standards for accessible voting systems.

**OPERATING IMPACT**

With the acquisition of 150 additional devices a position is needed to help in the programming, testing and configuring of the total 300 voting devices. All infrastructures for this position are in place at the Elections Warehouse. The FY05 budget includes funding for one Voting Systems Tech position.

**ADDITIONAL NOTES**

Federal and State mandate must be in place by January 1, 2006. Federal grant funding will support the 2005 acquisition of equipment.

## Board of County Commissioners Agenda Request 6

**Date of Meeting:** November 30, 2004

**Date Submitted:** November 24, 2004

**To:** Honorable Chairman and Members of the Board  
**From:** Parwez Alam, County Administrator  
Alan Rosenzweig, Director, Office of Management and Budget  
**Subject:** Approval of Budget Amendment to Realize Additional Grant Proceeds for the Purchase of ADA Voting Machines

### **Statement of Issue:**

Approval of the budget resolution and associated amendment realizing unanticipated grant proceeds for the purchase of voting systems for individuals with disabilities (Attachment #1).

### **Background:**

After the 2000 General Election, Congress passed the Help America Vote Act of 2002 (HAVA). Title III, Section 301 requires that by January 1, 2006, all jurisdictions have "at least 1 direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." As a result, Federal money was distributed to each state to be used for this purpose. The State of Florida, Secretary of State, Division of Elections devised a formula to distribute those funds to the County Supervisors of Elections who do not already use systems that meet this mandate. Leon County uses an optical scan voting system which does not meet the HAVA requirement for individuals with disabilities, therefore the County received funding.

### **Analysis:**

The current grant provides \$564,422 for purchase of voting equipment for individuals with disabilities. The FY 2005-2009 Capital Improvements budget contemplated \$425,000 of estimated grant revenues for this purpose. The grant revenues exceeded this estimate by \$139,422. The attached Resolution and Budget amendment request amends the budget for this project by \$139,422.

### **Options:**

1. Approve the resolution and associated budget amendment realizing an additional \$139,422 of ADA voting systems assistance grant proceeds.
2. Do not approve the resolution and associated budget amendment realizing an additional \$139,422 of ADA voting systems assistance grant proceeds.
3. Board Direction.

### **Recommendation:**

Option #1.

**Attachments:**

1. Resolution and Budget Amendment Request

[Back](#)

[Print](#)

**RESOLUTION NO.**

**WHEREAS, the Board of County Commissioners of Leon County, Florida, approved a budget for fiscal year 2004/2005; and,**

**WHEREAS, the Board of County Commissioners, pursuant to Chapter 129, Florida Statutes, desires to amend the budget.**

**NOW, THEREFORE, BE IT RESOLVED, that the Board of County Commissioners of Leon County, Florida, hereby amends the budget as reflected on the Departmental Budget Amendment Request Form attached hereto and incorporated herein by reference.**

**Adopted this 30<sup>th</sup> day of November, 2004.**

**Leon County, Florida**

**by: \_\_\_\_\_  
Cliff Thael, Chairman  
Board of County Commissioners**

**Attest: Bob Inzer, Clerk of the Court  
Leon County, Florida**

**by: \_\_\_\_\_**

**Approved as to Form:  
Leon County Attorney's Office**

**by: \_\_\_\_\_  
Herbert W. A. Thiele, Esq.  
County Attorney**

FY 2005

# DEPARTMENTAL BUDGET AMENDMENT REQUEST FORM

DATE: 11/24/04

COUNTY ADMINISTRATOR: \_\_\_\_\_

AGENDA DATE: 11/30/04

Parvez Alam

AGENDA ITEM #: \_\_\_\_\_

MANAGEMENT & BUDGET DIRECTOR: \_\_\_\_\_

- DEPARTMENT:
- Legislative/Administrative
  - Public Services
  - Growth & Environmental Mgmt.
  - Management Services
  - Public Works
  - Other - Supervisor of Elections

Alan Rosenzweig

PROGRAM DIRECTOR: \_\_\_\_\_

GROUP DIRECTOR: \_\_\_\_\_

Account Number (Fund-Obj-Program)	Account Description	Increase Revenue <input checked="" type="checkbox"/>	Decrease Revenue <input type="checkbox"/>
		Decrease Appropriation <input type="checkbox"/>	Increase Appropriation <input checked="" type="checkbox"/>
305-000-331110-000	ADA Voting Equipment	139,422	
305-096012-56400-513	Machinery & Equipment		139,422
Total		139,422	139,422

Explanation: Realization of additional funds for the purchase of ADA Voting machines

Approved By:  Board of County Commissioners  Resolution  Motion  
 County Administrator (Routine)

**B-011**

# ADA VOTING SYSTEM EQUIPMENT

DEPARTMENT: Supervisor of Elections  
 PROJECT #: 096012  
 SERVICE TYPE: General Government  
 STATUS: Existing Project - Anticipated Carry Forward Request

FUNDING: 305 (Capital Improvement Fund);  
 318 (1999 Bond Fund)

**PROJECT DESCRIPTION**

This project will provide at least one ADA compliant voting system equipped for individuals with disabilities at each polling site. By equipping the sites with larger memory sticks the number of machines has been limited to one per site which can handle multiple precincts.

**FINANCIAL SUMMARY BY FUNDING SOURCE**

Life To Date FY 2004	FY 2005 Adjusted Budget	FY 2005 Year To Date Exp.	FY 2006 Budget	FY 2007 Planned	FY 2008 Planned	FY 2009 Planned	FY 2010 Planned	5 Year Total	Total Project Cost
	564,422							0	564,422
General								0	0
Sales Tax								0	0
Bond SB			347,578					347,578	347,578
<b>Sub-total</b>	\$0	\$564,422	\$0	\$347,578	\$0	\$0	\$0	\$347,578	\$912,000

**LEGISLATIVE / POLICY COMPLIANCE STATEMENT**

This project complies with the Help America Vote Act of 2002 Title III - Uniform and Non-Discriminatory Election Technology and Administration requirements - Subtitle A - Requirements must be implemented for all elections by January 1, 2006; Florida Statute 101.56062 Standards for accessible voting systems.

**OPERATING IMPACT**

With the acquisition of 160 additional devices a position was added in FY 2005 to help in the programming, testing and configuring of the total 30 voting devices. All infrastructure for this position is in place at the Elections Warehouse.

**ADDITIONAL NOTES**

Federal and State mandate must be in place by January 1, 2006. Federal grant funding of \$564,422 has been received and will be carried forward to FY 2006 to help fund the acquisition of equipment.

## Board of County Commissioners Agenda Request

**Date of Meeting:** December 13, 2005

**Date Submitted:** December 7, 2005

**To:** Honorable Chairman and Members of the Board

**From:** Parwez Alam, County Administrator  
Alan Rosenzweig, Director, Office of Management & Budget

**Subject:** Approval of a Budget Amendment Realigning \$750,000 of Supervisor of Elections' Capital Improvement Funds for Purchase of Voting Machinery and Equipment

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**Statement of Issue:**

This agenda items seeks Board approval of a budget amendment realigning \$750,000 of the Supervisor of Elections' Capital Improvement Funds for the purchase of Elections System and Software's optical scan voting system and Automark device (Attachment #1).

**Background:**

In a recent memo, the Supervisor of Elections requested that the Board address a realignment of the Supervisor's Capital Improvement (CIP) funds for the purchase of voting machinery and equipment, in order to remain compliant with the Help America Vote Act (HAVA) of 2002 and assure paper ballots are available for a complete recount of all votes cast (Attachment #2).

**Analysis:**

Since 1992, Leon County voters have voted in each election with the precinct optical scan technology. However, the optical scan technology provided by the current vendor would require Leon County to vote with a "blended system" of optical scans and touch screens, in order to be compliant with HAVA. The Supervisor of Elections indicated that the "blended system" would not provide 100% of vote verification due to the use of the Diebold touch screens which fail to provide paper ballots.

To ensure that the voters of Leon County continue to vote in the same manner to which they are accustomed, the Supervisor of Elections has recommended the purchase of Elections System and Software's (ES&S) optical scan voting system and the Automark device. The Automark device assists voters with disabilities while at the time providing a marked optical scan ballot that produces a paper trail and allows 100% vote verification. Unlike the touch screens, the ES&S voting technology provides a paper trail for all ballots cast.

To comply with the HAVA, the Supervisor of Elections is required to provide at least one device that will allow persons with disabilities to vote independently at polling site. The purchase of ES&S'

**Agenda Request: Approval of a Budget Amendment Realigning \$750,000 of Supervisor of Elections' Capital Improvement Funds for Purchase of Voting Machinery and Equipment  
December 13, 2005  
Page 2**

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Automark device, which is compliant with Americans with Disabilities Act, will fulfill this HAVA requirement.

The FY 05/06 CIP Budget for the Supervisor of Elections allocates \$750,000 for the purpose of Electronic Voter Identification (EVID) technology. If approved, the budget amendment will realign the funds from the EVID technology CIP towards the purchase of the ES&S system. The Supervisor of Elections considers the purchase of the ES&S voting machinery and equipment as critical and recommends this realignment of funds. The realignment of CIP funds will allow the Supervisor of Elections to purchase the ES&S optical scan voting system and Automark device.

**Options:**

1. Approve the budget amendment realigning \$750,000 of the Supervisor of Elections' Capital Improvement Funds for the purchase of Elections System and Software's optical scan voting system and Automark device.
2. Do not approve the budget amendment realigning \$750,000 of the Supervisor of Elections' Capital Improvement Funds for the purchase of Elections and System Software's optical scan voting system and Automark device.
3. Board direction.

**Recommendation:**

Option #1

**Attachments:**

1. Budget Amendment
2. Supervisor of Elections' Memo

PA/AR/cml



### Memorandum

**To:** Honorable Bill Proctor, Chair of the Leon County Commission

**From:** Ion Sancho, Leon County Supervisor of Elections *IS*

**RE:** Meeting HAVA Requirements Using Verifiable Voting Technology

The Help America Vote Act (HAVA) was passed by the United States Congress in October of 2002. It contained a provision, Section 301(a)(3), requiring jurisdictions provide, in each voting location, at least one device allowing persons with disabilities to vote independently in all federal elections after January 1, 2006.

Voters in our jurisdiction cast their ballots using precinct based optical scan voting technology. As recognized by the Leon County Board of County Commission in 1992, and again by the State of Florida in March of 2001, (Governors Select Task Force on Elections: Revitalizing Democracy in Florida) precinct based optical scan technology is the most accurate and voter friendly technology currently employed to count votes in the United States.

While the Leon County Elections Office has been nationally recognized for its excellent election process and procedures, our agency must enter into a purchase agreement for additional hardware to comply with the aforementioned HAVA requirements. Fortunately, federal funds for this purpose are also available to our office so additional dollars are not needed for this purchase.

Consistent with our desire to maintain high standards our Agency has identified the Automark as the only device which, when certified, allows the Leon County Supervisor of Elections Office to continue the kind of elections its citizens have come to expect. It is certainly the only device that will allow for a 100 percent verification of all our voters votes and a complete recount of every ballot cast in every Leon County election.

Our plans to acquire this device have been frustrated by our current vendor, Diebold Elections. They have adamantly refused to seek certification of the Automark with their Accuvote optical scan products (we use the Accuvote 2000) and have threatened any Diebold user with loss of product support if they proceed with the Automark technology. Additionally they have threatened legal action for "copyright and patent infringements" if jurisdictions try to use the Automark device with "their" equipment.

Diebold's corporate tactics also include purposefully breaching their contract with Leon County, by failing to provide new versions of their elections software as required, in an attempt to force us to use only their touchscreen voting machines (we get the new release if we use their touchscreens).

Leon County would then have a "blended System", meaning voters would be voting on paper ballots and on touchscreen machines *in the same precinct!* In our opinion this would be the worst of all options available.

After months of intensive consideration our Office recommends the Leon County Board of Commissioners authorize the Leon County Supervisor of Elections to contract with Elections System & Software for the purchase of their precinct based optical scan voting system and the Automark device, thus enabling Leon County voters to continue voting in the same manner (fill in the oval) and technology (precinct based optical scanning) as we have in the past 13 years, with the complete ability to recount every citizen's vote.

Fortunately, this option can be funded from the current budget by re-allocating the \$750,000 the Board allocated to our Office for EVID technology. Given the critical nature of this issue we conclude the EVID must be deferred so the Board does not have to appropriate additional budget dollars this year for the Leon County Supervisor of Elections Office. Only in this manner can we continue to provide completely verifiable elections to the citizens of Leon County and maintain the same level of accountability and trust in our elections process.

**ION SANCHO**  
**Supervisor of Elections**  
**Leon County, Florida**

Page 32 of 57

January 13, 2006

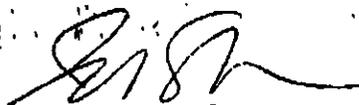
Dawn K. Roberts  
 Director, Division of Elections  
 Florida Department of State  
 R.A. Gray Building Rm. 316  
 Tallahassee, Florida 32399

Dear Ms. Roberts:

The Leon County Supervisor of Elections Office must regrettably inform you that on December 29, 2005, our agency was informed by Gary Crump, Chief Operating Officer for the ES&S Corporation, that they would not be selling their equipment to Leon County due to their lack of current products and resources. This action occurred despite the fact that Florida representatives of ES&S solicited Leon County's business over a year ago and as recently as the FSASE winter conference, senior level executives of the ES&S Corporation confirmed that our negotiations were complete and they would sell us the equipment.

Now, at the eleventh hour and through no fault of our own, we find ourselves without the certified equipment we must have to serve our citizens at the September 5, 2006 primary election. We are in the process of pursuing our lawful legal options at this time and have placed our HAVA grant monies in a special account while we vigorously pursue these options.

Sincerely yours,



Ion V. Sancho



STATE OF FLORIDA  
DEPARTMENT OF STATE

1  
33 57  
SUE M. COBB  
Secretary of State

JEB BUSH  
Governor

February 1, 2006

Mr. Steve Pearson  
Vice President of Certification  
Election Systems and Software, Inc.  
11208 John Galt Blvd.  
Omaha, NE 68137

Re: Test Status Report  
Ref: ES&S Voting System Release 4.5, Version 2a

Dear Mr. Pearson:

It is with regret that the Bureau of Voting Systems Certification cannot recommend certification at this time for "ES&S Voting System Release 4.5, Version 2a". Florida Statute section 101.56062 (1)(n) 7. states that an audio ballot system "...must communicate to the voter the fact that the voter has failed to vote in a race or has failed to vote the number of allowable candidates in any race and require the voter to confirm his or her intent to undervote before casting the ballot." The AutoMARK VAT has an audio feature similar to a DRE in that it warns a voter of an undervote prior to marking the ballot. However, this feature is not available for a multiple-page ballot set regardless of whether the voter intentionally or unintentionally fails to present all the ballot pages to the AutoMARK VAT. The AutoMARK VAT satisfies this requirement only for a single ballot page (one or two-sided), but cannot communicate to the voter that the voter has failed to vote or require the voter to confirm this intent to undervote when the voter presents a ballot set that is missing one or more ballot pages.

The Bureau has taken into consideration the AutoMARK's potential to vocalize a ballot's page number along with the total number of pages within a ballot set. However, it is the Division of Elections determination that this enhancement will not meet the intent of section 101.56062 (1)(n) 7. F.S.

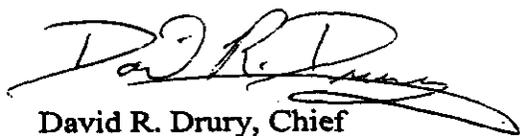
With the exception of the AutoMARK Technical Services (ATS) and the iVotronic elements, the referenced voting system includes the same hardware and software elements that make up the Florida certified "ES&S Voting System Release 4.5, Version 2". Those elements performed as expected during this series of tests except for the Model 650.

The Collins Building • 107 W. Gaines St., Rm. 231 • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6578 • Facsimile: (850) 245-6236 • WWW: <http://www.dos.state.fl.us>

The December '05 AutoMARK tests produced several ballots with votes displaced from the target ovals. Although correctly read by the M100 precinct scanner, the Model 650 central count scanner tabulated these votes as undervotes. Results of the root cause investigation support the hypothesis that there was an unfavorable tolerance stack-up for the "ballot on demand" printed ballots when combined with the AutoMARK VAT's print logic for skewed ballots and the tight tolerance associated with the fixed position of the Model 650's sensors. The proposed solution discussed with the Bureau on January 25, 2006 should resolve this issue. The Bureau is looking forward to testing and verifying the solution's suitability and acceptability and hopes that this can be accomplished in the near future.

The Bureau is confident that ES&S and ATS can resolve both of the above issues and fully expects ES&S to ultimately complete this certification effort. The Bureau is encouraged by the AutoMARK's touchscreen interface, its audio capability, and its ability to utilize assistive technology to enable all voters to vote independently. The road to certification has improved the AutoMARK system and its integration into the ES&S Unity system. Resolution of these issues will lead to a product offering that has met the demands of one of the most rigorous functional test programs in the United States.

Regards,



David R. Drury, Chief  
Bureau of Voting Systems Certification

ird/

UNOFFICIAL PRIMARY BALLOT  
DEMOCRATIC PARTY

Exhibit 179

P	P	P
<b>CONGRESSIONAL</b>		
<b>NONPARTISAN</b>		
UNITED STATES SENATOR (Vote for one)	MAYOR (Vote for one)	
UNITED STATES SENATOR (Vote for one)	<input type="radio"/> JAVIERE	
UNITED STATES SENATOR (Vote for one)	<input type="radio"/> Delvarance Charles BLUE	
UNITED STATES SENATOR (Vote for one)	<input type="radio"/> Jesse CANDELA	
UNITED STATES SENATOR (Vote for one)	<input type="radio"/> Miguel BIAZ DE LA PORTILLA	
<b>STATE</b>		
<input type="radio"/> MAURICE FERRE		
STATE ATTORNEY 11th JUDICIAL CIRCUIT (Vote for one)	<input type="radio"/> JAYN LOVE	
<input type="radio"/> JIMMY MORALES		
<input type="radio"/> DAVA SLATER		
AMILIAN REPUBLICAN		
LESLIE ROTHENBERG REPUBLICAN		
<b>NONPARTISAN</b>		
CIRCUIT JUDGE/11th JUDICIAL CIRCUIT, GROUP 3 (Vote for one)		
<input type="radio"/> Teresa M. POOLER		
<input type="radio"/> John SCHLESINGER		
CIRCUIT JUDGE/11th JUDICIAL CIRCUIT, GROUP 32 (Vote for one)		
<input type="radio"/> Barbara ARECES		
<input type="radio"/> D. Bruce LEVY		
CIRCUIT JUDGE/11th JUDICIAL CIRCUIT, GROUP 40 (Vote for one)		
<input type="radio"/> William L. THOMAS		
<input type="radio"/> Josie M. VELIS		
<input type="radio"/> Catharine B. PARKS		

UNOFFICIAL PRIMARY BALLOT  
REPUBLICAN PARTY

EXH. 1.80

36 57

PRECINCT 999

CONGRESSIONAL

UNITED STATES SENATOR  
(Vote for one)

RODOLFO RIVERA  
REPUBLICAN

JOHN GARCIA  
REPUBLICAN

JOHN RAY  
REPUBLICAN

WILLIAM BILLY KOGUT  
REPUBLICAN

JOHN MARCH  
REPUBLICAN

MARTIN MARTINEZ  
REPUBLICAN

SIMON COLLUM  
REPUBLICAN

JOHN SAUL  
REPUBLICAN

STATE

STATE ATTORNEY  
11th JUDICIAL CIRCUIT  
(Vote for one)

AI MILIAN  
REPUBLICAN

Leslie ROTHENBERG  
REPUBLICAN

PARTY

REPUBLICAN STATE  
EXECUTIVE COMMITTEE,  
STATE COMMITTEEMAN  
(Vote for one)

Robert E CANINO  
REPUBLICAN

Roberto A. GODOY  
REPUBLICAN

David RIVERA  
REPUBLICAN

REPUBLICAN STATE  
EXECUTIVE COMMITTEE,  
STATE COMMITTEEWOMAN  
(Vote for one)

Miriam GAJIGA  
REPUBLICAN

Raquel REGALADO-HERRERA  
REPUBLICAN

Liliana ROS

NONPARTISAN

CIRCUIT JUDGE/11th JUDICIAL  
CIRCUIT, GROUP 32  
(Vote for one)

Barbara ARECES

B. BRUCE LEVY

CIRCUIT JUDGE/11th JUDICIAL  
CIRCUIT, GROUP 30  
(Vote for one)

WILLIAM L. THOMAS

José M. VELIS

Catherine B. PARKS

Don S. JOHN

CIRCUIT JUDGE/11th JUDICIAL  
CIRCUIT, GROUP 45  
(Vote for one)

Peter ADRIEN

Henry H. HARNAGE

COUNTY COURT JUDGE,  
GROUP 15  
(Vote for one)

Valerie R. MANNO

Judith "Judy" RUBENSTEIN

COUNTY COURT JUDGE,  
GROUP 37  
(Vote for one)

Ada POZO REVILLA

Jeffrey David SWARTZ

MAYOR  
(Vote for one)

Carlos A. ALVAREZ

Deliverance Charles BLUE

NONPARTISAN

SCHOOL BOARD MEMBER  
DISTRICT 2  
(Vote for one)

KARIN L. MANN

Evelyn [unclear]

GRACE [unclear]

ARNE [unclear]

JANIS [unclear]

MARCO [unclear]

DON [unclear]

PAUL [unclear]



STATE OF FLORIDA  
DEPARTMENT OF STATE

37 57  
COPY

**JEB BUSH**  
Governor

**SUE M. COBB**  
Secretary of State

February 7, 2006

Via facsimile (202-307-3961) and U.S. Mail

John Tanner, Chief  
Civil Rights Division-Voting Section  
Room 7254-NWB  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

RE: Update on State's Compliance with Title III Requirements of the Help America Vote Act (HAVA)

Dear Mr. Tanner:

On behalf of the chief elections official, Secretary of State Sue M. Cobb, I am responding to your letter dated January 19, 2006, and received via e-mail on February 2, 2006. Your letter requests a detailed update on the status of Florida's efforts to comply with the requirements of sections 301 and 303(a) of the Help America Vote Act (HAVA), as it relates specifically to voting system standards and the statewide voter registration computerized database.

The state of Florida has complied with its requirements under section 301 of HAVA. Florida has pro-actively taken steps to ensure that all local jurisdictions were able to purchase voting systems that comply with federal voting system standards by the January 1, 2006 deadline for use in any federal election as required by HAVA. Additionally, the state of Florida is in compliance with the requirements of section 303 of HAVA by successfully implementing the Florida Voter Registration System by January 1, 2006 and otherwise meeting the requirements of that section.

#### Compliance with Section 301-Voting System Standards

Prior to responding specifically to your questions regarding an update on the status of voting systems in Florida's local jurisdictions that meet the standards under section 301, Title III of HAVA, some background information is necessary. As previously indicated to you in our September 9, 2005 letter, the Florida Legislature enacted state law relating to voting systems standards in the area of audit capacity, accessibility and language accessibility that met or in some cases exceeded federal standards under HAVA.

Office of the Secretary  
R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125 • <http://www.dos.state.fl.us>

Specifically, section 101.56062, Florida Statutes<sup>1</sup> (which was enacted in May 2002 before the October 2002 enactment of HAVA ) required any certified voting system used in any election held after July 1, 2005 (6 months earlier than the federal HAVA deadline for accessibility standards in federal elections), to have the capability to install devices that would meet 14 categories of accessibility standards. In addition, the state law required each polling place to have one voting system with such a device installed with one exception. Although the system had to have a simultaneous audio-video capability, the law excepted that particular requirement from actually being activated in the installed device.<sup>2</sup> The Department subsequently revised Rule 1S-5.001, Florida Administrative Code,<sup>3</sup> relating to Voting Systems Equipment Regulations, to further embody the state and federal standards, regulations and deadlines for use of voting systems in the state.

In 2004, the Florida Legislature specifically appropriated to the Department of State Title II HAVA funds totaling \$11,600,000.00 to be distributed to supervisors of elections whose counties did not already meet the disability compliant voting system requirement.<sup>4</sup> The sole purpose for these funds was to assist those local jurisdictions to obtain voting systems meeting the accessibility standards for voting systems in section 301(a) under Title III. In order to receive the funds, the supervisors of elections had to certify the number of polling places and machines needed to meet the federal requirement and to execute a grant agreement. Sixteen counties already had disability complaint voting systems while 51 counties certified their need for disability complaint voting systems to meet the federal requirement. Those 51 county supervisors of elections received an amount based on their certification of need and executed an agreement. The agreement incorporated specific legislative appropriation language governing the use, receipt and return of the funds. Under the agreement, a supervisor of elections who was not in compliance with voting system accessibility requirements in HAVA by January 1, 2006, would have to return the funds to the Department. Both the agreement and the certification form executed by the supervisors of elections also referenced the state law requirements for voting systems accessibility standards and the July 1, 2005 deadline.

It is important to note that the Department of State is responsible for evaluating, testing, and certifying the voting systems or any upgrades thereto that may be used in any municipal, county, state or federal election in the state. See sections 101.5601 -101.5614, Florida Statutes.<sup>5</sup>

<sup>1</sup> See s.12, ch. 2002-281, Laws of Florida at: [http://election.dos.state.fl.us/laws/02laws/ch\\_2002-281.pdf](http://election.dos.state.fl.us/laws/02laws/ch_2002-281.pdf) and section 101.56062, Florida Statutes, at:

<http://election.dos.state.fl.us/publications/pdf/electionLaws2005.pdf>

<sup>2</sup> The effective date of the legislation was one year from the date of legislative appropriation. The Florida Legislature did not appropriate funds until July 2004. Hence the law's effective date became July 1, 2005. Notwithstanding, the state law requirement that each voting system certified by the Department of State for use in any local, state, and federal elections held after the effective date (July 1, 2005), meet the accessibility standards in s. 101.56062, Florida Statutes, one federal court has construed the statute to apply only to electronic voting systems that have been purchased. See National Federation of the Blind, et al v. Volusia County, et al, F.Supp.2d, 2005 WL 1712038 (M.D.Fla.,2005)(unreported).

<sup>3</sup> See link at: <http://election.dos.state.fl.us/laws/AdoptedRules/ElectionsRules.shtml>

<sup>4</sup> See s. 6 of chapter 2004-268, Laws of Florida, specific appropriation 2781I at: [http://election.dos.state.fl.us/laws/04laws/ch\\_2004-268.pdf](http://election.dos.state.fl.us/laws/04laws/ch_2004-268.pdf)

<sup>5</sup> See provisions at: <http://election.dos.state.fl.us/publications/pdf/electionLaws2005.pdf>

Only voting systems certified by the Bureau of Voting Systems Certification may be purchased and used in any election. The Department is not responsible nor does it have statutory authority to dictate or otherwise purchase the voting system to be used by a particular local jurisdiction. The responsibility for the adoption, purchase, procurement and use of any voting system lies entirely with the respective local board of county commissioners in each of the 67 counties. See s. 101.294, Florida Statutes.<sup>6</sup> Each county supervisor of elections, all but one of whom is a constitutionally elected officer, is responsible for ensuring that the election is administered in accordance with state and federal law requirements.

In March 2005 the Chief of the Bureau of Voting Systems Certification sent a letter to each of the county supervisors of elections whose voting systems did not yet meet the state voting systems standards for accessibility. Copies of the letter were also sent to the respective county's Chair of the Board of County Commissioners and county attorney. The letter informed each county supervisor of elections that certified upgrades were now available for any local jurisdiction to bring its previously certified county voting system into compliance with state accessibility standards of section 101.56062, Florida Statutes. The Department also posted on its public website (<http://election.dos.state.fl.us/votemeth/index.shtml>) up-to-date data on certified voting systems used throughout the state by local jurisdiction, voting system type, and vendor.

In April 2005 it became apparent that 8 counties had no viable option or feasible means, other than to buy an entirely new already certified voting system, of complying with July 1, 2005, deadline for state accessibility standards. The Department adopted an emergency rule (Rule 1SER05-1)<sup>7</sup> to provide an additional 90-day window (from the date of adoption) for voting system vendors to request and obtain certification of existing accessible voter interface devices that would meet all but the simultaneous audio-video capability under section 101.56062, Florida Statute, and that would certainly meet the federal accessibility standards of HAVA. The rule expired on July 1, 2005.

By the July 1, 2005 deadline for state accessibility standards, the Department of State certified the following major systems to also meet the requirements of section 301(a) under Title III:

- *The ES&S Voting System, Release 4.5, Version 2: (Includes iVotronic touch screens, absentee scanners and a blend with the Model 100 precinct scanners)*
- *The ES&S Voting System, Release 4.5, Version 1 (ES&S iVotronic and Optech blended)*
- *The AVC "Edge" Voting System, Release Level "4.2 (Sequoia Touch Screen)*
- *The Diebold Election Systems, Inc. 2005B (Blended)+(Plus Audio)" and "Diebold Election Systems, Inc. 2003B (Blended) + (Plus Audio) (Diebold Touch Screen Systems)*

Most recently, the Department of State additionally certified *The AVC "Edge" Voting System, Release Level 4.3.320 (Sequoia Touch Screen)*.

Although the decision to procure or use a specific certified voting system is made at the local level without required prior approval from the Department, the Department typically receives

<sup>6</sup> Id.

<sup>7</sup> See link at: <http://election.dos.state.fl.us/laws/AdoptedRules/ElectionsRules.shtml>

a notice of systems acquisition after the fact. For example, the Supervisor of Elections for one county (Volusia) alerted the Department of its board of county commissioners' ongoing deliberations about which voting system upgrade or replacement to purchase in light of the HAVA January 1, 2006 deadline. Volusia County subsequently opted to enter into an agreement on December 21, 2005, with Election Systems & Software, Inc. for the purchase of certified voting equipment, including HAVA compliant direct recording equipment (DRE) units.

The Department of State recently conducted a survey of the counties that had received Title II HAVA funds to assist with the purchase of voting systems in compliance with section 301 standards. As a result of that survey, the Department has identified two counties that received Title II HAVA funds pursuant to a grant agreement but that are still not in compliance with state or federal law governing accessible voting systems. These two counties, Leon and Union, received \$564,421.95, and \$49,669.13, respectively in Title II HAVA funds, in November 2004. To date, neither county has expended the funds. However, on January 30, 2006, Union County executed a contract for the purchase of voting systems compliant with the state and federal accessibility standards.

Pursuant to the terms of the agreement that requires automatic return of the Title II HAVA funds if the county fails to comply with the federal voting systems accessibility standards by January 1, 2006, the Department of State issued a letter to the respective supervisors of these two counties demanding the return of the Title II HAVA funds. See Attachment "A", February 2, 2006 Letter & Enclosures to Leon County Supervisor of Elections Ion Sancho, and Attachment "B", February 2, 2006, Letter & Enclosures to Union County Supervisor of Elections Babs Montpetit. In addition, since these counties are also potentially at risk for failing to have voting systems that meet state standards for accessibility by the next federal election, they have been asked to provide a detailed, written plan, including a timeline, of the actions they intend to take to ensure that an accessible voting system will be in place and ready for use in their county in accordance with the requirements of federal and state law.

In response to your specific questions about disability accessible voting systems used in an election for federal office, there will be a certified voting system meeting section 301(a) accessibility requirements in place and ready for use in the next election for federal office in 66 of the 67 counties. More specifically 49 counties have procured such disability accessible voting systems that meet the federal requirements of section 301(a) of HAVA. See Attachment "C", chart of Voting Systems in Florida. Fourteen counties contracted by January 1, 2006, for accessible voting systems for delivery and ready use of such systems by the next election for federal office. See Attachment "C." One county (Union) contracted on January 30, 2006, for the delivery and ready use of an accessible voting system for by the next federal election. As indicated above, one county (Leon) remains without any contract for an accessible voting system for use in the next election for federal office.

The Department is making every effort to ensure that the outstanding county complies with federal law requirements for accessible voting systems as well as the stricter state law requirements for accessibility. Please note that as of January 1, 2006, the Department became

armed with new statutory authority under section 97.012(14), Florida Statutes,<sup>8</sup> to seek mandamus or injunctive relief to enforce compliance by a county supervisor of elections or any official performing duties with respect to chapters 97-102 and 105 of the Florida Election Code or with a rule of the department. Therefore, if any county fails to prepare for and to meet state accessibility standards for voting systems used in any election for federal office as required by section 101.56062, Florida Statutes, the Department may exercise the authority to enforce compliance.

The next election in Florida for federal office is the primary election scheduled on September 5, 2006. Obviously, there must be sufficient lead time for these counties to accommodate activities such as poll worker training, voter education activities, and testing of any newly acquired certified voting systems or upgrades to their existing system. Pursuant to their responsibility under section 102.014, Florida Statutes, at least 7 of the 67 county supervisors of elections have scheduled poll worker training to begin before June 1, 2006.<sup>9</sup> The majority of the 60 remaining county supervisors of elections have scheduled their poll worker training to begin no later than August 1, 2006. Additionally, under section 98.255, Florida Statutes, each county supervisor of elections is responsible for voter education activities throughout the year to ensure that voters have a working knowledge of the voting process before an election.<sup>10</sup> Supervisors of elections also engage in a number of other pre-election preparation activities including the testing of electronic or electromechanical voting systems to be thoroughly tested within 10 days of the election period in accordance with section 101.5612, Florida Statutes, reviewing & revising security procedures, coding the election, creating final election parameters, testing each voting machine, and visually examining the equipment during voting as provided under section 101.5613, Florida Statutes.

In response to your question as to whether the State has implemented standards for the uniform definition of a vote and what will count as a vote for each type of voting system used in the State, the standards are found in section 102.166, Florida Statutes,<sup>11</sup> and more explicitly embodied in Rule 1S-2.027, Florida Administrative Code, and Rule 1S-2.031, Florida Administrative Code.<sup>12</sup> These provisions provide the uniform definition required by subsection (a)6. of section 301 of Title III of HAVA.

### Compliance with Section 303-Computerized Statewide Voter Registration List & Other Requirements

As an update to the letter dated September 9, 2005, Florida has also successfully implemented the centralized, computerized statewide voter registration database known as the Florida Voter Registration System (FVRS) by the January 1, 2006, deadline. The FVRS meets the requirements of section 303(a) of Title III under HAVA. As permitted by your letter, in lieu of forwarding

<sup>8</sup> See provisions at: <http://election.dos.state.fl.us/publications/pdf/electionLaws2005.pdf>

<sup>9</sup> See provisions at: <http://election.dos.state.fl.us/publications/pdf/electionLaws2005.pdf>

<sup>10</sup> Id.; See also Rule 1S-2.033, Florida Administrative Code at: rule link at: <http://election.dos.state.fl.us/laws/AdoptedRules/ElectionsRules.shtml>

<sup>11</sup> Id.

<sup>12</sup> See rule link at: <http://election.dos.state.fl.us/laws/AdoptedRules/ElectionsRules.shtml>

documentation, I refer you to the Division of Elections' website at <http://election.dos.state.fl.us/hava/fvrs/index.html>. Detailed documentation regarding the development, design and operation of the Florida Voter Registration System (including the project schedule, operational work plan, and procurement documents) is posted and available on that website.

The Department has also timely implemented the data verification procedures for all new registrants under section 303(a)(5)(B), the list maintenance database coordination procedures under section 303(a)(2)(A)(ii), and the data matching procedures for first-time registrants by mail under section 303(b)(3)(b)(ii). These procedures were implemented by and are in operation as of January 1, 2006.

Once again thank you for your inquiry. We hope that this letter addresses your questions adequately. If you have any further questions, please do not hesitate to contact us.

Sincerely,



Dave E. Magn  
Assistant Secretary of State

Enclosures

- cc: Sue M. Cobb, Secretary of State  
Dawn K. Roberts, Director, Division of Elections  
Chris Herren, Department of Justice, Civil Rights Division  
David Drury, Chief, Bureau of Voting Systems Certification  
Don Roberts, FVRS Project Manager  
Sharon Larson, Deputy General Counsel  
Maria Matthews, Assistant General Counsel (HAVA-designated attorney)

**STATUS OF CERTIFIED VOTING SYSTEMS IN FLORIDA'S LOCAL JURISDICTIONS UNDER SECTION 301 STANDARDS IN TITLE III, HELP AMERICA VOTE ACT OF 2002**

COUNTY	CERTIFIED VOTING SYSTEMS		DATE PRESENT	DATE READY FOR USE
	VENDOR	TYPE		
<i>Alachua</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Baker</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Bay</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Brevard</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Broward</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Calhoun</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Charlotte</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Citrus</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Clay</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Collier</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Columbia</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>DeSoto</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Dixie</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Duval</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Escambia</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Flagler</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Gilchrist</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Hardee</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Hernando</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Highlands</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Hillsborough</i>	Sequoia	AVC Edge	1/1/06	1/1/06
<i>Indian River</i>	Sequoia	AVC Edge	1/1/06	1/1/06
<i>Jefferson</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Lake</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Lee</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Levy</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Madison</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Manatee</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Martin</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Miami-Dade</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Monroe</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Nassau</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Okaloosa</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Okeechobee</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Orange</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Osceola</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Palm Beach</i>	Sequoia	AVC Edge	1/1/06	1/1/06
<i>Pasco</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Pinellas</i>	Sequoia	AVC Edge	1/1/06	1/1/06
<i>Polk</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Putnam</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Santa Rosa</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Sarasota</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Seminole</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>St. Johns</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>St. Lucie</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Sumter</i>	ES&S	iVotronic	1/1/06	1/1/06
<i>Taylor</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Wakulla</i>	Diebold	AccuVote TSX	1/1/06	1/1/06
<i>Walton</i>	Diebold	AccuVote TSX	1/1/06	1/1/06

**STATUS OF CERTIFIED VOTING SYSTEMS IN FLORIDA'S LOCAL JURISDICTIONS  
UNDER SECTION 301 STANDARDS IN TITLE III  
HELP AMERICA VOTE ACT OF 2002**

COUNTY	CERTIFIED VOTING SYSTEM		DATE READY FOR USE
	VENDOR	TYPE	
<b>Bradford</b>	ES&S	IVotronic	<p align="center"><i>Contracts in place in all counties.</i> If the voting systems are not in place by 05/01/06, the Department of State will initiate legal action under section 97.012(14), Florida Statutes, to enforce compliance with accessibility standards by the next election for federal office.</p> <p align="center"><b>To Be Ready for Use by Next Election for Federal Office</b> Primary Election: September 5, 2006 General Election: November 5, 2006</p>
<b>Franklin</b>	ES&S	IVotronic	
<b>Gadsden</b>	ES&S	IVotronic	
<b>Glades</b>	Diebold	AccuVote TSX	
<b>Gulf</b>	ES&S	IVotronic	
<b>Hamilton</b>	ES&S	IVotronic	
<b>Hendry</b>	ES&S	IVotronic	
<b>Holmes</b>	ES&S	IVotronic	
<b>Jackson</b>	ES&S	IVotronic	
<b>Lafayette</b>	ES&S	IVotronic	
<b>Liberty</b>	ES&S	IVotronic	
<b>Marion</b>	ES&S	IVotronic	
<b>Suwannee</b>	ES&S	IVotronic	
<b>Union</b>	ES&S	IVotronic	
<b>Volusia</b>	ES&S	IVotronic	
<b>Washington</b>	ES&S	IVotronic	
<b>Leon</b>	UNKNOWN	UNKNOWN	<p align="center"><i>No contract is in place.</i> If the voting system is not in place by 05/01/06, the Department of State will initiate action under section 97.012(14), Florida Statutes, to enforce compliance with accessibility standards by the next election for federal office. As a prerequisite to legal action, the Department of State sent a notice on February 3, 2006, seeking full and complete compliance.</p> <p align="center"><b>To Be Ready for Use by Next Election for Federal Office</b> Primary Election: September 5, 2006 General Election: November 5, 2006</p>

**ION SANCHO**  
**Supervisor of Elections**  
**Leon County, Florida**

February 16, 2006

Dawn K. Roberts, Director  
Florida Division of Elections  
Florida Department of State  
500 S. Bronough St., Rm. 316  
Tallahassee, Florida 32399

RECEIVED  
06 FEB 17 PM 12:00  
LEON COUNTY  
ATTORNEY'S OFFICE

Dear Ms. Roberts:

Enclosed is our transition plan to comply with Secretary Cobb's letter to our agency dated February 2, 2006 requesting such.

**Item 1, procurement of HAVA compliant (section 301) state certified voting equipment.** The Leon County Supervisor of Elections Office is currently negotiating with one of the three companies offering state certified HAVA compliant voting equipment. A successful conclusion to these negotiations is expected within the week and the Leon County Supervisor of Elections Office is scheduled to bring this matter to the Leon County Board of County Commission at its meeting on February 28, 2006. At this time the Board can comply with the statutory requirements of Chapters 101.293 1(b), and 101.5604, F.S. As soon as this action is completed the Department will be notified.

**Item 2, poll worker training.** Ch. 102.041, F.S., will be accomplished in the normal course of training with the following addendum: training of senior technical and professional staff will begin March 1, 2006, training the trainers will commence on April 7, 2006, and Leon County poll worker pre-training will commence on May 2, 2006.

**Item 3, voter education.** Public voter education will formally commence on April 1, 2006, at Springtime Tallahassee, an event which the Leon County Supervisor of Elections Office has traditionally used to kick off election year activities. The new devices will be available for interested citizenry to vote on with straw ballot questions. A multi faceted education plan using television (both free and paid), direct mail, web accessible materials, large and small group presentations and availabilities will be conducted throughout the rest of the election cycle.

**Item 4, interim measures.** In the event there is a municipal or county special election without candidates the Leon County Supervisor of Elections will conduct the election by mail ballot. In the event such a special election includes candidates, then our agency will borrow certified equipment from Polk County 161 precincts vis-a-vis 120 for Leon County. A copy of the letter of commitment from the Polk County Supervisor of Elections is enclosed for your file. While we anticipate our equipment deliveries by the beginning of March, the agreement between our counties will continue through the end of April.

Pursuant to these actions Leon County will be in compliance for regular and special elections in 2006.

Sincerely,



Ion V. Sancho

Enc: Copy of February 15, 2006 letter by the Honorable Lori Edwards, Supervisor of Elections, Polk County, Florida



RECEIVED  
06 FEB 17 PM 12:00  
LEON COUNTY  
ATTORNEY'S OFFICE

February 15, 2006

The Honorable Ion Sancho  
Supervisor of Elections, Leon County  
PO Box 7357  
Tallahassee, FL 32314

Dear Ion

As we discussed, Polk County will be happy to offer you the loan of our certified Diebold Voting equipment in the event of an unplanned special election in Leon County, if such an event occurs now through May 1, 2006. Good luck on your transition to new voting equipment.

Regards,

*Lori Edwards*

Lori Edwards  
Supervisor of Elections, Polk County

# BOARD OF COUNTY COMMISSIONERS

## MEMORANDUM

**DATE:** February 17, 2006  
**TO:** Parwez Alam, County Administrator  
Herbert W. A. Thiele, Esq., County Attorney  
**FROM:** Chairman Bill Proctor *Bill*  
**SUBJECT:** Letter from Counsel Owen for the Diebold Corporation

Due to the importance of this matter, I forward copies of the attached letter sent to the Board Members from Mr. Charles R. Owen, Division Counsel for the Diebold Corporation.

Based on the letter it is apparent Mr. Sancho's comments to our Board are inconsistent with the Diebold Company's account of these matters. Not only is the chasm a very large one between Mr. Sancho and Diebold, but the issues of character are also being called into question. Diebold indicates they welcome the opportunity to speak with us directly which suggests they are at an impasse with Mr. Sancho. However, not having a copy of Mr. Sancho's response to the Secretary of State, I am unable to make a determination of Mr. Sancho's intentions. I would appreciate your advising me on the overture made by Diebold being sensitive to the Board's direction allowing the Supervisor until February 28<sup>th</sup> to respond to the Board.

The newspaper quotes Mr. Sancho's response made to the Secretary of State's, however, I am unaware of Mr. Sancho providing a copy to the County. My recollection of Mr. Sancho's comments at our meeting was he would provide copies to the Board. I hope that we will be able to receive a copy today.

I am extremely concerned about this new information and am seeking this additional material be placed on our next Board meeting.

CC: Board of County Commissioners



Overnight  
1253 Allen Station Pkwy  
Allen, TX 75002

49 57

Diebold Election Systems, Inc.  
1611 Wilmeth Road  
McKinney, TX 75069  
972 542-6000  
fax 972 542-6044  
www.dieboldes.com

February 16, 2006

Chairman Bill Proctor  
Leon County Commissioner  
12 S. Monroe Street, 5<sup>th</sup> Floor  
Gainesville, FL 32301

VIA FEDERAL EXPRESS  
TRACKING NO. 7913 7741 2990

Dear Chairman Proctor,

In my writing concerning statements attributed to Mr. Ion Sancho, supervisor of elections, following a recent meeting of the Leon County Commissioners. According to newspaper reports and recordings of the meeting, several of Mr. Sancho's statements are simply not true and need to be corrected.

As you know, Diebold Election Systems, Inc., (DESI) has had a strong working relationship with Leon County for over a decade. It was not until June 8, 2005 (see attached letter) at which time Mr. Sancho willfully and intentionally allowed the manipulation of memory cards related to your elections that our relationship became strained. It is important to note, the instance on June 8, 2005, was the second time Mr. Sancho acted, in what we perceive as a reckless manner, and despite Mr. Sancho's reckless behavior, DESI did not sever the relationship with the county. As our letter reflects, following Mr. Sancho's actions, DESI offered to review the matter with the appropriate county IT staff under the direction of your Commission and the State's Office of Secretary of State. In fact, it was Mr. Sancho who took the dramatic step of severing the county's relationship with our company, following a third instance in which he acted in this reckless manner. After this incident he made statements in the national media that he planned to enter into negotiations with a competitor company.

Furthermore, Mr. Sancho presented your Commission on February 14, 2006, with inaccurate information on several other topics during the course of the meeting, specifically:

DESI does not have a meeting scheduled with Mr. Sancho on February 28<sup>th</sup>, or any other date to discuss purchasing its AccuVote-TSX system, which is federally qualified and Florida state certified as HAVA compliant.

The software supporting Leon County's voting system has not been upgraded because an upgrade is not necessary in order to support the system the county is currently running. The software would only need to be upgraded if the county decided to use the DESI touch screen system, which Mr. Sancho had made perfectly clear he had no intention of doing.

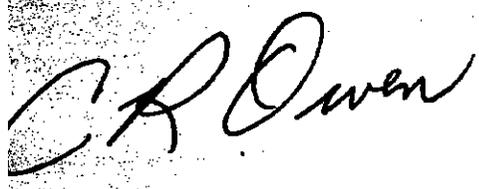
DESI has subjected our software and hardware to the most stringent outside testing by well-respected and certified testing agencies both in and out of the elections industry. Against our objections, and without rigorous testing controls and procedures, Mr. Sancho has repeatedly given unfettered access to the optical scan software and hardware in use in Leon County to outside groups, whose stated goal is to discredit the secure nature of this system, its operation, and its usefulness in the conduct of elections. This is the same system that Mr. Sancho has been using successfully and touting the best voting system in the nation for years. It is the same system that worked so well for him in

vember 2000. His actions have been contrary to our contracts with Leon County, and his own security procedures. His actions have harmed our company, our customers, and Leon County.

Mr. Sancho has represented that DESI breached its obligations in its contract with the County; however, I have no knowledge of any such alleged breach.

Chairman, I am sure you will agree, a working relationship must be based on an honest and truthful understanding of the facts. If I have misunderstood any of Mr. Sancho's statements, I welcome the opportunity to speak to you directly and clarify this situation.

Respectfully,



Charles R. Owen  
Division Counsel  
Diebold Election Systems

- Mr. Ion Sancho
- Mr. Bob Rackleff
- Ms. Jane G. Sauls
- Mr. Cliff Thaeil
- Mr. Dan Winchester
- Mr. Ed De Puy
- Mr. Tony Grippa

attachment



Diebold Election Systems, Inc.  
1611 Wilmeth Road  
McKinney, TX 75069  
972 542-6000  
fax 972 542-6044  
www.dieboldes.com

June 8, 2005

Mr. Ion Sancho  
Supervisor of Elections  
Leon County, Florida  
301 South Monroe Street Suite 301  
Tallahassee FL 32301

Dear Mr. Sancho,

We have been advised based on certain reports from internet websites that you have willfully and intentionally allowed the manipulation of memory cards related to your elections. You may also have allowed the Diebold Election Systems, Inc. (DESI) GEMS software, which is installed at your site, to be used in an unauthorized manner and in doing so, appear to have intentionally and negligently allowed unauthorized personnel to make modifications to your system that are not discernable by you or your IT staff. Aside from potential violations of our licensing agreements and intellectual property rights, we believe this to have been a very foolish and irresponsible act.

As you are acutely aware, basic security practices are required in the operation of any voting system. And it is your responsibility to ensure that your computing equipment is protected from unauthorized access. In this case, at a minimum, the room where the system is used should be locked with access control given only to trusted individuals; the password is never shared with others. During elections and at all other times, all memory cards should be under the control and supervision of authorized personnel performing official duties for the County and responsible enough to protect the integrity of the citizen's voting system.

Your improper actions, Mr. Sancho, are equivalent to leaving your car unlocked, with the windows down and keys left in the ignition and then acting surprised when your car is stolen or the interior vandalized. Other examples would be acting surprised if anomalies were discovered after you left paper ballots exposed in an unsecured area and invited individuals of questionable character to visit the room, or asked some unknown person to deliver paper ballots to a central counting location without a trusted escort. Like paper ballots, the memory cards and other parts of the voting system must be kept secure to protect their integrity. I am sure that Florida State law mandates such a duty on your part and that the voters and citizens of Leon County would expect such a responsibility from you as well.

While we welcome authorized testing and examination of our products by qualified professionals and are confident that our products are the most secure and accurate products available, actions such as yours only serve to undermine the public's confidence in the security and accuracy that good systems can provide when used with the proper procedures and by authorized personnel.

The damage you may have allowed to be caused to your system has nothing to do with the safety and security of the products you have purchased from DESI or its predecessors. You have chosen not to operate your voting system in accordance with the processes and procedures recommended by DESI and the industry's best practices.

We are investigating whether your actions may have violated your responsibilities under our licensing agreements or voided any extended warranty. Clearly, at a minimum, the efforts required to determine if any anomalies remain in your system are not covered by the system's extended warranty.

As your system has now been compromised by your acts, DESI cannot confirm at this time whether you can conduct any future elections reliably. Due to your seemingly gross negligence, Diebold recommends that no elections be conducted using your GEMS computer and memory cards until the system has been evaluated by qualified professionals and the software completely reinstalled.

We have indicated to the State Division of Elections authorities that we will gladly review this matter with them if they wish. If the County Commissioners wish DESI to review this matter with the personnel responsible for the overall IT security in Leon County, we will also be glad to do so. Please contact our Support Department if you wish to make arrangements for us to attempt to identify and/or remedy the existence or extent of any damage you have caused to your system.

Respectfully,



Michael E. Lindroos  
Senior Corporate Counsel

- cc: Paul Craft, Bureau Chief, Florida Department of State, Division of Elections,  
Bureau of Voting System Certification
- Mr. Bill Proctor, Leon County Commissioner
- Mr. Bob Rackleff, Leon County Commissioner
- Ms. Jane G. Sauls, Leon County Commissioner
- Mr. Cliff Thaell, Leon County Commissioner
- Mr. Dan Winchester, Leon County Commissioner
- Mr. Ed DePuy, Leon County Commissioner
- Mr. Tony Grippa, Leon County Commissioner



53 59

# Leon County

## Board of County Commissioners

301 South Monroe Street, Tallahassee, Florida 32301  
(850) 488-4710 www.leoncountyfl.gov

RS

OR

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AM  
nistrator

A. THIELE  
rney

February 17, 2006

Charles R. Owen  
1611 Wilmeth Road  
McKinney, TX 75069

Dear Mr. Owens:

I am in receipt of your federal express letter dated 2/16/06 and recognize the gravity of your concerns. The Leon County Board of County Commissioners also shares the overall seriousness of this matter. It is our Board's hope that notwithstanding concerns stated in your letter that we may still depend upon your company in the interest of Leon County voters.

Please be assured that we value your communications and your long standing commitment to voters in Leon County. We are hoping for a productive resolution to this matter.

Thank you for taking the time to address this important issue.

Sincerely,

Bill Proctor, Chairman  
Board of Leon County Commission

Cc: Board of Leon County Commissioners  
Herb Thiele, Leon County Attorney  
Parwez Alam, Leon County Administrator

54 of 57

**From:** Janet Olin  
**To:** pgriego@sequoiavote.com  
**Date:** 2/23/2006 4:34:22 PM  
**Subject:** This will follow up on our phone conversation today

Paul,

Thank you for checking on what Sequoia optical scan equipment is certified within the State of Florida.

It is disappointing to learn that Sequoia hasn't any precinct-based optical scan equipment is certified for use in the State of Florida. It would have made a smoother transition for our county voters at our precincts, and a less expensive change out of voting equipment too for the taxpayers.

However, we must move forward and to do so will mean total touch screen units at our precincts and early voting sites. We will get you the number of units we will need for this year's election cycle tomorrow. A consideration we will propose to the Leon County Board of County Commissioners is to defer purchasing some of the extra units needed for the Presidential General Election until their next budget cycle in 2008. It would not be an overwhelming number of units but perhaps every bit of option we can provide them would be appreciated.

You mentioned that your meeting with David Drury, Bureau Chief for Florida's Voting Systems Certification, proved successful in that David was receptive to conducting the voter verification component of the Edge touch screen within the next month. This is excellent news. With the Secretary of State coming out welcoming the paper trail for touch-screen units, and Sequoia pursuing certification to be ahead of the game, the opportunity for our voters to have that verification of their vote will remain.

Also, as we discussed when we met on Monday, the touch screen units do provide an excellent means of meeting the state-mandated precinct specific ballot styles. No longer will we have to plan a means of educating our poll workers on how to distribute the correct ballot style from an assortment of three to eighteen ballot styles at precincts with paper stock.

Still outstanding is whether mail ballots, or absentee ballots, which utilize a central high speed counter, have a specific design that must be utilized. The samples you left with us, which were a circle bordered on each side by a solid bar, is our preference. It provides the smoothest transition for voter education and accuracy.

We will confer within ourselves and get you our equipment quantities as soon as possible. Safe journeys tomorrow!

Janet

Janet L. Olin  
Assistant Supervisor of Elections  
Leon County Supervisor of Elections  
Physical Address:  
315 South Calhoun Street Suite 110  
Tallahassee FL 32301

Postal Address:  
Post Office Box 7357  
Tallahassee FL 32314-7357

1  
Page 55 of 57

**From:** Janet Olin  
**To:** Griego, Paul  
**Date:** 2/24/2006 4:16:25 PM  
**Subject:** Equipment needs

Paul,

Now I see you did get us the server specs so disregard that aspect of my voice mail on your cellular.

Our needs are:

- 2 high speed optical scan units for absentee/mail ballots
- 1005 touch screen units for precincts and early voting sites
- 132 HAAT units for generation of voter authorization cards
- operating software
- training
- 1005 Verification units for use when the State so authorizes
- Cost of annual maintenance of software and hardware.

Question: When Sequoia has software upgrades, is that included in the annual maintenance or is there a separate cost? If there is a separate cost, is there a usual cost? We have to plan out our budget for five years and I am trying to anticipate what might be coming down the pike, so to speak.

Thanks Paul,

Janet

Janet L. Olin  
Assistant Supervisor of Elections  
Leon County Supervisor of Elections  
Physical Address:  
315 South Calhoun Street Suite 110  
Tallahassee FL 32301

Postal Address:  
Post Office Box 7357  
Tallahassee FL 32314-7357

(850) 606-VOTE (8683)

Main Office Fax Line (850) 606-8601

janet@leoncountyfl.gov  
www.leoncountyfl.gov/elect

>>> "Griego, Paul" <pgriego@sequoiavote.com> 02/23/06 2:56 PM >>>  
TJ,

Attached is the information that you requested. If you have any questions, don't hesitate to call me.

Respectfully yours,

56 of 57

Paul Griego  
Regional Manager  
Sequoia Voting Systems  
402-212-4999

---

From: Thomas James [mailto:TJ@leoncountyfl.gov]  
Sent: Thu 2/23/2006 8:56 AM  
To: Griego, Paul  
Subject: RE: Leon County Visit

Give them my email address as well Paul.  
Thanx  
TJ

>>> "Griego, Paul" <pgriego@sequoiavote.com> 02/21/06 10:52 AM >>>

Thomas,

I will be talking to my office today and have a tech support person give you a call.

Again, it was a pleasure meeting with you and the rest of the staff yesterday.

Respectfully yours,

Paul Griego  
Regional Manager  
Sequoia Voting Systems  
402-212-4999

---

From: Thomas James [mailto:TJ@leoncountyfl.gov]  
Sent: Tuesday, February 21, 2006 8:32 AM  
To: Griego, Paul  
Subject: Leon County Visit

Hello Paul

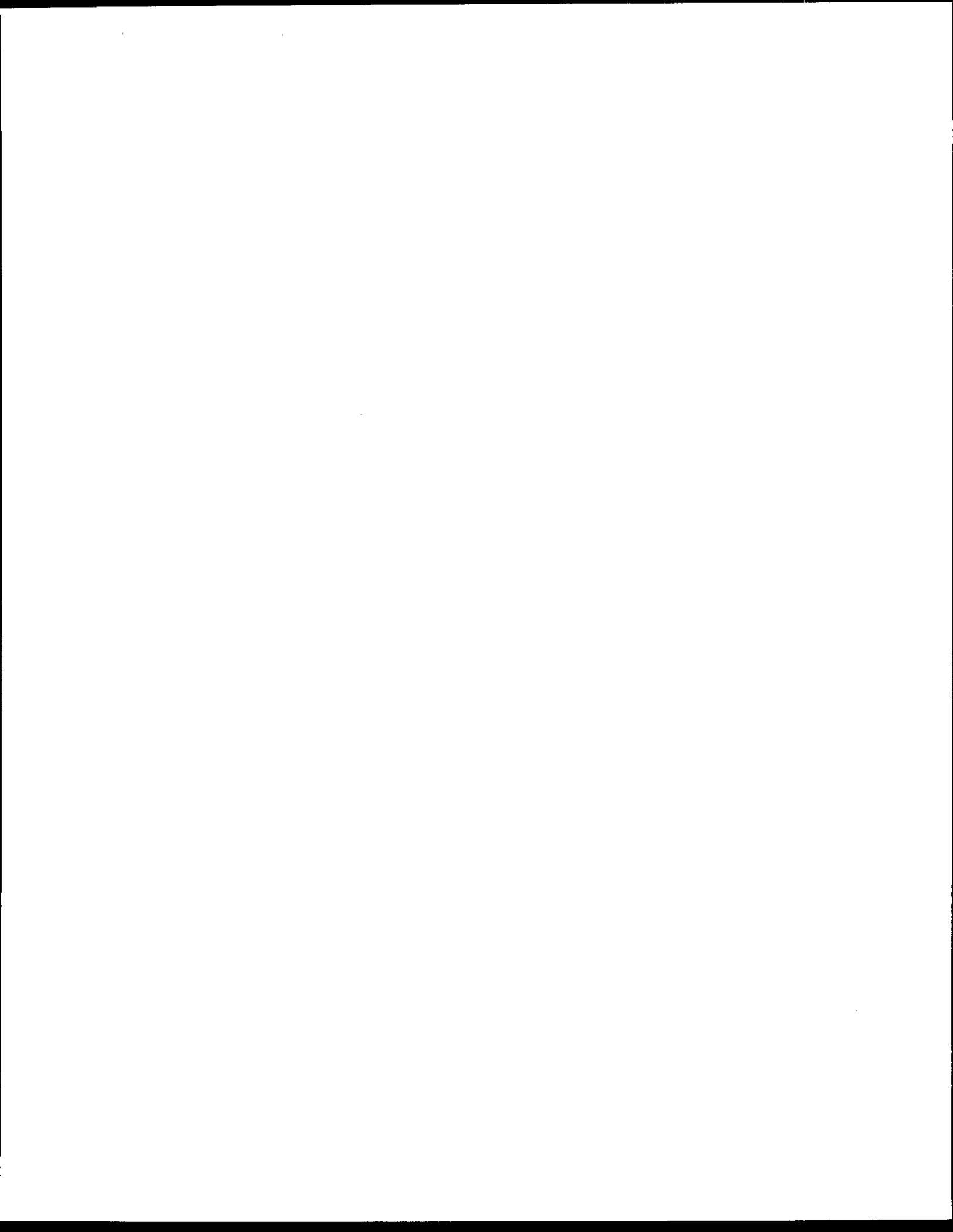
It was a pleasure meeting with you yesterday. It appears that your company has what we need so I can't wait to talk to your tech support team to bring me up to speed on the systems and requirements.

57 1 57

Thomas "TJ" James  
Election Systems Manager  
P.O. Box 7357  
Tallahassee FL 32314  
(850) 606-8636 606-8601 Fax  
[tj@leoncountyfl.gov](mailto:tj@leoncountyfl.gov)  
[www.leoncountyfl.gov/elect](http://www.leoncountyfl.gov/elect) <<http://www.leoncountyfl.gov/elect>>

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CC: Conley, Heather; Henry, Harley; Kelley, Cynthia; Mitchell, Diana; Pingree, Benjamin; Sancho, Ion; TJ (office)





Page 1 of 2

**STATE OF FLORIDA  
DEPARTMENT OF STATE**

**JEB BUSH**  
Governor

**SUE M. COBB**  
Secretary of State

March 3, 2006  
*Certified Mail Return Receipt*

The Honorable Ion V. Sancho  
Supervisor of Elections for Leon County  
315 South Calhoun Street, Suite 100  
Tallahassee, FL 32301

Dear Mr. Sancho:

This letter acknowledges the receipt of \$564,421.95 in Title II HAVA funds that were returned to the Department of State in accordance with the terms of "Memorandum of Agreement for Receipt and Use of Voting Systems Assistance Grant" executed on October 18, 2004, for failure to comply with the accessibility requirements of section 301(a) of Title III of the federal Help America Vote Act (HAVA) by January 1, 2006.

This letter also serves as a follow-up request to your February 16, 2006 letter, in which you outline your transition plan, including timeline, for ensuring that Leon County will have an accessible voting system in place and ready for use in the next election for federal office in accordance with state and federal law.

In your letter you stated that you expected to bring contract negotiations for a state certified HAVA compliant voting system to a conclusion within a week and to present the matter to the Leon County Board of County Commission on February 28, 2006. You also stated you would notify the Department as soon as said actions were completed.

We request an update on the progress of the negotiations, the outcome of the board meeting, and all other relevant actions you have taken since February 16, 2006. Your revised plan must include details more specific than those generalized in February 16, 2006 letter. For example, please provide specifics on the contingency back-up arrangement you have with Polk County including how the loaned certified voting system equipment from Polk County will be delivered and set up in conjunction with your system and what software and licensure agreements must be satisfied.

As previously indicated, a failure to have your county's voting system accessible to the disabled if used in any federal election held after January 1, 2006, would be in violation of section 301(a) of Title III of HAVA. Under Title IV of HAVA, the Department of Justice is responsible for enforcement which may include seeking declaratory and injunctive relief. Likewise such a failure to have your county's voting system accessible to the disabled if it is used in any federal

Office of the Secretary  
R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125 • <http://www.dos.state.fl.us>

election held after July 1, 2005, would also be in violation of section 101.56062, Florida Statutes. Please be advised that the Department may also enforce this provision pursuant to authority under section 97.012(14), F.S.

If timely and appropriate actions are not taken to ensure the procurement and delivery of such system by May 1, 2006, the Department may seek legal action accordingly. We believe this May 1, 2006 deadline is necessary to ensure that adequate time exists to train poll workers, educate and familiarize voters with the voting system, and conduct necessary testing on the voting system prior to the primary election on September 5, 2006. This May 1, 2006 deadline in no way supersedes your statutory obligation to ensure that your county have present and ready for use a voting system that meets accessibility standards of state law for any local, county, or federal election scheduled and held in the interim. The Department reserves the right to take earlier action to enforce compliance as circumstances may require.

In conclusion, please submit the information requested and all relevant documentation including a revised timeline, and a completed contract, if available, to Dawn K. Roberts, Director of the Division of Elections, by Friday, March 10, 2006, 5:00 p.m.

Respectfully,

*Jon M. Cobb*

Secretary of State

Cc: Bill Proctor, Chair, Board of County Commissioners for Leon County  
Herbert W.A. Thiele, County Attorney for Leon County  
Dawn K. Roberts, Director, Division of Elections

SMC/mim

# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

To: Honorable Chairman and Members of the Board of County Commissioners

From: Herbert W. A. Thiele, Esq.   
County Attorney

Date: March 3, 2006

Subject: Voting Equipment Purchase

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As a result of Board direction issued at its regularly scheduled meeting of February 14, 2006, the County Attorney was instructed to report back to the Board on the nature of the alleged breach of contract claim relating to the above-referenced subject.

As we informed the Board on February 28, 2006, members of our staff were scheduled to meet with counsel for the Supervisor of Elections, Thursday, March 2, 2006, to discuss the alleged contract dispute between the Leon County Supervisor of Elections, Ion Sancho, and representatives of Dieboldt Election Systems, Inc. ("DESI"). The County Attorney met on this date with Richard Benham, Esq., counsel to the Supervisor of Elections, Ion Sancho.

At this meeting, we were provided a copy of the Software License, Software Maintenance and Hardware Warranty Agreement, dated October 1, 2004, by and between DESI and Supervisor of Elections, Ion Sancho. A copy of said Agreement is attached for your information. At the meeting with Mr. Benham, we were informed that, while the Agreement at issue states that it is by and between DESI and Leon County, the Agreement was not approved by the Board of County Commissioners nor reviewed by this office; but, nevertheless, was executed by Ion Sancho, as Supervisor of Elections. Thus, Mr. Benham and this office concurred that the proper parties to the Agreement and dispute are, in fact, DESI and Ion Sancho, as Supervisor of Elections.

Further, we were provided with certain information with regard to allegations of a breach of the said Agreement alleged to have taken place by DESI to the detriment of the Supervisor of Elections. Since we do not have any firsthand knowledge as to the information provided to us at that meeting, we cannot accurately make an assessment of the merit of said claims.

Lastly, though we were informed by Mr. Sancho, Supervisor of Elections, at the Board's meeting of February 28, 2006, that our office would be provided a copy of the Agreement between the Supervisor of Elections and Sequoia Voting Systems and provided with an update as to meeting the requirements under federal and state law related to having accessible voting equipment in

Honorable Chairman and Members of the Board of County Commissioners  
March 3, 2006  
Page 2

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time for the 2006 elections, Mr. Sancho was neither present at the meeting on March 2, 2006, nor did his counsel have any information related to the proposed contractual relationship between the Supervisor of Elections and Sequoia Voting Systems nor the costs thereof. Therefore, at this time, we are unable to update the Board as to same.

Naturally, should you have any questions or need additional information, please contact the County Attorney's Office.

HWAT:eal  
Attachment

cc: Ion Sancho, Supervisor of Elections  
Richard Benham, Esq.  
Parwez Alam, County Administrator  
Alan Rosenzweig, Director, Office of Management & Budget ✓

COPY

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## SOFTWARE LICENSE, SOFTWARE MAINTENANCE AND HARDWARE WARRANTY AGREEMENT

This Software License, Software Maintenance and Hardware Warranty Agreement ("Agreement") dated October 1, 2004 ("Effective Date") is entered into by Diebold Election Systems, Inc., ("DESI") and Leon County of Florida ("Customer").

1. **Term.** The initial term of this Agreement is one year, beginning on the Effective Date (the "Initial Term"). Thereafter, Customer may renew this Agreement for successive one year terms (each, a "Renewal Period" and, together with the Initial Term, the "Term") by paying DESI, at least 45 days before the end of the Initial Term or Renewal Period, as applicable, the annual renewal fee specified in Exhibit A ("Renewal Fee").
2. **Software**

Software License. Subject to the terms of this Agreement, DESI grants Customer a non-exclusive license, without the right to transfer or sublicense, to use, during the Term, for the purpose of preparing for and conducting federal, state or local elections, run-offs, referenda and other similar voting events that take place within the State of Florida, the numbers of copies specified in Exhibit A of the DESI Software. "DESI Software" means the software specified in Exhibit A and any firmware included in the hardware specified in Exhibit A, in object code form, including all documentation therefor (but excluding Third-Party Software, as defined below). This license may be exercised by Customer officials, employees and volunteers authorized by Customer to conduct the above described elections.

Third-Party Software. Subject to the terms of this Agreement, DESI agrees to sublicense the Third-Party Software, in object code form only, to Customer for use during the Term as part of the hardware and software configuration purchased from or approved by DESI ("System") and solely for the purposes described in Section 2 above. "Third-Party Software" means software obtained from third-party manufacturers or distributors and provided by DESI hereunder. This sublicense is conditioned on Customer's continued compliance with the terms and conditions of the end-user licenses contained on or in the media on which Third-Party Software is provided.

No Other Licenses. Other than as expressly set forth in this Agreement, (a) DESI grants no licenses, expressly or by implication, and (b) DESI's entering into and performing this Agreement will not be deemed to license or assign any intellectual property rights of DESI to Customer or any third party. Without limiting the forgoing sentence, Customer agrees to use each copy of the AccuVote TSx firmware, or AccuVote OS firmware, only on the AccuVote TSx unit, or AccuVote OS unit, with which the copy is supplied, agrees not to use any DESI Software as a service bureau for elections outside Leon County, Florida and

agrees not to reverse engineer or otherwise attempt to derive the source code of any Software.

2.1. Software Warranty. DESI warrants that DESI Software will perform free of defects that would prevent the System from operating in conformity in all material respects with its specifications, so long as such DESI Software is operated with DESI Hardware, or with Third-Party Software and/or third-party hardware approved by DESI for use with such DESI Software (together, "Third-Party Products").

2.2. Software Maintenance

2.2.1. During the Term, DESI shall maintain the DESI Software so that it operates in conformity at all times with the warranties set forth in Section 2.4 above. DESI shall use its best efforts to correct any reproducible error affecting the DESI Software.

2.2.2. If a problem cannot be resolved using remote diagnostics, upon Customer's prior authorization, DESI will send a specialist to the Customer's premises under the following terms:

- (a) If the problem lies solely with DESI Software, DESI is responsible for all expenses associated with the resolution of the problem, provided that Customer has incorporated all Enhancements and Upgrades (each as defined in Section 2.6 below) within ten days after receiving them from DESI.
- (b) If the problem is due to acts or omissions by Customer or a third party, including by the failure to incorporate all Enhancements and Upgrades in a timely manner, Customer is responsible for all fees and expenses at DESI's then-current consulting service rate. Such problems include those that arise from the failure of hardware or software that is not licensed or under warranty from DESI, installation of the DESI Software on hardware that was not approved by DESI, or improper use of the DESI Software or the hardware upon which it is installed.

2.2.3. As is reasonably necessary for DESI to provide maintenance and support, Customer shall provide access to its personnel and premises, be responsible for maintaining any Third Party Products, communications equipment, telephone lines, cabling and modems, and make available paper, disk packs and other similar supplies.

2.3. Enhancements and Upgrades. During the Term, DESI shall provide Enhancements and Upgrades to Customer under the following terms and conditions.

- 2.3.1. DESI may provide Customer with unsolicited error corrections or changes to the DESI Software that DESI determines from time to time are necessary for proper operation of the System ("Enhancements").
- 2.3.2. DESI may release DESI Software improvements that add to or change the functionality characterizing the DESI Software as of the Effective Date ("Upgrades"). Upgrades do not include later released versions of the DESI Software with a higher version number.
- 2.3.3. Customer shall incorporate each Enhancement and Upgrade within ten days after receipt from DESI, unless DESI consents in writing to a delay in such incorporation. Each Enhancement and Upgrade will be, from and after delivery to Customer, licensed to Customer under this Agreement and treated for all purposes as part of the DESI Software.

**3. Hardware**

Hardware Warranty. DESI warrants that each item of hardware identified in Exhibit A (the "DESI Hardware"), when used with the hardware and software configuration purchased from or approved by DESI ("System"), will during any term of this Agreement be free of defects that would prevent the System from operating substantially in the manner described in the DESI user documentation provided with the DESI Hardware ("Warranty").

Hardware Warranty Services. If any item of DESI Hardware fails to perform in accordance with the foregoing warranty during the Term, DESI shall, at DESI's option, repair or replace such DESI Hardware item (the "Hardware Warranty Services"). The following conditions apply to Hardware Warranty Services:

- 3.1.1. Customer shall bear the shipping costs to return the malfunctioning item of DESI Hardware to DESI and DESI shall bear the shipping costs to return the repaired or replaced item to Customer.
- 3.1.2. The following services are not Hardware Warranty Services, and DESI shall invoice Customer at DESI's then current time and material rates for:
  - (a) The replacement of consumable items such as batteries, paper rolls, ribbons, clock chips, smart cards, floppy disks and disks on chips.
  - (b) Any Hardware Warranty Services performed on-site at Customer's request, if such Hardware Warranty Services could have been timely completed remotely.
  - (c) The repair or replacement of hardware damaged by accident, abuse, improper usage, or as a result of service modification by anyone other than DESI or its authorized agent or service representative.

(d) Other similar work that Customer requests, and that DESI agrees to perform.

4. Fees

- 4.1. Renewal Fee. The Renewal Fee, at the time of execution of this Agreement, is as stated in Exhibit A. DESI may increase Renewal Fees by providing 60 days' advance notice of any such increase.
- 4.2. Taxes. The Renewal Fee, and any other amounts payable by Customer pursuant to this Agreement, is exclusive of any local, state, federal, excise, personal property or similar taxes or duties which may be levied on the DESI Hardware, the DESI Software and/or any services under this Agreement. Customer is responsible for and shall pay all such taxes, as they are due. If Customer is exempt from taxes, Customer shall supply DESI with a tax exemption certificate in a form satisfactory to DESI and all applicable taxing authorities. If DESI is required to pay any such taxes on Customer's behalf, Customer shall promptly reimburse DESI for payment of such taxes upon receipt of DESI's invoice.
- 4.3. Additional Services. Within 30 days after the calendar month in which such services are performed, DESI will invoice Customer for services, if any, for which additional fees are due under Section 3.2 on a time-and-materials basis. Customer shall pay all such amounts within 30 days after the invoice date.

5. **No Other Warranties.** THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER, WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Replacement or repair will be the exclusive remedy of Customer, and the sole obligation of DESI, in any action concerning or arising from the operation of, or Customer's use of or inability to use, the DESI Software or DESI Hardware.

6. **Limitation of Liability.** DESI will not be liable under this Agreement for (1) consequential, special, punitive or incidental damages or (2) compensatory damages in excess of the total of all amounts payable under this Agreement during the 12-month period preceding the event or events giving rise to liability.

7. **Indemnification.** Each party shall indemnify and hold harmless the other party from third-party claims arising from, or alleged to arise from, the gross negligence or deliberate misconduct of a party. This indemnity extends solely to claims and lawsuits for personal injury, death, or destruction of tangible personal property.

8. **Confidential Information.** Neither party will use or disclose the other party's Confidential Information without the other party's prior written consent. "Confidential Information" means, as to DESI, the documentation for the DESI Hardware and DESI Software and, as to

either party, any information designated as confidential by the party when or before it is disclosed. This paragraph does not apply to information (a) after it becomes publicly known through no fault of the receiving party, (b) already rightfully in the receiving party's possession when received, (c) developed by the receiving party without the use of the other party's Confidential Information or (d) required to be disclosed by law so long as the other party is given immediate notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure. Each party acknowledges that its breach of this Section 8 may cause the other party substantial and irreparable harm for which the other party would be entitled to equitable relief in addition to any available legal remedies. Each party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief.

9. **Force Majeure.** DESI's obligations hereunder will be suspended so long as compliance is impeded or prevented by causes beyond DESI's reasonable control, which may include acts of God, embargoes, acts of war (including terrorist attacks), labor disturbances and acts or regulations of governmental entities.

10. **Termination.** If either party materially breaches this Agreement and does not cure the breach within 30 days after receiving written notice of the breach from the non-breaching party, the non-breaching party may terminate this Agreement as of a termination date specified in that notice or a subsequent notice delivered within such 30-day period. If the breach cannot be completely cured within the 30-day period, no default will occur if the party receiving the notice begins curative action within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable.

11. **Miscellaneous**

11.1. **Assignment.** Neither party may assign any rights or delegate any obligations under this Agreement without the prior written consent of the other party; provided that DESI may subcontract the performance of any services under this Agreement upon 30 days' prior written notice to Customer. Any attempted assignment in violation of this Section 11.1 will be null and void.

11.2. **Severability.** If any term of this Agreement is held to be unenforceable, the other terms of this Agreement will be enforced to the fullest extent permitted by law.

11.3. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

11.4. **Governing Law.** This Agreement will be construed under the laws of **Leon County of Florida** and the state and federal courts within **Florida** have non-exclusive jurisdiction for all actions to enforce this Agreement.

11.5. Waiver. No waiver or failure of a party to assert any right under this Agreement on any one occasion will operate as a waiver of any other right on that occasion or any right on any other occasion.

11.6. Notices. All notices under this Agreement will be delivered personally, sent by confirmed facsimile transmission, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown below or such other address as may be specified by either party to the other party in compliance with this Section 11.6. Notices will be deemed effective on personal receipt, receipt of such electronic facsimile confirmation, two days after such delivery by courier and four days after such mailing by U.S. mail.

If to DESI:

Diebold Election Systems, Inc  
1611 Wilmet Rd  
McKinney, Texas 75069-8250  
Attn: Corporate Counsel

If to Customer:

Leon County, Florida  
Ion Sancho, Supervisor of Elections  
301 S. Monroe St., Suite 301  
Tallahassee, FL 32301

With a copy to:

Diebold, Incorporated  
5995 Mayfair Road  
North Canton, OH 44270  
Attn: Vice President and General Counsel

With a copy to:

11.7. Interpretation. This Agreement, including Exhibit A attached hereto (which is incorporated herein by this reference), is the complete and final expression of the parties' agreement regarding its subject matter and supersedes all prior or contemporaneous communications or agreements, written or oral, by the parties regarding such subject matter. In the event of any conflict or ambiguity between the terms set forth in the body of this Agreement (i.e., Section 1.1 through this Section 11.7) and those set forth in Exhibit A, the terms set forth in the body of this Agreement will prevail. No amendment or supplement to this Agreement is effective unless in writing and signed by both parties' authorized representatives. The word "include" (or any of its derivatives) is deemed to be followed in all contexts by the words "without limitation." Headings are included for convenience and will be ignored in interpreting this Agreement.

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Customer and DESI have caused this Agreement to be executed by their duly authorized officers as of the date set forth below.

**DIEBOLD ELECTION SYSTEMS,  
INC.**

**LEON COUNTY of FLORIDA**

Authorized Signature

Authorized Signature

Printed Name

Ion V. Sancho  
Printed Name

Title

Supervisor of Elections Leon County Florida  
Title

**EXHIBIT A**

**DESI Hardware, DESI Software, Annual Renewal Fees**

<b>Item</b>	<b>Fee Per Unit or Fee Per Copy</b>	<b>Number of Units or Number of Copies</b>	<b>Extension</b>	<b>Term ending</b>
AccuVote-OS Hardware	\$150.00	145	\$21,750.00	09/30/2005
GEMS Software	\$6,000.00	1	\$6,000.00	12/31/2004*
<b>Annual Renewal Fee:</b>			<b>\$27,750.00</b>	

\*DESI shall invoice Customer for the Annual Renewal Fee at least thirty (30) days in advance of the Anniversary. Customer shall pay such invoice on or before the Anniversary. If the Annual Renewal Fees pursuant to this Agreement have multiple Anniversaries, or if DESI and Customer have entered into one or more related Warranty Agreements with differing Anniversaries, DESI may consolidate all of the Anniversaries. DESI shall do so by changing the Anniversary of one or more Renewal Fees so that it coincides with the Anniversaries of other Renewal Fee.

DESI acknowledges that it has already received \$6,000.00 for the GEMS Software from Leon County and is paid thru 12/31/2004. Before the expiration of this current renewal term of the GEMS Software, DESI shall prorate the Annual Renewal Fee for the resulting shortened term to coincide accordingly. The GEMS Software nine (9) month Renewal fee will be \$4,500.00.

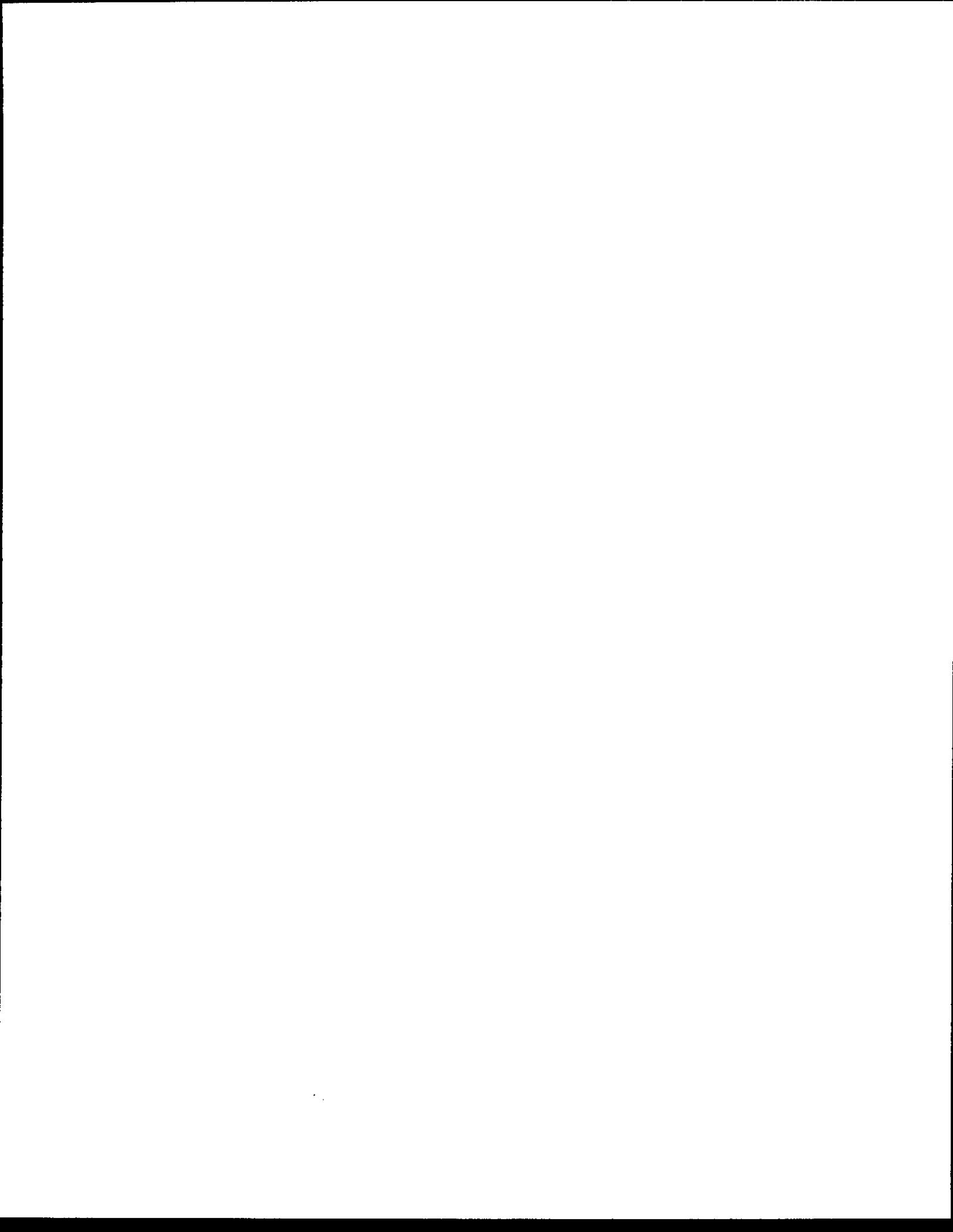
Leon County, Florida

AVOS Units Cleared for Extended Warranty Maintenance, eff. 10/1/04

Unit Count	Serial #	Unit Count	Serial #	Unit Count	Serial #
1	10200	48	10253	100	10402
2	10201	49	10254	101	10403
3	10203	50	10255	102	10404
4	10204	51	10259	103	10405
5	10205	52	10260	104	70919
6	10206	53	10261	105	70925
7	10207	54	10262	106	71024
8	10208	55	10264	107	71025
9	10210	56	10265	108	71026
10	10211	57	10266	109	74710
11	10212	58	10267	110	74711
12	10214	59	10268	111	77553
13	10215	60	10268	112	80563
14	10216	61	10269	113	80566
15	10217	62	10270	114	80597
16	10218	63	10272	115	80612
17	10219	64	10273	116	80622
18	10220	65	10274	117	83484
19	10221	66	10276	118	83485
20	10222	67	10277	119	83495
21	10224	68	10283	120	83496
22	10225	69	10284	121	83497
23	10226	70	10287	122	83498
24	10227	71	10288	123	83499
25	10228	72	10371	124	83500
26	10229	73	10372	125	83501
27	10230	74	10373	126	83502
28	10231	75	10374	127	83503
29	10232	76	10375	128	83504
30	10233	77	10376	129	83505
31	10235	78	10377	130	83506
32	10236	79	10379	131	83507
33	10237	80	10380	132	83508
34	10238	81	10381	133	83509
35	10239	82	10382	134	83510
36	10240	83	10383	135	83511
37	10242	84	10384	136	83512
38	10243	85	10385	137	83513
39	10244	86	10386	138	83514
40	10245	87	10387	139	83515
41	10246	88	10388	140	83516
42	10247	89	10389	141	83517
43	10248	90	10390	142	85444
44	10249	91	10391	143	85485
45	10250	92	10392	144	85589
46	10251	93	10393	145	85590
47	10252	94	10395		
		95	10396		
		96	10397		
		97	10398		
		98	10400		
		99	10401		

AVOS Units Requiring Further Examination as of 10/1/04--  
To Be Excluded from Extended Warranty coverage until cleared by DESI's Depot Repair Dept.

Unit Count	Serial #
1	10213
2	10223
3	10241
4	10256
5	10378
6	10394
7	10399
8	71023
9	74709
10	85588



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# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

To: Ion Sancho, Supervisor of Elections

From: Herbert W.A. Thiele, Esq., County Attorney 

Date: March 3, 2006

Subject: Municipal or County Special Election Contingency Plan

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As you are aware, at the regularly scheduled meeting of the Board of County Commissioners held on February 28, 2006, the Board voted to continue its review of the Leon County Supervisor of Elections response to the Secretary of State (concerning federal and state voting equipment requirements) for a period of two weeks to a workshop to be scheduled on March 14, 2006. At that time you indicated to the Board, and it was our understanding, that either you and your counsel or just your counsel would be meeting with staff of the County Attorney's Office on Thursday, March 2, 2006. As we understood it, we would be provided a copy of a proposed contract with Sequoia Voting Equipment to provide the necessary elections voting equipment to comply with federal and state standards. What you may not be aware of is that later in the Board's meeting a motion was brought forth and approved requiring our office to inquire as to your contingency plan in the event that an unplanned special election occurs in Leon County. While we were happy to meet with Richard Benham, your counsel, and did have an opportunity to discuss matters related to the Software License, Software Maintenance and Hardware Warranty Agreement that you entered into on October 1, 2004 with Diebold Election Systems, Inc. (DESI) and issues related to alleged breaches of that Agreement, Mr. Benham was unable to provide us with any information outside of that mentioned above with regards either to the Sequoia Voting Equipment contract, Sequoia Voting Equipment related negotiations or contingency plans with Polk County.

In light of the fact that you were not present at that meeting, prior to informing the Secretary of State of our concerns regarding the proposed contingency plan, as directed by the Board, in which you propose to use Polk County voting equipment for any unplanned special elections occurring in Leon County, we would respectfully ask you to respond to the following query based upon the information provided to staff as further described below:

Staff has been advised by DESI that while Polk County may have purchased Diebold voting equipment, the software necessary to utilize such equipment has been provided to Polk County under a license agreement, which contains certain restrictions which will prevent Leon County from utilizing said equipment in the event of an unplanned election. In light of what we have been informed by DESI representatives we would appreciate a response to the alleged flaw in your contingency plan to utilize Polk owned certified Diebold voting equipment in the event of an unplanned special election in Leon County.

Ion Sancho, Supervisor of Elections  
March 3, 2006  
Page 2

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We would appreciate a response by 5 p.m. March 6, 2006. If no response is received by that time we have been instructed to inform the Secretary of State as to the alleged deficiencies in your contingency plan.

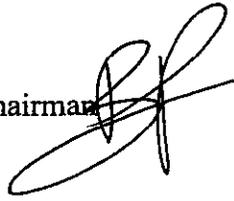
Naturally, should you have any questions concerning this matter please contact the Office of the County Attorney at your earliest convenience.

HWAT/PTK:mm

cc: Honorable Chairman and Members of the Board of County Commissioners  
✓ Parwez Alam, County Administrator

**BOARD of COUNTY COMMISSIONERS**  
*Interoffice Memorandum*

To: Parwez Alam, County Administrator  
Herb Thiele, County Attorney

From: County Commissioner Bill Proctor, Chairman 

Date: March 6, 2006

Re: Pending Budget Shortfalls Due To Unforeseen Election Bills

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Upon reviewing a copy of Secretary of State Sue Cobb's letter on Friday (Attachment #1), I am growing increasingly concerned by Supervisor Sancho's failure to present a plan for voting that meets the approval of the state.

The unexpected and escalating costs to negotiate a timely purchase of State certified voting equipment by May 1, 2006 will place a tremendous burden on us financially and otherwise. At the Commission meeting of February 14, 2006, Mr. Sancho confirmed that the state demanded the return of \$564,421 in voting assistance grant funding due to his failure to have HAVA compliant voting equipment in place by the state's deadline by January 1, 2006. Mr. Sancho further advised the Board that a new Sequoia touch screen system will cost us between two and five million dollars. I have received information suggesting this figure could go as high as seven million dollars.

Staff informed the Board last Tuesday that our contingency fund will not handle a five million dollar hit. This is not only alarming, but it seems unfair that Leon County taxpayers are forced to eat this bill passed along from the Supervisor of Elections because of his inefficiencies.

That we are the only county in Florida situated in our position is not a reflection upon the Board of County Commissioners or County staff. We are in a potentially financially upside down position at mid-year in our budgeting due to the failures related to the Supervisor of Elections.

Unfortunately, we are tasked by the Secretary of State and Legislature to bear ultimate responsibility for voting processes and equipment provided within the County. The Supervisor's failures and ideological pursuits are sustained by the luxury he has in knowing that state law forces our Board to bail him out of the financial and legal challenges he has created for our community with the state and with private vendors and troubles he has caused for the state with the Federal government. Whether we support his ideological perspectives are irrelevant because the ultimate financial and legal burden bearer to the state is the Board of County Commissioners and not the Leon County Supervisor of Elections.

Memorandum: Pending Budget Shortfalls Due To Unforeseen Election Bills  
Date: March 6, 2006  
Page: 2

I have learned that many other jurisdictions do not have an elected type of Elections Supervisor. Since we own the machines, why can't we contract this function on a periodic, as needed basis, and maintain voter registration on a regular basis through a simple administrative office? Please advise.

These legal, financial and electoral matters, according to state law, rest at our door step. It is from within the context of this outlined discussion that I ask you to provide the Board at our March 14 workshop the following:

1. Please provide a table showing a schedule of property tax increases in increments of one million dollars covering amounts ranging from two to seven million dollars.
2. Provide an ordinance consistent with state statutes that places the function of voting machine purchases into the Board of County Commissioners delegated to the County Administration of a designee.
3. Provide a verified confirmation of any document submitted to staff that purports to be a sales contract between Leon County and Sequoia.
4. Provide a conservative financial plan or schedule that outlines how our Board and taxpayers should pay this new, unexpected bill from Sequoia.
5. Provide a concise, legal and electoral discussion of the process necessary to place election functions under the authority of the County consistent with what the state law currently holds us accountable for doing. In this review, indicate whether there are any jurisdictions where county governments hold authority for conduction elections. Can we do this in Florida? If not, can we pursue legislation to achieve same?
6. Finally, please outline a comparison of costs associated with the current Supervisor's office and compare the cost benefits to an office of elections that can be executed by Leon County.

Your attention to this request is appreciated and your review is not limited to these specific concerns.

Thank you.

cc: Board of County Commissioners



Page 3 of 5

STATE OF FLORIDA  
DEPARTMENT OF STATE

**JEB BUSH**  
*Governor*

**SUE M. COBB**  
*Secretary of State*

March 3, 2006  
*Certified Mail Return Receipt*

The Honorable Ion V. Sancho  
Supervisor of Elections for Leon County  
315 South Calhoun Street, Suite 100  
Tallahassee, FL 32301

Dear Mr. Sancho:

This letter acknowledges the receipt of \$564,421.95 in Title II HAVA funds that were returned to the Department of State in accordance with the terms of "Memorandum of Agreement for Receipt and Use of Voting Systems Assistance Grant" executed on October 18, 2004, for failure to comply with the accessibility requirements of section 301(a) of Title III of the federal Help America Vote Act (HAVA) by January 1, 2006.

This letter also serves as a follow-up request to your February 16, 2006 letter, in which you outline your transition plan, including timeline, for ensuring that Leon County will have an accessible voting system in place and ready for use in the next election for federal office in accordance with state and federal law.

In your letter you stated that you expected to bring contract negotiations for a state certified HAVA compliant voting system to a conclusion within a week and to present the matter to the Leon County Board of County Commission on February 28, 2006. You also stated you would notify the Department as soon as said actions were completed.

We request an update on the progress of the negotiations, the outcome of the board meeting, and all other relevant actions you have taken since February 16, 2006. Your revised plan must include details more specific than those generalized in February 16, 2006 letter. For example, please provide specifics on the contingency back-up arrangement you have with Polk County including how the loaned certified voting system equipment from Polk County will be delivered and set up in conjunction with your system and what software and licensure agreements must be satisfied.

As previously indicated, a failure to have your county's voting system accessible to the disabled if used in any federal election held after January 1, 2006, would be in violation of section 301(a) of Title III of HAVA. Under Title IV of HAVA, the Department of Justice is responsible for enforcement which may include seeking declaratory and injunctive relief. Likewise such a failure to have your county's voting system accessible to the disabled if it is used in any federal

Office of the Secretary  
R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250  
Telephone: (850) 245-6500 • Facsimile: (850) 245-6125 • <http://www.dos.state.fl.us>

election held after July 1, 2005, would also be in violation of section 101.56062, Florida Statutes. Please be advised that the Department may also enforce this provision pursuant to authority under section 97.012(14), F.S.

If timely and appropriate actions are not taken to ensure the procurement and delivery of such system by May 1, 2006, the Department may seek legal action accordingly. We believe this May 1, 2006 deadline is necessary to ensure that adequate time exists to train poll workers, educate and familiarize voters with the voting system, and conduct necessary testing on the voting system prior to the primary election on September 5, 2006. This May 1, 2006 deadline in no way supersedes your statutory obligation to ensure that your county have present and ready for use a voting system that meets accessibility standards of state law for any local, county, or federal election scheduled and held in the interim. The Department reserves the right to take earlier action to enforce compliance as circumstances may require.

In conclusion, please submit the information requested and all relevant documentation including a revised timeline, and a completed contract, if available, to Dawn K. Roberts, Director of the Division of Elections, by Friday, March 10, 2006, 5:00 p.m.

Respectfully,

Jon M. Cobb

Secretary of State

Cc: Bill Proctor, Chair, Board of County Commissioners for Leon County  
Herbert W.A. Thiele, County Attorney for Leon County  
Dawn K. Roberts, Director, Division of Elections

SMC/mim