



Office of the Attorney General

Please return completed consumer contact form to:
Office of Attorney General Charlie Crist
State of Florida
PL-01, The Capitol
Tallahassee, Florida 32399-1050

Consumer Contact Form

The shaded information MUST be provided as we correspond via U.S. mail. *Incomplete forms cannot be processed.* PLEASE WRITE LEGIBLY. Only one business per complaint form.

Person Making Complaint: <i>For Florida Fair Elections Coalition</i> Miss/Ms. <i>Pynchon, Susan R.</i> Mrs./Mr. _____ Last Name, First Name, Middle Initial <i>P.O. Box 317</i> Mailing Address <i>DeLand, Volusia County</i> City, County <i>Florida 32721</i> State, Zip Code	Complaint is Against: <i>Diebold, Inc.</i> Name/Firm/Company <i>5995 Mayfair Road</i> <i>P.O. Box 3077</i> Mailing Address <i>No. Canton</i> City, County <i>Ohio 44720-8077</i> State, Zip Code
<i>1-386-804-3131 1-386-736-8086</i> Home & Business Phone, including Area Code	<i>1-330-490-4000</i> Business Phone, including Area Code
<i>susanpynchon@</i> Email Address <i>FloridaFairElections.org</i>	<i>www.diebold.com</i> Business Email or Web Address

Product or Service involved: Voting Systems Amount Paid: \$ Over \$1 million

Date of Transaction: After 2004 I was contacted _____ Telephone _____ Mail Other

Have you retained an attorney? Yes No *We are taxpayers; we are turning to the Attorney General to represent us*

Did you sign a contract or other papers, i.e. estimates, invoices, or other supporting documents? Yes No *Counties contract on our behalf*

(ATTACH COPIES. DO NOT SEND ORIGINALS.)

Note:

- All documents and attachments submitted with this complaint are subject to public inspection pursuant to Chapter 119, Florida Statutes.
- Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 837.06 Florida Statutes.

Please indicate if you are over the age of 60. Penalties can be enhanced for victimizing senior citizens. Over 60 Yes No

(PLEASE USE OTHER SIDE OF THIS FORM TO DESCRIBE YOUR COMPLAINT & ATTACH YOUR SIGNATURE)

Please explain your complaint. Attach additional sheets, if necessary.

- 1) Upon information and belief, Diebold Election Systems Inc. (Diebold) delivered untested and uncertified voting systems to the counties of Volusia, Polk, Glades and Putnam. This is a felony under Florida Statutes §§ 101.294 (4), 295 (Exhs. A& B).
- 2) On April 6, 2006, David Drury informed Diebold that it was authorized to ship uncertified voting systems to Florida counties that had not yet received them. He did this prior to examining the systems or reading the complete ITA (Independent Testing Authority) report. (Exh. C)
- 3) Upon information and belief, Diebold was scheduled to deliver voting systems to a fifth county, Leon, on or about May 30, 2006. According to Leon County officials, the delivery has been put on hold pending certification.
- 4) On May 10, 2006, David Drury informed the Supervisor of Elections of Leon County that it was appropriate to accept an untested and uncertified system which was in direct contravention of Florida Statutes §§ 101.294, 295.(Exh. D)
- 5) Mr. Drury justified this by referring to the need to comply with the Help America Vote Act of 2002 ("HAVA"). However, Diebold had a contractual duty to deliver the certified equipment, and Mr. Drury had neither the right to interfere with the counties' contracts nor to waive the law. There appears to be no exception given in Florida Statutes §§ 101.294 or 295, and no statutory provision elsewhere referencing these provisions and giving the Bureau of Voting System Certification the right to waive the law.
- 6) Florida Statutes § 101.294(5) states that the vendor is supposed to provide the local official with a sworn statement attesting to certification, David Drury seems to authorize violating this law by telling Diebold that it can give the Supervisors of Elections a copy of his letter dated April 6, 2006. There are no exceptions for systems informally authorized by the Bureau of Voting Systems in §§ 101.294 or 101.295 and no other statute that references these provisions and gives the Bureau of Voting Certification the right to change the requirements of the statute to accept anything less than a statement that system as a whole has been certified by the State of Florida.
- 7) Diebold submitted an "Affidavit of Certification" for uncertified equipment. The affidavit to Volusia County, dated April 27, 2006, was carefully worded but still contained material allegations that were false and appears to be an attempt to mislead.

- 8) Florida Statutes § 101.5605 (3) (b) requires that any change or improvement be approved by the Department of State. The Florida Voting Systems Standards (Form DS-DE 101, p.12) which are adopted as a rule, *see* IS 5.001, provide that any change to an existing certified system constitutes a new release of the system requiring new certification. The statute and the rule provide no exceptions or qualifications whatsoever (emphasis added). Approval under the statute is accomplished through the certification process in §101.5605.
- 9) Upon information and belief, neither Diebold nor Mr. Drury apprised the Supervisors of Elections in advance of the delivery of a different and uncertified system from the one for which they had contracted. Instead, upon information and belief, Volusia County discovered this in acceptance testing. (Exhs. A & B).
- 10) Diebold is a multi-national corporation and had no right to rely on David Drury as there is no provision of law authorizing him to waive certification nor did it receive provisional certification.

My signature authorizes the Attorney General's Office to take any action deemed necessary for purposes of investigation or enforcement. I understand that the Attorney General does not represent private citizens seeking the return of their money or other personal remedies. I am filing this complaint to notify your office of the activities of this company so that it may be determined if law enforcement of other legal action such as an action in QUO WARRANTO against the Division of Elections is warranted.

Signature: Susan R. Pynchon
Susan R. Pynchon
for Florida Fair Elections Coalition

Date: June 1, 2006

EXHIBITS TO COMPLAINT

- Exhibit A *Orlando Sentinel*,
“Voting Machines Lack State Approval,” May 12 2006
- Exhibit B *Daytona Beach News Journal*
“Touch-screen voting devices not certified,” May 12, 2006
- Exhibit C Letter to Diebold
from David Drury, Chief of the Florida Bureau of Voting
Systems Certification
- Exhibit D Letter to Janet Olin, Leon County Asst. Supervisor of Elections
from David Drury, Chief of the Florida Bureau of Voting
Systems Certification
- Exhibit E “Affidavit of Certification,” Signed by Mark Earley, Diebold
Election Systems, April 27, 2006

EXHIBIT A

Orlando Sentinel, "Voting Machines Lack State Approval," May 12, 2006

Orlando Sentinel

<http://www.orlandosentinel.com/news/local/volusia/orl-vvote1206may12,0,7981821.story?track=rss>

ADVERTISEMENTS

Voting machines lack state approval

New touch-screens in Volusia and 4 other counties need to be certified, officials say.

Kevin P. Connolly
Sentinel Staff Writer

May 12, 2006

Brand-new touch-screen voting machines can't be used in Volusia, Polk and three other Florida counties because they still require state approval, officials said Thursday.

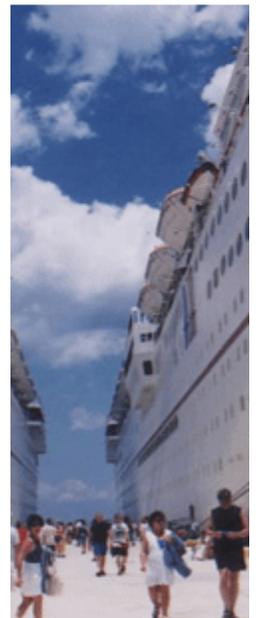
The problem, uncovered by an election official in Volusia County, apparently violates a state law prohibiting vendors from selling "uncertified" equipment in Florida, according to Susan Pynchon, a voting-equipment activist.

Not so, said Jenny Nash, a spokeswoman for the state Division of Elections, who said the machines from Diebold Election Systems are nearly the same as those already certified.

"It's just a modification," Nash said. She compared it to a routine software update on a home computer. "It's very similar to that."

Nash said a routine examination of the new machine is set for May 30 and June 1 in Tallahassee. Because no elections are planned before those dates, it's not a problem, she said.

Some people
really
enjoy
cruises,
like you.



Nonetheless, Pynchon, executive director of DeLand-based Florida Fair Elections Coalition, said her organization is contemplating "legal options" because she thinks the state approval should have been completed before delivery.

Nash said the issue affects five counties: Volusia, Polk, Leon, Putnam and Glades.

County election officials contacted Thursday said they were surprised to learn they had received machines that still needed to jump through another hoop at the state level.

Volusia County Elections Supervisor Ann McFall and Polk County Elections Supervisor Lori Edwards said the machines they told Diebold they wanted were certified.

"It's just what arrived was not [certified]," Edwards said.

A Diebold official contacted Thursday referred questions to a company spokesman, who did not return voice-mail and e-mail messages.

At issue is the difference between a TSx Model D touch-screen and Models A, B and C.

David R. Drury, chief of the state's Bureau of Voting Systems Certification, said in an e-mail to a Leon County official that Model D is the same as the other three certified models in "form, fit, and function."

Still, he listed several changes with the hardware and operating system. The changes include a new liquid-crystal display, a new "inverter" to power the LCD and changes to the motherboard to accommodate a "graphics processor, flash memory, and voltage regulators. The motherboard also includes the addition of fuses to the modem outputs to improve immunity to phone line faults," he wrote.

The operating system is also "slightly different," Drury wrote. The "firmware" has not changed, he said in the e-mail.

Still, the state will examine the new model using the same standards used to certify other TSx models.

"The Bureau is does not anticipate any issues with the Model D," Drury wrote. "Upon

successful completion of this examination, the Division will issue a modified certification to delineate the various models of the TSx that are certified for use in Florida."

McFall said one of her top staffers -- technology system analyst Laurie White -- discovered the discrepancy with the motherboard and operating system Monday while examining Volusia County's 210 touch-screens during a process called "testing and acceptance."

"At least we found it now instead of two days before an election," McFall said.

The machines must pass this process before Volusia makes its next and largest payment yet: 80 percent of the \$782,185 contract price for the 210 machines and related equipment. The county, which approved the contract in February, already put 10 percent down.

The final 10 percent is due after 2006's first major election, which is Sept. 5.

Edwards, Polk's supervisor, said she thinks Diebold made changes to touch-screens at the national level and simply shipped the new models without realizing the changes meant another review in Florida.

"In all fairness, we work well with Diebold," she said.

The latest flap raised suspicions among voting-equipment activists about paperless voting and the state's equipment-certification process.

Volusia has become one of the battlegrounds for Pynchon and other activists demanding all voting systems use paper ballots for security and recounts of close elections.

They are scheduled to discuss their concerns during a public forum from 1 to 4 p.m. May 20 in Room 112 of Building 110 at Daytona Beach Community College, 1200 W. International Speedway Blvd.

For more than a year, a majority of Volusia County Council members agreed with the pro-paper movement. But they were unable to buy the equipment they wanted -- a handicapped-accessible ballot-marking device made by Diebold rival Election Systems

& Software -- because it failed certification in Florida.

In February, faced with a federal mandate to provide accessible voting, council members agreed to buy Diebold touch-screens for blind voters to supplement Volusia's existing optical-scan paper-ballot tabulators.

Kevin P. Connolly can be reached at kconnolly@orlandosentinel.com or 386-851-7934.

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EXHIBIT B

Daytona Beach News Journal,
“Touch-screen voting devices not certified,” May 12, 2006

Originally appeared on News-Journal Online at

<http://www.news-journalonline.com/NewsJournalOnline/News/Local/newEAST01POLL1051206.htm>

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May 12, 2006

Touch-screen voting devices not certified

By **JOHN BOZZO**
Staff Writer

DELAND -- A funny thing happened when Volusia County elections officials fired up their new touch-screen voting machines -- they discovered the equipment wasn't certified by the state.

Diebold Election System shipped upgraded models -- 210 of them -- not yet verified by the Florida Division of Elections. The main difference is the upgraded models shipped here include a plug for a printer, when one becomes available.

While Volusia officials want printers to provide a permanent record of the votes that are cast on the machines, any election held on noncertified machines could prove to be a legal nightmare.

"If, God forbid, (the mistake) was never caught and we went through an election cycle -- the whole darn election cycle could be challenged," Volusia County Chairman Frank Bruno said.

Thirty of Florida's 67 counties use Diebold voting equipment, but only five, including Volusia, got the uncertified models, said Ann McFall, Volusia County supervisor of elections.

"I think it's an embarrassment to Diebold and the Division (of Elections)," McFall said. "I'm happy my department caught this. No other county caught this."

Jenny Nash, spokeswoman for the state Elections Division, described the issue as minor.

"It's basically just a modification to the original system," she said.

Volusia County Council members agreed to buy the touch-screen machines from Diebold in February after months of debate about the best way to provide voting access for disabled people. County officials plan to offer touch-screens as well as the traditional paper ballot for voters.

At one point during the months of debate, the County Council had decided to replace the entire Diebold system with new equipment from Election Systems and Software Inc. But they nixed that deal because -- once again -- the Election Systems and Software equipment wasn't certified by the state.

McFall said she anticipates no problems getting the new Diebold model touch-screen machines certified. Testing is scheduled the day after Memorial Day. She won't sign off on accepting the machines until they're verified by the state.

"Our testing was a little more stringent than what the state does; that's why it was caught," McFall said.

If the new models do not get certified, Bruno said Diebold would be required to supply the older, certified models under the county contract with the company.

john.bozzo@news-jrnl.com

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EXHIBIT C

Letter to Diebold, April 6, 2006,
from David Drury, Chief of the Florida Bureau of Voting Systems Certification



FLORIDA DEPARTMENT OF STATE

Sue M. Cobb
Secretary of State

April 6, 2006

Mr. Donald Vopalensky
Certification Manager
Diebold Election Systems, Inc.
P.O. Box 1019
Allen, TX 75013

Re: AVPM Ready AV-TSx

Dear Mr. Vopalensky:

This letter is in response to your request to ship AVPM ready AV-TSx units to your Florida customers.

The Bureau of Voting Systems Certification has examined Mr. Ian Piper's email regarding this issue and the material contained in your email. The Bureau understands that the model D tablet includes the motherboard and wiring harnesses that are configured to accept the AVPM kit. The Bureau also understands that it is DESI's desire to fulfill new AV-TSx orders for Florida customers with this AVPM ready DRE. Furthermore, it is our understanding that DESI does not intend to reconfigure the existing TSx DREs in Florida to an AVPM ready status until the AVPM becomes a requirement. Therefore, DESI is not requesting authorization to perform a field upgrade to the existing non-AVPM ready DREs, but at a later date may make this request if necessary.

The Bureau has examined the changes necessary to support the AVPM and has reviewed Wyle Laboratories' letter that acknowledges successful completion of the Operating Environmental Test and the Product Safety Review. The Bureau requests that DESI authorize Wyle Laboratories to provide the Florida Division of Elections with a copy of the test report(s).

The Bureau concurs with Wyle's findings and therefore, authorizes DESI to ship AVPM ready AV-TSx units (P/N 00-103380-000D) to your Florida customers. Please provide a copy of this letter to your Florida customers as objective evidence that AVPM ready TSx DREs are approved by the Division of Elections provided the corrected firmware is installed as delineated on certification # 0305Diebold-01 "Diebold Election Systems, Inc. 2005 B (Blended) + (Plus Audio)".

Please contact me at your convenience should you have any questions or concerns.

Regards,

A handwritten signature in cursive script, appearing to read "David R. Drury".

David R. Drury, Chief
Bureau of Voting Systems Certification

drd/

Division of Elections

R.A. Gray Building, Room 316 • 500 South Bronough Street • Tallahassee, Florida 32399-0250
(850) 245-6220 • FAX: (850) 245-6236 • WWW: <http://www.dos.state.fl.us>

EXHIBIT D

Letter to Janet Olin, Leon County Assistant Supervisor of Elections
from David Drury, Chief of the Florida Bureau of Voting Systems Certification

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

>>> "Drury, David R." <DRDrury@dos.state.fl.us>
05/10/06 10:07 PM >>>

Janet:

Thank you for your kind words. I appreciate your assessment very much. However, I just want to clarify one comment that you provided below. The TSx Model D has not been "used" in a Florida election.

I have examined the hardware changes and have concluded that the Model D is essentially the same as the Models A, B, and C in form, fit, and function.

In addition, Wyle Laboratories conducted an Operating Environmental Test and Product Safety Review and these examinations produced a successful outcome. I informed Diebold that the Model D could be shipped to Florida to meet scheduling commitments to ensure that Florida counties

would have HAVA compliant devices. To delay these shipments would have posed greater risk to counties such as yours, as production and delivery windows may change to meet commitments from other States. However, the Model D must be certified for use with the "2005 B (Blended) + (plus audio)" voting system before it can be used in an election, because WinCE has changed.

The Model D incorporates new hardware components. The liquid crystal display (LCD) was change to a more readily available unit from the same manufacturer (Sharp). The inverter was change to match the power requirements for the new LCD. The motherboard circuit card assembly was changed to allow the use of more readily available components. These components include the graphics processor, flash memory, and voltage regulators. The motherboard also includes the addition of fuses to the modem outputs to improve immunity to phone line faults.

Keep in mind that WinCE is custom configured to the hardware which is why WinCE is slightly different for the Model D relative to the WinCE created for the Models A, B, and C. The firmware which controls how the TSx functions as a voting device has not changed. Nevertheless, the Bureau will examine the TSx Model D using the same election definition that was used to certify the TS R6 and the original TSx. The Bureau does not anticipate any issues with the Model D. Upon successful completion of this examination, the Division will issue a modified

certification to delineate the various models of the TSx that are certified for use in Florida.

I hope this clarifies any confusion or concerns that you may have.

Regards,

David Drury

-----Original Message-----

From: Janet Olin [mailto:JANET@leoncountyfl.gov]
Sent: Wednesday, May 10, 2006 12:12 PM
To: Drury, David R.
Subject: Fwd: Diebold TSX units "D"

David,

I wanted to follow up with your verbal assurance expressed at Monday's Diebold User's Meeting concerning the TSX "D" units already in use at various counties within Florida.

You indicated that it would be permissible for counties to purchase and gain custody of hardware that, although not yet certified by the Division of Elections (DOE), will be certified the week following Memorial Day weekend (May 29 - June 2). I asked the question because we have 128 TSX units coming our way by May 30 to comply with the Secretary of State's deadline for our office to have ADA certified voting equipment. As I expressed at the Diebold Users' meeting, I do not want Leon County Elections to be between a rock and a hard place with the ADA certified equipment again. Your assurance was music to our ears!

The meeting as a whole was terrific. I appreciate the pragmatic manner that you are taking security procedures so that multiple modifications do not need to be made to the document. Those staff members in attendance from Leon County learned a lot and felt the meeting was beneficial, to say the least. I noticed you didn't have the usual comment sheets that are usually distributed at DOE sponsored presentations but feel free to share my favorable remarks with whomever in the DOE. Communication is always a welcome event.

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

EXHIBIT E

“Affidavit of Certification,” Signed April 27, 2006,
by Mark Earley, Diebold Election Systems

STATE of FLORIDA
VOTING SYSTEM VENDOR
AFFIDAVIT OF CERTIFICATION

VENDOR NAME: Diebold Election Systems, Inc.

VENDOR RESIDES IN THE STATE OF: Texas

AND THE COUNTY OF: Collin

I, Mark S Earley being of legal age and sound mind, do hereby state and aver as follows:

I hold the position of Major Accounts Manager for Diebold Election Systems, Inc. ("DESI"). In that capacity, I have conducted due diligence with regard to the statements set forth in this Affidavit, in Exhibit "A" to this Affidavit, and in Exhibit "B" to this Affidavit. Based on good faith information, and belief; the voting system provided to Volusia County, Florida, as set forth in Exhibit "A" to this Affidavit by DESI reflects what I believe to be accurate information regarding version numbers for the DESI Products used by Volusia County in the State of Florida, and as set forth in Exhibit "B" to this Affidavit by DESI reflects what I believe to be accurate information regarding version numbers for the DESI Products certified for use in the State of Florida.

1. See Exhibit "A" to this Affidavit which is incorporated herein by reference as though fully stated in this Affidavit.
2. See Exhibit "B" to this Affidavit which is incorporated herein by reference as though fully stated in this Affidavit.

STATE of FLORIDA
VOTING SYSTEM VENDOR
AFFIDAVIT OF CERTIFICATION

For Vendor to Complete in Front of Notary Public:

Under the penalties of perjury and state law, I do solemnly swear or affirm that the foregoing information is based on good faith information, and belief is true and correct. Furthermore, Exhibit A includes the version level of the tabulation equipment software, hardware and firmware believed to be resident on the equipment based on the last physical evaluation of the same by DESI. Furthermore, Exhibit B includes the version levels of the tabulation equipment software, hardware and firmware listed on the certification documentation issued by the State of Florida. I have attached hereto Exhibits "A" and "B", which form the basis of the information set forth above.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 27 day of APRIL, 2006

Signature: 

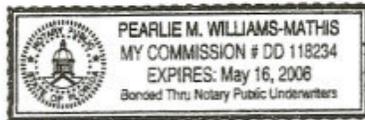
Name and Title: Mark S Earley, Major Accounts Manager

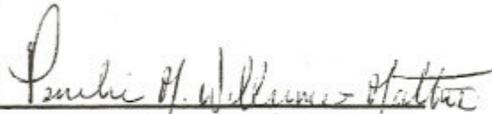
Vendor Company: Diebold Election Systems, Inc.

Subscribed and sworn to before me in the)

County of LEON)

State of Florida)




NOTARY PUBLIC SIGNATURE

My Commission expires: _____

Exhibit A

Customer: *Volusia County, Florida*

Vendor Company: Diebold Election Systems, Inc.

Equipment List

Product Name	Product Version	Comments
Global Election Management Software (GEMS)	1.18.19	
Key Card Tool	1.0.1	
Microsoft Windows 2000 Server	Service Pack 4	
Adobe Audition	1.0	or later version
Adobe Acrobat	6.0	or later version
Nero	6.0	or later version
WinZip	8.1	or later version
AccuVote-OS Optical Scan Tabulators	Firmware 1.94w and VRL firmware 13.9	Hardware Configuration A or Hardware Configuration B, rev 1
AccuVote-TSX DRE Touch Screen Ballot Stations	Firmware 4.5.2	WinCE 4.10, Build 2-5-04
Voter Card Encoders	1.3.2	
Numeric Keypads		
Headphones		Commercial-Off-The-Shelf (COTS)

Exhibit B

<attach relevant State of Florida certification documents and certificates>

Certification

Diebold Election Systems, Inc.

DIEBOLD ELECTION SYSTEMS, INC. 2005 B (Blended) + (Plus Audio)

On this date, the Department of State certifies the DIEBOLD ELECTION SYSTEMS, INC. 2005 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.

Election Administration:

- Global Election Management Software (GEMS), Release Level **1-18-19**
- Key Card Tool, version **1.0.1**
- COTS Software
 - Microsoft Windows 2000 Service Pack 4.0
 - Adobe Audition 1.0 or later
 - Adobe Acrobat 6.0 or later
 - Nero 6.0 or later
 - WinZip 8.1 or later

Precinct Count (one or more of the following):

- AccuVote-OS Optical Scan Tabulator
(Hardware Configuration A and/or Hardware Configuration B, Revision 1)
 - w/ firmware **1.94w** and VRL firmware **13.9**
- AccuVote-TS R6 DRE Touch Screen Ballot Station
 - w/ firmware version **4.5.2** (WinCE 3.0, Build 8-8-02)
- AccuVote-TSX DRE Touch Screen Ballot Station
 - w/ firmware version **4.5.2** (WinCE 4.10, Build 2-5-04)
- *Auxiliary equipment for AccuVote TS:*
 - Voter Card Encoder
 - w/ firmware version **1.3.2**
 - Numeric keypad and COTS headphones for audio ballots

Central / Absentee Count (one or more of the following):

- AccuVote-OS Optical Scan Tabulator
(Hardware Configuration A and/or Hardware Configuration B, Revision 1)
 - w/ firmware **1.94w** and VRL firmware **13.9**
- Optional AccuFeed, revisions D & E
 - w/ OS firmware **1.94w**

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

Certification # 0305Diebold-01

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this twenty-ninth day of March, A.D., 2005.



Dawn K. Roberts
Director
Division of Elections
Department of State
State of Florida

