



Testimony to Senate Elections Committee
Tuesday, January 24, 2006

Thank you for the opportunity to testify this afternoon. I will touch on the situation facing Washington County, but also talk about where we are as counties in creating our election plans and preparing to purchase equipment.

Just as a reminder, the Federal Help America Vote Act passed in 2002 requires each polling place to utilize an assistive voting machine for all federal elections after January 1, 2006. Then last year, MN passed its funding bill that extended the requirements to state and local elections and also created the standards for what assistive voting machines needed to be able to do to be certified for use in Minnesota.

The assistive voting devices need to allow voters with disabilities the ability to privately and independently cast their ballots in a similar manner to all other voters.

First, let me be clear that I believe the Legislature in 2005 passed a good funding bill. However, we were facing a significant challenge at the time. We were attempting to define in the equipment funding bill what types of equipment would be allowed in Minnesota and we did not know exactly what the equipment vendors were creating.

To make this task related to equipment even more difficult was the federal government's delay in creating equipment standards. The draft standards were only released this fall, only months prior to the January 1, 2006 equipment deadline. Final standards are to be published later this year.

So, where are we today?

As of today only one piece of assistive voting equipment has been certified for use in Minnesota. That piece of equipment is the Automark Ballot Marking Device manufactured by Election Systems and Software.

The funding bill also was written to allow the use of a combination assistive voting machine and optical scan counter being manufactured by Diebold Elections. However, we have been told by this vendor that development of this machine has not been completed and it will not be ready for use in the 2006 elections.

The fact that there is only one certified piece of equipment is not a problem for most counties. In fact, 83 counties are completing their election plans and will be utilizing the Automark and vote counting equipment from Election Systems and Software that is compatible with the Automark. These 83 counties are those that currently utilize ES & S vote counters or are buying equipment for the first time.

However, Counties that in the past purchased vote counters from Diebold are in a difficult position. We are facing the potential of purchasing Automark ballot markers for our assistive voting devices, but they are not compatible with our vote counting equipment. This means we need to either replace our entire voting systems, basically wasting the investment in our current equipment or use the two incompatible pieces of equipment. It can be done, and we will do this if needed, but we think we need to explore all other better options.

These four counties (Washington, Dakota, Ramsey and Anoka) have met a number of times with the ES & S Company to talk about how our equipment may work together. What we have found out is it would require a substantial amount of manual programming at a time in the election cycle when we just do not have that time. This system would also require double the programming and operating costs in these counties.

In an attempt to identify a solution that meets our accessibility requirements and also allows for efficient programming, these counties requested that a machine made by Diebold be certified for use. The Secretary of State's office denied certification.

This piece of equipment was not part of our conversations in 2005, however I think it may be a good solution in Minnesota. We have brought this piece of equipment with us today.

However, in order to make this option available in Minnesota it may require a state law change. Currently our law in Chapter 206.80 requires ballot markers to create an optical scan ballot to be tabulated. This machine while it creates a paper record of the votes cast, does not create an optical scan ballot.

We hope you will consider making a change in the state requirements. We believe it meets the public policy you have set that all systems be paper based and provide a paper record that can be utilized in a recount or audit.

I would suggest this desire for alternate equipment is not based just on finances. This option provides a very similar experience for voters to that of the Automark, it just makes more sense in the Diebold counties because of our previous investments.

We are also considering a request to the State Auditor's Office under the newly created mandate reform legislation you passed last year. This bill allows the Auditor's Office to temporarily waive procedural state laws that have been mandated upon local governments. The request would outline how we would still meet the state and federal goals, but relax a couple of the procedural requirements currently in our voting system laws.

Secondly, I would like to raise one issue related to the interpretation of the funding provisions in the 2005 bill. The bill creates two pots of funding. The first grant account totaled \$29 million and is being shared equally by all counties based on the number of precincts in each county.

The second grant included \$6 million to provide funding to counties that need to replace its vote counting equipment or buy equipment for the first time.

The Secretary's Office is interpreting the law to allow that office to fund these eligible counties in the following priority.

First to those counties who have not purchased equipment in the past.

Second, to counties who currently utilized central count equipment.

And then finally, if any money remains, to those counties who need to replace vote counters that are incompatible with the assistive voting devices.

My fear is that if a compatible alternative is not allowed for the four Diebold counties that have roughly 500 precincts between them, this second grant account will not be able to fund all eligible counties at the \$3000 per precinct as stated in the law. If there are more requests than funding, some counties that are currently at the end of the Secretary's priority list will not be funded.

I do not believe this prioritization was the intent of the 2005 language.

If this priority system is used, it will punish those counties that have already made one purchase with local tax dollars. This will most likely lead those same counties to use local dollars to fund the replacement as well, while those who have not bought any equipment previously are allowed to use federal funds. This is not an equitable solution and I do not believe it was the intent of the bill passed in 2005.

Let me say the timing of this is very difficult. Even if the Legislature is interested in relaxing the state requirements to allow additional vendors into the Minnesota marketplace, the timing is very tight. But we think an attempt is certainly worth the effort.

Finally, I see your agenda includes a discussion on 2006 election legislation. While we will certainly implement anything that is passed, we would request you make very few if any changes to election administration laws. Counties will have our hands full implementing new equipment and training election officials and judges. We are also still in training on the administrative changes created in 2004 and 2005 related to the federal HAVA law. We have not identified any changes that are absolutely necessary for us to administer a successful 2006 election. So, again we would encourage you to make few changes in 2006, giving us a chance to implement all the changes occurring already this year.

Thank you for this opportunity and I will try to answer any questions the committee has.