

Indiana Election Commission Minutes June 22, 2005

Members Present: Brian Burdick, Chairman of the Indiana Election Commission (the Commission); S. Anthony Long, Vice Chairman of the Commission; John T.L. Koenig, Proxy for Butch Morgan; Thomas E. John, member of the Commission

Member Absent: Butch Morgan

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Kristi Robertson, Co-Director of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Cody Kendall, Co-General Counsel of the Election Division;

Also Attending: Mr. William Barrett (Fidlar Election Company); Mr. Bill Bettings, Voting Technologies International (VTI); Mr. Rob McGinnis (Election Systems & Software); Mr. Jim Minor, UniLect Corporation; Mr. Steve Pearson (Election Systems & Software); Mr. Robert Vane (Marion County); Mr. Richard Vogel (Automark Election Systems LLC)

1. Call to Order

The Chair called the June 22, 2005 meeting of the Commission to order at 9:00 a.m. at the Indiana State House, Rooms 156B and 156C (basement level), 200 West Washington Street, Indianapolis, Indiana. The Chair noted that proper notice of the meeting had been given, as required by state law, and that two members were currently present with a third member represented by a designated proxy. A copy of the meeting notice, agenda, and designation of proxy are incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division Office.]*

2. Approval of Minutes

The Chair noted that members needed to approve the September 22, 2004 and December 14, 2004 Commission minutes and asked if there were comments or corrections. There being none, Mr. John moved that the September 22, 2004 minutes be adopted as submitted, seconded by Mr. Koenig. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Koenig, Mr. John,), and no Commission member voting "no," the motion was adopted.

The Chair then noted that members needed to approve December 14, 2004 minutes. Mr. John moved to approve the December 14, 2004 minutes, as submitted, seconded by Mr. Koenig. There being no further discussion, the Chair called the question, and declared that with three members

voting “aye” (Mr. Burdick, Mr. Koenig, Mr. John,) and no Commission member voting “no,” the motion was adopted.

3. Order 2005-1 (Approving Revised Forms)

The Chair recognized Ms. Robertson who noted that there were several forms that needed to be approved, and that a copy of Order 2005-1, which incorporates these forms, had been provided to Commission members for review. She noted that most of the forms were for the two towns that were having elections this year: Montezuma and Cambridge City, and that the forms to be approved were revisions of the CAN 16, CAN 17, CAN 44, CAN 45, CAN 46, CAN 51, and the CEB 33 forms. Ms. Robertson explained that she was basically just updating those forms.

Additionally, Ms. Robertson stated that two revised petition forms, CAN 4 and CAN 19, needed to be approved. She noted that she was getting several requests for the updated forms for next years elections because people wanted to circulate these candidate ballot access petitions to prepare for the 2006 elections now. She added that people were already circulating the most recently Commission approved version of these petitions (which refer to 2004 deadlines) to obtain voter signatures; therefore, she was requesting that the Commission “grandfather” this use of the most recent version of these petition forms because the forms were already being circulated.

The Chair asked if there were any questions for Ms. Robertson regarding Order 2005-1. There being none, Mr. John moved, seconded by Mr. Koenig, that the Order be approved as submitted. There being no further discussion on the motion, the Chair called the question, and declared that with three members voting “aye” (Mr. Burdick, Mr. John, Mr. Koenig,) and no Commission member voting “no,” the motion was adopted. Mr. King then asked if Commission members would consent to the use of their signature stamps for the appropriate blanks on the order. The consent was granted.

4. Voting System Certification

The Chair recognized the Co-Directors of the Election Division to present these matters to the Commission. Mr. King noted that Commission to a packet in their binders which contained a memo from the Co-Directors dated June 21, 2005 concerning Voting Certification applications and other related matters.

Mr. King informed the Commission about new legislation taking effect on July 1, 2005 establishing a new “Voting System Technical Oversight Program” to provide technical guidance to the Commission in going through the Voting Certification Applications. The legislation allows the Secretary of State and a qualified entity to enter into a contractual agreement. The individual or entity under the contractual agreement reviews reports from independent laboratories and recommends to the Commission whether an application for voting certification should be approved and if so with any conditions or restrictions. Finally, the Voting System Technical Oversight Program would perform any additional testing necessary to determine whether the voting system complies with state law.

Mr. King also stated that the statute provides for the Secretary of State to issue invitations to private and public colleges in Indiana and there willingness to participate in this program. The

Chair asked Mr. King if the Secretary of State was paying for this program. Mr. King stated that Vote Indiana Team would be deciding where the funds come from and that the money would not necessarily require a separate appropriation from the budget agency.

Mr. King stated the Chair at the last Commission meeting requested an update from voting system vendors with pending applications for voting system certification. Mr. King noted that the staff had invited all applicants with pending applications to be at today's meeting. He noted that four of the applications had been pending for more than 12 months after the date the application was initially filed. He then noted that Indiana Code 3-11-15-8 did address the life span of an application, and gives the Commission some discretion in extending the application beyond a year after its initial filing.

Mr. King noted that the MicroVote Corporation had filed a request to withdraw MicroVote's pending application to certify the Infinity DRE software upgrade version 2.1.3 because MicroVote was going to be submitting an upgraded application for this voting system. Ms. Robertson explained how the packets concerning voting system applications were laid out for the convenience of the Commission.

The chair stated that, with the consent of Commission members, this MicroVote application was considered withdrawn. Commission members consented.

Mr. King added that the Election Division had received a fax from Sierra Election Systems, dated June 20, 2005, indicating that this vendor was withdrawing its pending application for approval of an optical ballot marking device since this voting system would be represented by ES&S AutoMARK, and that Rick Vogel was present on behalf of the vendor to address any questions. There being no further discussion, Commission members consented to the withdrawal of this application.

Mr. King stated that at the September 22, 2004 Commission meeting, the certification application for the ES&S Ivotronic 9.0.0.0 direct recording electronic voting system was approved on the condition that ES&S filed a complete report from CIBER and Wyle laboratories with the Election Division indicating that the system complied with 2002 FEC Standards. He noted that ES&S had met this condition by filing these reports.

The chair asked Mr. King and Ms. Robertson if the new law that was passed that required the Voting System Technical Oversight Program to recommend approval of an application on October 1, 2005 would require a voting system vendor whose application was approved by the Commission at this meeting to still have to come back and get recertified after Oct. 1, 2005 to meet the requirements of this new law. Mr. King stated that was essentially correct.

Mr. King then restated the question and answer: Indiana law was amended in 2004 to provide that all voting system certifications expire Oct. 1, 2005 and are subject to renewal if the vendor chooses to do so for a four year term. The change was made to implement a standardized cycle for review and Commission consideration of voting system applications so that voting systems certifications would occur in the off election year. To have a voting system certified today would mean that the certification would be good until Oct. 1, 2005 and during the time period a vendor can market and sale and a county can use that system if necessary that voting equipment.

Mr. King added that a vendor will have to resubmit another application for certification after October 1, 2005. However, if a voting system was certified by the Commission today, the applicant will not have to pay another fee to be certified for the new 2005-2009 term. A vendor

could simply incorporate their previous application with their new application for the term beginning October 1, 2005. The differences in the process would be that the Technical Oversight Committee will have input in the Commission's review of new voting system applications after Oct. 1, 2005. The Chair stated that his term would be up July 1, 2005 and it was his hope that the Commission would establish an expedited process for those vendors that had just recently obtained voting systems certification and had to get immediately recertified in October 2005.

A. Cause 2005-1: Voting Technologies International direct record electronic VOTWare software upgrade (Version 3.6.10 application filed July 3, 2003).

The Chair recognized Mr. King, who stated the first of the pending applications was the Voting Technologies International (VTI), application for certification of VOTWare, a direct record electronic (DRE) voting system software upgrade. He noted that this is an upgrade to a previously certified system that is being used in several Indiana counties.

Mr. King stated that the application was filed July 3, 2003 and that various requirements, such as escrow, had been met, and the initially certified system had been demonstrated to the commission. Additionally, Mr. King stated that although some progress has been reported by the vendor, the application has been pending for well over a year. He stated that representatives from VTI were present who might wish to speak to Cause 2005-01 regarding the dismissal of the pending application.

The Chair then asked if a member from VTI was present. Mr. Bill Bettings stated that he was from VTI and asked to be recognized. Mr. Bettings asked the Commission to withdraw the application for the 3.6.10 version since VTI was currently in the process of another upgrade which they would be submitting before the new certification date of Oct. 1, 2005. The Chair stated that the consent of the Commission's members, the VTI application was considered withdrawn. Commission members consented.

Mr. Bettings then asked Mr. King if VTI could resubmit an application and send in a fee for the October or November hearing so that VTI would be in line for certification of the newer upgrade to the system. Mr. King stated there is no period that would be closed to VTI to submit an application. However, the application could not go forward to the Commission for approval until the application was complete.

B. Cause 2005-2: UniLect Corporation "The Patriot" direct recording electronic voting system, application filed December 29, 2003.

Mr. King stated that the UniLect Patriot Direct Record Electronic voting system (DRE) is an application for an entirely new voting system and has not been demonstrated to the Commission. He added that this voting system had not been machine marketed or sold to any Indiana county. Mr. King noted that a representative from UniLect was present and that the UniLect model was set up for a demonstration.

Mr. King stated that the reason that the UniLect "Patriot" certification application was on the agenda was because the application had been filed more than a year ago and that the Election Division sent out a document on behalf of the Commission requesting that UniLect Corporation to show cause to the Commission why the application should not be dismissed because of the timeliness.

The Chair said that he would like to hear from the representative from UniLect. Jim Minor, a representative from UniLect, stated that he was at the meeting in response to a fax that he received on June 17, 2005 regarding the timeliness of UniLect's application. Mr. Minor noted that he was from California and that even though the notice was extremely short notice he was there to demonstrate to the Commission UniLect's interest in getting its application approved in the State of Indiana. He noted that UniLect had a superior system and would like to have Commission approval for certification. He also noted that UniLect, like Voting Technologies International's application, if approved would have to go through a renewal starting in October 2005.

Mr. Minor then went on to explain the background of UniLect. The company was founded in 1989. The company first introduced touch screen electronic voting systems at an international conference in 1992. The Company has five or six jurisdictions across the country using their systems, and has used the system for three presidential elections: 1996, 2000, and 2004. The company claims to have very mature touch screen voting systems. The company only markets touch screen voting systems, not any other type of system.

Mr. Minor then stated that he had brought with him a basic precinct setup for the system. To demonstrate the operation of the system, and the detail that the system provides the voter as far as the touch screen voting is concerned. He stated that the system is made up of a central system, which is in the elections center of each county, a precinct control unit, which is in each of the polling places. Mr. Minor stated so if there is a county that has 28 or 128 precincts there would be one of the precinct control units in each one of the polling places. He noted that a touch screen voter unit is attached to each precinct control unit. Mr. Minor stated that for the demonstration before the Commission, there was a precinct control unit with two touch screens attached. He stated that each precinct control unit could handle up to 16 touch screen voter units for voting within a polling place. Mr. Minor stated that he had with him the HAVA compliant unit which was for the unassisted voting by the blind. He stated that this HAVA compliant unit presented an audio ballot to a voter who is blind voter, has limited sight, is illiterate or who has difficult reading.

He stated that when the audio ballot was designed so that it basically disconnects from the touch screen so no one can see how that voter is voting. He added that the system goes through the audio ballot by permitting the individual to navigate the ballot through a freedom keyboard. Mr. Minor said that every selection that a voter makes through the keyboard is repeated back to the voter to confirm the voter's selection. A voter can also review the ballot orally or otherwise before they cast their ballot.

Mr. Minor noted that that the information pack was the method of getting a ballot on the screen, and that each one of the electronic systems (when they have a voting booth with a touch screen in it), the ballot has to get on the screen some how. He remarked that some the suppliers use smart cards, some individual Pebs, some use a key, like a code, but that UniLect does not subscribe to any of those types of methods. Instead, it uses the information pack. He noted that the information pack is loaded with the precinct ballot in the general election office of the county, and is labeled precinct twelve (12). After testing in a warehouse, it is loaded into a control unit, which will go out to unit twelve (12), with a pre-marked information pack. He said that all the poll worker has to do is touch two buttons on the control unit, and the next voter number so and so, and the ballot then comes immediately over to anyone of the screens.

Mr. Minor then displayed for the Committee the brightness and color of the screen and large bold printing used by the system. He also noted that the office boxes are illuminated and once the

office is voted for the box loses its illumination, the candidate's name illuminates, and a big red X appears. If a person makes a mistake in voting, all the person has to do is deselect the box and the system illuminates the box again. The reason that the machine requires a voter to deselect the selection (rather than go directly to it), is because if the voter first selected another candidate, the system would think that the voter wanted to overvote, which the system does not allow.

Mr. Minor indicated that the system handles a write-in vote by having the voter touch the screen to indicate a write-in choice; a key board then appears showing the letters A-Z. All the voter has to do is to touch each letter in the candidate's name to spell out the name of a candidate. After the voter types in the candidate's name and hits complete, the candidate's name appears with the other candidates, and the voter can check then check a box that appears for this person as a write-in candidate. For offices that permit a voter to vote for more than one candidate, the office remains illuminated until the voter selects enough candidates.

Mr. Minor stated that when the voter is done voting, the system goes to a review page. On the review page, the voter can see every selection made including write-ins. Offices that voter has not voted for appear in red. If a voter is satisfied and does not want to vote for a candidate for that office, the voter does not have to. Mr. Minor said vendors are trying to reduce any undervotes.

Mr. Minor said that to finish voting, the voter hits "record ballot now" on the screen. From there, the cast ballot is transferred to the control unit. The control unit has a message window, and a public counter. To start on Election Day morning, the poll worker breaks a seal on the equipment and pushes a button that says "open polls." A printer then will print out a zero tape to demonstrate that the machine is completely void of any votes prior to the opening to the polls.

Mr. Minor stated the machine has one power connection that plugs into the walls and a back up battery that lasts between two and six hours. Therefore, the machine will not lose votes. The machine has a third source of power (a 12 volt DC system) that is basically an automobile battery, which is an external battery.

Mr. Minor stated that for the disability community, the system is able to be taken outside for curbside automobile voting. Mr. Minor also noted during the demonstration that the data accumulated from the ballots is stored in several pieces of the voting system so if something were to happen to the system, the data would be easily retrievable. In regards to paper audit, the system includes a paper tape and can be easily audited with the ballot.

The Chair asked Mr. Minor about the utility of the machine with regards to state party conventions and turn around time for several ballots being held to select a party's nominee for an office chosen at the state party convention, such as Attorney General or Secretary of State. Mr. Minor stated that he believed that the system was really not set up to do that; what the system is set up for is precinct voting. Mr. Minor stated that the system could do it if necessary.

The Chair asked if the system had experienced problems performing in North Carolina. Mr. Minor stated that the system did have problems there. Mr. Minor said that this system (but not the touch screens) were installed in a county in North Carolina in 1996. He added that these systems were an earlier model. He stated technically the system demonstrated before the Commission was not the same system that was installed in North Carolina. He noted that the control system has been completely upgraded, and that the problem was with the coding of the elections. Mr. Minor said that a normal system could take 3,005 votes which was the maximum for that model. He added that in North Carolina, the system that had a problem—it was voted

more times than this maximum. He indicated that prior early voting in this North Carolina county never amounted to more than a 1,000 votes, but that the early voting on that model surpassed the maximum capacity.

The Chair asked how a poll worker would know if the newer version of this system that holds up to 10,000 votes would know that the system was reaching capacity. Mr. Minor stated because a message window to that effect would pop up on the monitor, and the machine would not record any more votes. The Chair then asked how the North Carolina county redressed the problem. Mr. Minor stated that there were two statewide offices that were affected by this problem. On one of the offices, one of the candidates “backed off” and the results of the race were finalized. On the second office, the race was not resolved. The Chair then asked if there was any liability or lawsuits involved. Mr. Minor stated that there was not. He then stated that UniLect would like the Commission’s temporary approval of the system.

The Chair then stated that he thought UniLect was missing some requisite documentation for the Commission to approve this application. Mr. Minor stated that he had responded to everything that was asked for. The Chair then stated that he would not move to dismiss the application, but noted that a Commission meeting was scheduled for the very near future. He said that if Mr. Minor had everything in place at that meeting, then that UniLect would be ready for certification.

Mr. John moved, seconded by Mr. Koenig, that this application be tabled. The chair asked for discussion. There being no further discussion on the motion, the Chair called the question, and declared that with three members voting “aye” (Mr. Burdick, Mr. John, Mr. Koenig), and no Commission member voting “no,” the motion to table the application until the next meeting was adopted.

C. Avante International Technology Vote- Trakker direct record electronic version 4.7.6, application filed August 9, 2004.

Mr. King stated that he was not aware that any representative of Avante was present. He stated that this application was for a certification of new Direct Record Electronic (DRE) Voting System that has not been sold or used in any Indiana county. He added that this application was originally filed Aug. 9, 2004 and the application had been pending for more than 1 year, and that although the Election Division had received no information regarding the escrow of version 4.7.6. He also stated that the system has not been demonstrated to the Commission.

With regard to reports from an independent testing authority, Mr. King said that there was a report from CIBER that states that the version 4.7.5 complies with the 2002 standard. However, the version 4.7.6 has been issued a NASED number which indicates compliance with 1990 FEC standards, rather than 2002 FEC standards.

Mr. King stated he recently spoke by telephone with Mr. Rick Gleim of Avante and was told that Mr. Tallone, who has originally coordinated the filing of this application, was no longer employed with the company. He said that the Election Division’s recommendation was that the Commission table this application pending a demonstration, proof of escrow, and Avante submitting an ITA letter clarifying that 4.7.6 meets the 2002 standards. The Chair again asked if there was anyone from Avante was present, but there was no response.

The Chair moved, seconded by Mr. John, that this application be tabled. There being no further discussion on the motion, the Chair called the question, and declared that with three members

voting “aye” (Mr. Burdick, Mr. John, Mr. Koenig,) and no Commission member voting “no,” the motion to table the application was adopted.

D. Election Systems & Software Model 100 precinct tabulator optical scan firmware version 5.1.0.0 (Unity 2.5 component), *application filed August 17, 2004.*

Mr. King stated that this was an application to certify an upgrade to a previously certified voting system. On February 28, 2002, the Commission had approved the Model 100 firmware upgrades through version 4.7.6. As part of the review of version 5.1.0.0, a couple of issues were raised by former Election Division Co-Director Candy Marendt with regard to the universal key and ballot security bind issues. Mr. King stated that a “universal key” opened each unit of the system. The ballot security bind issue was a question raised by Ms. Marendt because she could insert her hand into the ballot security bin of the system.

Mr. King stated that ES&S had provided documentation of escrow. He noted that the system was demonstrated at its initial certification by the Commission, and that reports have been received from Wyle Laboratories stating that version 5.1.0.0 complies with 2002 FEC standards. Mr. King noted that the Unity 2.5 software had already been certified by the Commission at its September 22, 2004 meeting. He indicated that ES&S has sent the Election Division correspondence dated June 14, 2005 regarding the universal key and ballot security issues, and that copies of this letter had been provided to Commission members. Mr. King noted that representatives from ES&S were present to answer questions.

Mr. King stated that the Co-Directors, assuming the software to be used is the Unity 2.5 and all issues outstanding regarding the application are resolved, would recommend that the system be certified for the term ending Oct. 1, 2005.

Mr. Rob McGinnis of ES&S offered to set up the model 100, but the Chair said that there was no need to set it up.

Mr. King noted that Ms. Marendt’s letter was in her capacity as a Marion County Election Board Member, not as a Co-Director. Mr. King also noted that as part of the application, the Election Division did require a response to the issues raised.

The Chair moved, seconded by Mr. Koenig, that the Election Systems & Software Model 100 precinct tabulator optical scan firmware version 5.1.0.0 (Unity 2.5 component) be certified by the Commission for a term ending October 1, 2005. There being no further discussion on the motion, the Chair called the question, and declared that with three members voting “aye” (Mr. Burdick, Mr. John, Mr. Koenig,) and no Commission member voting “no,” the motion was adopted.

E. Election Systems & Software Model 650 centralized mark sense tabulator, version 2.0.0.0 (Unity 2.5 component), *application filed August 17, 2004.*

Mr. King stated that this application was for certification of the Model 650, an entirely new voting system. He noted that the Model 650 has not yet been demonstrated to the Commission, but that he thought that it was set up in the adjoining room for a demonstration.

Mr. King noted that escrow of the system’s firmware had been documented. He said that the Election Division had received a letter from Wyle Laboratories, an independent testing authority,

dated October 22, 2004, indicating that version 2.0.1.0 complies with FEC standards. However, he noted that this raises a question for the applicant since the pending application is for version 2.0.0.0, and that he understood that version 2.0.1.0 had been developed to fix a bug. Mr. King stated that he and Ms. Robertson would recommend that if the Commission approves an amendment to the pending application for certify version 2.0.1.0 to correct these bugs, that the Election Division would then recommend approval of the amended application.

The Chair then stated the Commission would like to see it demonstrated unless Mr. McGinnis had anything to add. Mr. McGinnis introduced Mr. Steve Pearson, another representative of ES&S. The Commission then left the room to see the Model 650 demonstrated.

Mr. Long then arrived at the Commission meeting. The Chair then asked Mr. King to restate some information presented regarding the Model 650 for Mr. Long. Mr. Long then asked if the escrow was had completed for version 2.0.1.0 or version 2.0.0.0. Mr. King deferred to the vendor.

Mr. McGinnis stated that version 2.0.0.0 was submitted to Wyle for testing, but as part of that testing, the system ran into a problem with the high limit counter overflowing. He added that ES&S made a change to correct that problem and the change did so successfully. Mr. McGinnis stated that the ITA should have amended their report to reflect version 2.0.1.0 because that is the final version Wyle Laboratories ended up with. He stated that if they escrowed they should be escrowing 2.0.1.0. Mr. Long again asked which version was escrowed. The Chair said that they should see the demonstration and they could deal with the escrow issue when they returned.

Mr. McGinnis stated that he was demonstrating the Model 650 and the AutoMARK. He noted that ES&S had Rick Vogel with them today who would also be demonstrating the AutoMARK. Mr. McGinnis said the Model 650 was the new generation, and an evolutionary change of the Model 550. He stated that they were going to run some ballots and to jump in if there were any questions. He noted that operationally and looks wise that the Model 550 and the Model 650 looked the same. Mr. McGinnis indicated that the main differences are that ES&S went to updated technology, such as a standard hard drive. He said that the system is classified as a centralized optical mark scanner, and will scan paper ballots at up to 400 a minute. The system does audit checks on ballots and sends that data to memory. He remarked that the machine is capable of printing out individual reports on elections from the on-board printer, and is also capable of being interfaced with the election reporting manager, which is a software application in Unity. He noted that the system can be used as a stand alone scanner and in the past they have been. He said that the application is now primarily for this function and to process large quantities of absentees and early voting ballots. He stated that the system has capabilities to find blank and overvoted ballots, and that data transfer is accomplished by a 100MG zip disk. He noted that the system has self-diagnostic capabilities. He indicated that the system uses a standard ballot size.

The Chair asked if this was the system that Marion County purchased and returned. An audience member (Mr. Robert Vane of the Marion County Election Board staff) said that the Model 650 was that system.

Following the conclusion of the demonstration, the Chair noted that there was a pending request to amend the application to be for version 2.0.1.0 of the system. The Commission accepted this request by consent.

Mr. King noted that during the demonstration, ES&S had provided the Election Division with a letter documenting escrow of version 2.0.1.0, and that letter Commission members had received copies of this letter..

Mr. John moved, seconded by Mr. Koenig, that Election Systems & Software Model 650 centralized mark sense tabulator, version 2.0.1.0 (Unity 2.5 component), be certified by the Commission for a term ending October 1, 2005. There being no further discussion on the motion, the Chair called the question, and declared that with four members voting “aye” (Mr. Burdick, Mr. John, Mr. Koenig, and Mr. Long), and no Commission member voting “no,” the motion was adopted.

F. Diebold Election Systems, Inc. AccuVote-TSX direct record electronic voting system; firmware version 4.5.2, application filed March 2, 2005.

Mr. King stated that this was an application for certification of a new voting system. He noted that Diebold filed its application on March 2, 2005 and paid the required fee. He stated that there was an issue raised since the filed application did not include engineering drawings for the system due to concerns that Diebold had expressed concerning the proprietary nature of these drawings.

Mr. King noted that the application does not contain an explicit reference to the software to be used on the system. In the materials filed with the application, GEMS 1.18.19 is referenced; however, GEMS 1.17.17 is the most recent previously certified version in Indiana.

Mr. King added that the application appears to indicate that this could be an upgrade to an existing direct record electronic system (the AccuVote marketed by Fidler Election Systems, representing Diebold Election Systems. Mr. King remarked that there was a representative from Fidler present who could address questions regarding what the role of Fidler would be regarding this DRE system. He added that this application for certification was filed in the name of Diebold Election Systems. Mr. King concluded by noting that although Diebold had indicated that version 4.5.2 had been escrowed, the Election Division had not yet received confirmation of this escrow from Iron Mountain, the escrow agent.

Mr. King stated that this system had not been demonstrated to the Commission. He added that Diebold had filed a letter and report from Wyle Laboratories, dated March 2, 2005, indicating that the 4.5.1 version complies with 2002 FEC standards and that the correction to version 4.5.2 also complies with 2002 standards. Mr. King noted that the Co-Directors recommend tabling the application pending a satisfactory demonstration and secondly a submission of the remaining elements in the applications (documentation of escrow and clarification of the relationship to this voting system to previously certified systems the Election Division currently has listed as being marketed by Fidler).

The Chair recognized Mr. William Barrett, who stated that was the Vice President of Sales and Marketing for Fidler Election Company. He noted that Fidler was the authorized Diebold reseller in the Mid-West (Indiana, Michigan, Illinois, and Wisconsin). The Chair asked if Diebold sold direct at all. Mr. Barrett responded that they did. He noted that Fidler was the largest Diebold dealer, and that Diebold had four other dealers. He added that Fidler supported and serviced Diebold equipment.

The Chair asked Mr. Barrett to speak regarding the issue of the engineering drawings. Mr. Barrett stated that his role in front of the Commission was to be a good communicator and let

Diebold know the Commission's concerns and to finalize the application. Mr. Long stated that as far as he was concerned, that if a vendor did not want to supply something that customarily is supplied by all vendors, they could probably save a trip down here as far as his vote's concerned. The Chair also agreed and stated that Fidler needed to let Diebold know that this is a business decision that Diebold would have to make.

Mr. John then asked Mr. Barrett about an issue in Franklin County, Indiana involving Fidler. The Chair asked the Co-Directors if there had been a response to the previous inquiry regarding this matter. The Chair said because of time that the Commission would have to table the issue. Mr. Long stated that when this issue comes off the table, that someone should be here to discuss the issue. The Chair then informed Mr. Barrett that there was a letter dated December 15, 2004 asking for a written response by Fidler explaining what happened in Franklin County. He asked Mr. Barrett to have someone present at the next Commission meeting to explain this.

Mr. John moved, seconded by Mr. Long, to table this application, to address the application at the next Commission meeting, and ask the applicant to provide someone to discuss the issues involving Franklin County. There being no further discussion on the motion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. John, Mr. Koenig, and Mr. Long), and no Commission member voting "no," the motion was adopted.

G. Hart InterCivic eSlate direct record electronic voting system, version 4.0 *application filed May 2, 2005*; and version, 4.1, *application filed May 13, 2005*.

Mr. King stated that Hart InterCivic had filed an application on May 2, 2005 for certification of an upgrade to a system that has been previously certified by the Commission. He noted that no Indiana county was currently using the system. Mr. King added that Hart InterCivic then filed another application on May 13, 2005 for an upgrade for various components of its firmware and software. He noted that the May 13 application for certification of version 4.1 was the same as the application filed on May 2, 2005 for approval of version 4.0 except for additional upgrades to the two software components: JBC and Eslate.

Mr. King said that Hart InterCivic had submitted a letter setting forth its intent to document the escrow of version 4.1. He added that Hart InterCivic had also filed full reports from CIBER and Wyle Laboratory stating that these independent testing authorities had found that versions 4.0 and 4.1 complied with 2002 FEC Standards. He added that Hart InterCivic had supplied information explaining the correction of the error that led to change from 4.0 to 4.1.

Mr. King stated that essentially the proof of documentation of the escrow was the only outstanding issue that would preclude the Co-Directors from recommending certification by the Commission. Mr. King stated that he had recently spoken with Sandy Green from Hart InterCivic, who has been trying to obtain proof of documentation of the escrow, but had not been able to.

The Chair asked if anyone in the room was from Hart InterCivic, and there was no response. Mr. John moved, seconded by Mr. Long, to table the application. There being no further discussion on the motion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. John, Mr. Koenig, and Mr. Long), and no Commission member voting "no," the motion was adopted.

H. Election Systems & Software AutoMARK voting system (Voter Assist Terminal [VAT] and Information Management System [AIMS] *application filed May 11, 2005.*

The Chair recognized Mr. Rick Vogel, who demonstrated the AutoMark. Mr. Vogel stated that he received confirmation that morning that this system was fully NASED approved and that they did have a NASED number on the AutoMARK system.

Mr. Vogel said the system works with optical scan ballots. He stated that the ballot would be put in, the machine picks up the code, and brings up the right ballot style. He indicated that the machine takes two seconds to read the different codes, and that you can have multiple languages. Mr. Vogel showed that you can speed up the audio instructions on the system for sight impaired voters, and stated that there are two ways to vote on the system: by keypad or Braille. Mr. Pearson added that a voter can also use a puff sip device or a paddle. Mr. Vogel stated that the system works well with a vast cross section of disabled voters.

Mr. Vogel then demonstrated how to cast a write in vote on the system. He stated that a contrast color would appear on the screen to display an error; this error would also be reported by audio to the voter. He added that the write in candidate is read back to the voter. Mr. Vogel stated that once the ballot comes out of the machine, the ballot goes right into a privacy sleeve. Mr. Vogel added that when a visually impaired person casts a ballot, then the ballot comes out blank. He noted that the reader will notice if the ballot has already been voted, and that if you try to revote the ballot, the system will not let you. Instead, you would have to obtain a new ballot. Mr. Vogel stated that this voting system has been certified in Ohio, and certification is pending in 8 other states. Mr. Vogel asked for any questions.

The Chair recognized Mr. King, who asked if the poll worker would determine if a visually impaired voter who is going to be using the head set gets a ballot that does not include candidate names printed on it. Mr. Vogel stated that the person would have to make that choice as to whether a ballot with candidate names would be printed (or that perhaps the state should determine this question). Another unidentified gentleman stated that this question should be determined by a written procedure so that it would be applied uniformly throughout Indiana.

Mr. King asked whether the AutoMARK met HAVA's two part requirement: if the voting system allowed a voter to vote privately and independently. With regard to whether the AutoMARK allowed a voter to vote privately, he noted that ES&S had demonstrated that the system could produce a voted ballot that did not display the names the voter had cast votes for, so that this portion of the requirement was covered.

Mr. King stated that the other part of the HAVA requirement concerned what the use of the privacy sleeve with the AutoMARK, since HAVA also requires that an individual must be able to vote independently. He noted that if the system requires a third person, such as a poll worker, friend, or relative who is properly assisting a blind voter to insert the voted ballot into a secrecy envelope, and then feed the envelope into a system, whether that process is truly independent for the voter. Mr. Vogel responded that a visually impaired person would have no problem putting the ballot into a privacy sleeve and would have no problem putting the voted ballot already in the sleeve into the system. He added that the poll worker could show the voter where to put the ballot, and that there was also Braille on the side of the machine. In response to a question from Mr. King, Mr. Vogel stated that ES&S had not brought a privacy sleeve for today's meeting, and as a result had not included the use of this sleeve in the demonstration of the system.

Mr. Vogel stated that the system has been tested in many places and there have been no problems with the system. He noted that anyone might have to be led to a ballot box, and added that the voted ballot does not have to be placed in the privacy sleeve in any certain direction.

Mr. Koenig asked what happened in the case of a recount with regards with the blank ballot. Mr. Vogel said that if a recount was conducted using the system, the system knows what the marks signify on a ballot which does not list candidate names, but was cast by a blind voter. He added that if there was a manual recount, a template would be used to overlay the ballot that a judge could determine which candidates had been voted for on the blank ballot. Mr. Vogel stated that AutoMARK works with the Model 100, Model 650, and ES&S Eagle scanners

The Chair recognized Mr. King, who stated that it seemed that ES&S could deal with the “voting independently” question by having an automatic feed from the part of the system where the ballot was marked into the system’s tabulator without requiring any assistance to the voter by another person. Mr. Pearson said there were already ideas, such as this one, under discussion involving possible upgrades to the AutoMARK and the Model 100. Mr. Vogel said there might be problems with an automatic feed because a person not needing assistance would be treated differently than other voters.

The Chair asked if there were Indiana regulations that would prevent the AutoMARK from being certified. The Chair recognized Ms. Robertson, who said that there are not any such regulations under Indiana law, but that federal HAVA is a different story. She noted that Mr. King and she were responsible for assisting counties in obtaining upgraded voting equipment to comply with HAVA and to help counties receive reimbursement for obtaining this equipment. She added that to receive full reimbursement, a county must purchase voting systems that are compliant with Title 3 of HAVA, which includes being accessible to the disabled. Mr. King agreed. Mr. King added stated that the laboratory reports and the assignment of a NASED number only indicate that the AutoMARK has met the 2002 FEC standards, which is a precondition for certification of the voting system by the Commission. He noted that the Commission’s certification is a different issue than subsequent county reimbursement since Ms. Robertson, Secretary Rokita, and himself must sign off on any reimbursement application for a county which purchases a system and pay them out of the Title 3 HAVA funds only after determining that the voting system also met the additional HAVA requirements for a voter to be able to cast a ballot privately and independently. Mr. King emphasized that he wanted to make certain that everyone knew that Commission certification and county reimbursement for purchasing the AutoMARK were two separate issues. Mr. Vogel asked what would be the determining factor concerning county reimbursement. Mr. King responded that one factor would be the demonstration of the system, and that he would have liked to have seen the privacy sleeve used during the demonstration because that is a key point in addressing the issue of a disabled voter casting a ballot independently.

Mr. Vogel stated that if the system does not show any names on the voted ballot, then the privacy envelope does not matter. Ms. Robertson responded that the issue that we are struggling with is independence, as opposed to privacy, in voting. Mr. Vogel said with any voting system, a voter will need some assistance, even with DRE systems.

Mr. Koenig stated that there might be problems with independence in recounts because with the low numbers of visually impaired voters, you could probably identify their ballots. Mr. McGinnis said that this concern could be remedied by taking the ballots into a vault, so to speak, so that these ballots are voted when the absentees get voted. He noted that at least in Marion County the absentee ballots come out from the central election office to each precinct and get

voted some point during election day. He added that at least then if you are voting in the context of that process you aren't separating these blank ballots out and you don't know whose is whose.

Mr. King said that Indiana law now required that any voter (not just a disabled voter) must be allowed to vote on the voting system provided in polling places specifically for use by disabled voters. Mr. Vogel noted that the AutoMARK is certified in Ohio and is being marketed as being HAVA compliant. He stated that there have not been any challenges to this system and that Indiana is the first state to have some issues regarding the system. He added that the state of Ohio made it very clear that counties buying these machines were eligible for reimbursement.

Mr. King stated that Ms. Robertson and he have received letters from Jim Dickson and other individuals who have raised the issue of whether the AutoMARK complies with the HAVA requirements for disabled voters to vote privately and independently, and who have at least raised the possibility of litigation over this issue. He also stated that Mr. Robertson and he and contacted the Election Assistance Commission for guidance on this issue, and that although the EAC would not specifically state whether the AutoMARK meets these HAVA standards, the EAC indicated that it planned to address this issue to help states determine what factors should be considered in determining whether a voting system of this type will comply with the privacy and independent requirements. He added that he did not know when they would receive a reply. An unidentified person said that anyone can threaten litigation.

After completion of the demonstration, the Chair recognized Mr. King, who stated that this application for certification of a new voting system that had not been previously certified by the Commission. He noted that ES&S has filed an application that consists of two parts: the AutoMARK Voter Assistance Terminal (VAT), hardware, firmware, software, and the AutoMARK Information System (AIMS), which are the two component parts of the system.

Mr. King stated that the Election Division had not received documentation of proof of escrow for this voting system. He noted that the Election Division had received a letter from ES&S stating that ES&S would escrow the firmware and software after NASED issued a certification number for the AutoMARK. He added that according to the applicant, the NASED number for AutoMARK had been issued on the morning of this meeting.

Mr. King added that ES&S had submitted a letter to the Election Division from SySTest an independent testing authority, indicating that the AutoMARK complied with 2002 FEC standards. He noted that ES&S had submitted a letter from CIBER, another independent testing authority, dated May 9, 2004 and an additional letter from CIBER dated June 14, 2005 in response to a request for clarification of the May 9th letter. The CIBER letters indicated the AutoMARK version 1.0 and referenced that version 1.0.9 complied with FEC standards.

Mr. King stated that the first recommendation the Co-Directors had was that the Commission ask the vendor to provide clarification on the number referenced in the CIBER letters with the possibility of amending the application of that is what the vendor requests.

The Chair asked Mr. McGinnis to respond the reference of version 1.0.9 in the May 9 letter by CIBER. Mr. McGinnis stated that the final version was tested in the ITA process and in functional testing version 1.0.9 was the build that was made. Version 1.0.9 was then recompiled to be referred to as 1.0. He added that the two versions are synonymous and both have the exact same functionalities. He noted that sometimes with an ITA there is some confusion of what is to the final version number to be published. Another representative of ES&S stated that the independent testing authorities are very careful now to reference not only the compiled number,

which in this case ended up as 1.0, but also the build number that a company finally compiles the software from. He added that you may have numbers from 1-50 depending on how many builds were made on the software or firmware.

The Chair asked if ES&S wanted to amend this application to reflect the ITA's specificity regarding the version numbers. Mr. Long stated that it was up to ES&S to ask for the amendment. Mr. McGinnis asked if the Commission would feel more comfortable with further clarification from CIBER. The Chair stated that amending the application was ES&S's decision or the Commission could table it.

The Chair stated that since the since the required escrow was not yet executed and documented by ES&S, and since the Commission is shortly going to have another meeting, the Commission may wish to table this application. Mr. Long moved, seconded by Mr. Koenig, to table this application until the next Commission meeting.

The chair noted that he had some concerns with regards to the independence issue because the issue is untested. He added that he would encourage county governments purchasing the AutoMARK to really get comfortable with the voting system being reimbursable under HAVA. In spite of what Ohio authorities have said, a judge might rule differently if the system was challenged in a lawsuit on these grounds. The chair stated that he wanted his concerns on this point to be part of the record. Mr. Long joined the Chair in his sentiment.

There being no further discussion on the motion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. John, Mr. Koenig, and Mr. Long), and no Commission member voting "no," the motion was adopted.

5. Vanderburgh County

Mr. Long stated that the Election Division should monitor future handling of election materials, and assist them in storing of election materials.

6. Adjournment

There being no further items on the Commission's agenda, the Chair adjourned the meeting at 3:00 p.m.

Respectfully submitted,

J. Bradley King
Co-Director

Kristi Robertson
Co-Director

APPROVED:

Thomas E. Wheeler, II
Chairman