

State of California



SECRETARY OF STATE

DECERTIFICATION AND WITHDRAWAL OF APPROVAL OF ACCUVOTE-TSx VOTING SYSTEM AS CONDITIONALLY APPROVED NOVEMBER 20, 2003, AND RESCISSION OF CONDITIONAL APPROVAL

I. Recitals

Whereas, pursuant to Elections Code section 19201, no voting system, in whole or in part, may be used unless it has received the approval of the Secretary of State;

Whereas, existing law requires that I, as Secretary of State for the State of California, conduct periodic reviews of voting systems to determine if they are defective, obsolete, or otherwise unacceptable for use;

Whereas, pursuant to my statutory obligations, I have undertaken such a review of the AccuVote-TSx voting system to determine if it is defective, obsolete, or otherwise unacceptable for use in the November 2004 General Election in California;

Whereas, on April 21, 2004 and April 22, 2004, a duly noticed public hearing was held to give interested persons, including Diebold Elections Systems, Inc., an opportunity to express their views regarding the use of the AccuVote-TSx voting system, as conditionally approved for use in California on November 20, 2003;

Whereas, following the duly noticed public hearing on April 21, 2004 and April 22, 2004, the Voting Systems and Procedures Panel recommended that I withdraw approval of the use of the AccuVote-TSx voting system, as conditionally approved for use in California on November 20, 2003;

Whereas, pursuant to Elections Code section 19222, I, as Secretary of State, am authorized to withdraw approval previously granted of any voting system or part of a voting system should that voting system or any part of that voting system be defective or be proven to be unacceptable after my review;

Whereas, I have considered relevant information regarding the AccuVote-TSx voting system, as conditionally approved on November 20, 2003, including the public testimony presented at the hearings referenced above, the response filed by Diebold Elections Systems, Inc. dated April 26, 2004; numerous communications from elections officials, vendors of voting systems and interested members of the public; and other materials, as well as the findings and recommendations of the Voting Systems and Procedures Panel;

Whereas, pursuant to Elections Code section 19222, six months' notice must be given before withdrawing approval previously granted of any voting system or part of a voting system unless I, as Secretary of State, for good cause shown, make a determination that a shorter period is necessary;

Whereas, pursuant to Elections Code section 19222, any withdrawal of approval by the Secretary of State of any previous approval of a voting system or part of a voting system is not effective as to any election conducted within six months of that withdrawal;

II. Therefore, I, Kevin Shelley, Secretary of State for the State of California, find and determine, pursuant to Division 19 of the Elections Code and Government Code section 12172.5, as follows:

A. Findings and Determinations

1. The AccuVote-TSx hardware and firmware, as conditionally approved on November 20, 2003, are found to be defective and unacceptable for use in California elections based on the following independent grounds:
 - a. The failure of the hardware and firmware of that voting system to receive federal qualification;
 - b. The disenfranchisement of voters attempting to use the AccuVote-TSx voting system at the March 2, 2004 Presidential Primary Election.
2. Diebold Elections Systems, Inc., has failed to fully satisfy the conditions set forth in the conditional certification of November 20, 2003, for the AccuVote-TSx voting system.

B. Orders

Therefore, I, Kevin Shelley, Secretary of State for the State of California, hereby direct, pursuant to Division 19, Chapter 1 (commencing with Section 19001) of the Elections Code and Government Code section 12172.5, that:

1. For the reasons set forth above, the AccuVote-TSx hardware and firmware, as conditionally approved on November 20, 2003, are defective and unacceptable and approval for their use in subsequent elections in California is decertified and withdrawn, effective immediately;
2. For the reason set forth above, the conditional certification of the AccuVote-TSx voting system, dated November 20, 2003, is hereby rescinded with respect to all subsequent elections.

III. Therefore, I, Kevin Shelley, Secretary of State of California, further find and determine, pursuant to Elections Code section 19222, that based on the materials, testimony and comments I have reviewed and considered, and the findings and recommendation of the Voting Systems and Procedures Panel, good cause exists establishing the need to shorten the six months notice requirement for the withdrawal of approval of AccuVote-TSx hardware and firmware, as specified above. I also find and determine that good cause exists to require such notice and rescission of the conditional certification be effective immediately in order to provide sufficient time for conducting subsequent elections in California fairly, efficiently and to ensure the integrity of the elections process.

It is so found, determined and ordered.



IN WITNESS WHEREOF, I execute this Certificate and affix the Great Seal of the State of California this 30th day of April, 2004.


KEVIN SHELLEY
Secretary of State