**Proposed Rule 4—Incremental Voting System Conversion**

The purpose of this proposed Rule is to permit all county election superintendents to complete a smooth and efficient incremental transition from the Diebold GEMS Voting System to the Dominion Voting System during 2020 at the option of the county election superintendent (county election board). The intent of the Rule is to permit each county to choose the transition plan that best suits their local capabilities and resource availability to avoid unnecessary election disruption during the 2020 presidential election year, and to provide for other administrative and financial assistance to counties during the voting system transition.

The proposed rule permits the conversion to the Dominion Voting System, including the KnowInk Pollbooks, to be made in incremental steps to avoid disruptions from system debugging, start-up malfunctions, recruiting additional pollworkers, and intensive training during the presidential election year likely to see record turnout.

Under the proposed rule, the Dominion Voting System would be considered an approved pilot program until the system is fully operational and adequately tested in all counties, and the Diebold system would not be decertified until the Dominion system is fully operational and adequately tested in significant elections in all counties. **At the election superintendent’s option, the current Diebold system components (ExpressPolls, GEMS servers, Accu-Vote Optical Scanners), excluding the DRE units, could be used as part of a hand marked paper ballot voting system**[[1]](#footnote-1). Alternatively, the Dominion Voting System components could be used as part of a hand-marked paper ballot system, in lieu of fully installing the BMD units during 2020. The BMD units and printers make up the bulk of the new computerized equipment and are the most difficult to install. In addition, the violations of ballot secrecy they create has not been solved. Georgia statutes support these emergency options.

The various configurations we envision with the adoption of this rule would be:

1. Use GEMS server, hand marked paper ballots and Accu-vote optical scanners for centralized tabulation at election office. ExpressPollbooks used.
2. Use GEMS server, hand marked paper ballots and Accu-vote optical scanners in the polling places with ExpressPollbooks.
3. Use Dominion EMS, scanners, hand marked paper ballots and PollPads. (This was the configuration of the Cobb County pilot,)
4. Use Dominion EMS, scanners, BMDs, and PollPads. (configuration of the 6 pilot counties.)
5. Small county—Hand **counted** paper ballots, paper pollbooks.

Georgia statutes permit the use of traditional hand counted or optical scan ballots under certain conditions as explained below in the section entitled “Statutory Authorization.”

Proposed Rule Language

***March 24, 2020 primary election***

1. *The Secretary of State’s office, at its expense, shall arrange for the printing and delivery of all UOCAVA and mail ballots anticipated to be required by each county for the March 24, 2020 presidential primary election. The delivery of printed ballots to the county superintendent shall occur no later than January 29, 2020.*

1. *Counties wishing to retain components of the Diebold system[[2]](#footnote-2) (Configurations A. or B. above) for the March 24, 2020 election must notify the Secretary of State no later than January 6, 2020, or other date as established by the Secretary of State to provide for timely UOCAVA and absentee ballot printing and delivery.*
2. *For counties desiring to conduct a hand marked paper ballot election with the Diebold system in lieu of Dominion BMDs, the Secretary of State, at its expense, shall arrange for printing and delivery of sufficient ballots and emergency ballot stock to conduct the March 24, 2020 election.*
3. *For counties desiring to conduct a hand marked paper ballot election with the Diebold system in lieu of Dominion BMDs, the Secretary of State, at its expense shall arrange for installing a new (unused) GEMS server loaded with a trusted build copy of GEMS.*
4. *The Secretary of State shall supply at its expense, an adequate number of new or used properly operating Diebold Accu-Vote Optical Scanners to counties opting to place such scanners in each polling location (versus central count at a tabulation center).*
5. *County election superintendents choosing to use the Diebold voting system may choose to scan ballots in the polling place or to use the central count option placing the tabulating center in the superintendent’s office as permitted by O.C.G.A. § 21-2-438.*
6. *County election superintendents who anticipate a presidential primary voter turnout of less than 10,000 may choose to hand count the ballots in accordance with the provisions of O.C.G.A. § 21-2-430 through §21-2-440, rather than use a voting system for tabulation. If hand counting is used, ballots cast during advance in-person or mail ballot voting may be counted beginning at noon on Election Day. An appropriate voting device for accessibility needs shall be provided and programmed for each polling place by the Secretary of State.*

***2020 primaries and elections after March 24, 2020***

1. *Counties wishing to adopt the Dominion Voting System after the March 24, 2020 primary, shall notify the Secretary of State 60 days prior to the election for which the adoption of part or all of the Dominion Voting System is desired.*
2. *Provisions 2 through 6 above shall apply.*
3. *County election superintendents who reasonably anticipate a voter turnout of less than 5,000 for any election may choose to hand count the ballots in accordance with the provisions of O.C.G.A. § 21-2-430 through §21-2-440, rather than use a voting system for tabulation. If hand counting is used, ballots cast during advance in-person or mail ballot voting may be counted beginning at noon on Election Day. An appropriate voting device for accessibility needs shall be provided and programmed for each polling place by the Secretary of State.*

***General***

1. *The Secretary of State shall issue instructions to superintendents regarding reviews for accuracy at the time of ballot issuance during* ***in-person advance voting*** *to assure that accurate ballot styles are issued to voters. This rule applies to both BMD ballots and paper ballots.*
2. *For any polling places the superintendent reasonably believes will receive less than 500 Election Day voters, the superintendent may use the paper pollbook (voters’ printed list) as provided in § 21-2-401(b), in lieu of the electronic pollbook if the polling place is also using hand marked paper ballots.*
3. *Counties utilizing the Dominion system shall use the BMD for accessible units. Counties opting to use the Diebold system will use an appropriate voting device for accessibility needs shall be provided and programmed for each polling place by the Secretary of State.*

Existing Statutory Authority

Georgia’s Election Code has long provided for use of hand marked paper ballots in the event that the use of voting equipment is not practical.

*§ 21-2-281. Voting by paper ballot when use of voting equipment impossible or impracticable*

 *In any primary or election in which the use of voting equipment is* ***impossible or impracticable****, for the reasons set out in Code Section 21-2-334, the primary or election may be conducted by paper ballot in the manner provided in Code Section 21-2-334.*

*§ 21-2-334. Voting by paper ballot when use of voting machine impossible or impracticable*

 *If a method of nomination or election for any candidate or office, or of voting on any question is prescribed by law, in which the use of voting machines is not possible or practicable, or in case, at any primary or election, the number of candidates seeking nomination or nominated for any office renders the use of voting machines for such office at such primary or election impracticable, or if, for any other reason, at any primary or election the use of voting machines* ***wholly or in part is not practicable,*** *the superintendent may arrange to have the voting for such candidates or offices or for such questions conducted by* ***paper ballots****. In such cases, paper ballots shall be printed for such candidates, offices, or questions, and the primary or election shall be conducted by the poll officers, and the ballots shall be counted and return thereof made in the manner required by law for such nominations, offices, or questions, insofar as paper ballots are used.*

If the county election superintendent (county election board) determines that a rapid transition to new pollbooks, touchscreen units, scanners, or EMS systems is not practical because of significant implementation risks, the board has the long-standing authority to order hand marked paper ballots instead.

Alternatively, each board of County Commissioners is also authorized to order the use of optical scanners and hand marked paper ballots under the provisions of §21-2-366. While this may be in potential conflict with the uniform voting system requirement in §21-2-300, the flexibility of the pilot program provision (§21-2-300(d)) should permit the Dominion system to be considered a pilot system until it is fully implemented, allowing it to exist alongside the GEMS system just as it does in the municipal elections of November 5, and December 3, 2019.

1. Diebold retention option requires that the State obtain Court approval for the State’s continued use in the Curling v. Raffensperger case (17 cv 2989). [↑](#footnote-ref-1)
2. As noted in footnote 1, use of Diebold system will require the State to obtain Court approval. [↑](#footnote-ref-2)