

# State of California



SECRETARY OF STATE

## ***DECERTIFICATION AND WITHDRAWAL OF APPROVAL OF CERTAIN DRE VOTING SYSTEMS AND CONDITIONAL APPROVAL OF THE USE OF CERTAIN DRE VOTING SYSTEMS***

### **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 voting systems approved for use in California, to determine if they are defective, obsolete, or otherwise unacceptable for use in the November 2004 General Election in California;

*Whereas*, on April 21, 2004, April 22, 2004, and April 28, 2004, a duly noticed public hearing was held to give interested persons an opportunity to express their views regarding the use of various voting systems in the November 2004 General Election in California. At these hearings approximately 100 individuals testified. Many more submitted comments by letter, fax and electronic mail;

*Whereas*, following the duly noticed public hearing on April 21, 2004, April 22, 2004, and April 28, 2004, the Voting Systems and Procedures Panel recommended that I withdraw approval of the use of certain voting systems to be used at the November 2004 General Election unless certain conditions for their use were implemented;

*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 I determine that voting system or any part of that voting system be defective or otherwise unacceptable;

*Whereas*, I have reviewed voting systems approved for use in California and I have reviewed and considered several reports regarding the use of voting systems, including Direct Recording Electronic (DRE) voting systems and other voting systems, the public testimony presented at the hearings referenced above, numerous communications from elections officials, State Legislators, members of the disabled community, voting rights advocates, 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 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, determine and order, pursuant to Division 19 of the Elections Code and Government Code section 12172.5, as follows:**

**A. Findings and Determinations**

1. DRE voting systems currently approved for use in California pursuant to Division 19, Chapter 1 (commencing with Section 19001) of the Elections Code and Government Code section 12172.5:
  - a. Do not produce an accessible voter verified paper audit trail permitting a voter to independently and contemporaneously verify the accuracy of the electronic vote recording so as to ensure that his or her vote is counted in accordance with Section 2.5 of Article II of the *California Constitution*;

- b. Do not permit meaningful recounts specified in Elections Code sections 15360, 15610, 15620, 15621, 15623, 15627 and 15640;
- c. May not permit a contest to be decided by a meaningful recount of the votes, as provided for in Division 16 (commencing with section 16000) of the Elections Code;
- d. Use proprietary source codes that are complex and secret so that the absence of malicious code in the firmware is extremely difficult, if not impossible, to prove or determine;
- e. Involve sophisticated electronic technology that cannot easily be operated and, when necessary, repaired by many poll workers, which sometimes results in voters not voting the correct ballot type and which is sometimes vulnerable to unexpected functional failure resulting in the disenfranchisement of voters;
- f. May be the subject of erroneous programming or other human errors that may not be detected prior to the commencement of voting;
- g. May be subject to tampering and/or manipulation if insufficient security enhancements are not in place or are not properly implemented;

### **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, DRE voting systems, including but not limited to the Diebold AccuVote-TS, the ES&S iVotronic, the Sequoia AVC Edge, and the Hart eSlate, and any other DRE voting system, previously approved, are found and are determined to be defective or unacceptable and approval for their use in subsequent elections in California is immediately decertified and withdrawn, except as specifically provided below.

2. DRE voting systems are approved for use in California only if (a) Paragraph 3 **or** 4 below applies **and** (b) Paragraph 5 below applies.
3. No new DRE voting system may be used in California unless it includes a fully tested, federally qualified and state certified accessible, voter verified, paper audit trail, and there is compliance with all of the conditions set forth in Paragraph 5 below. For purposes of this paragraph, any modified version of the Diebold AccuVote-TSx voting system submitted to the Secretary of State for certification shall be deemed to be a new DRE voting system.
4. DRE voting systems used in the March 2, 2004 Statewide Primary Election, but not including the AccuVote-TSx voting system, are approved for use in the jurisdictions in which they were previously used if there is compliance with all of the conditions set forth in Paragraph 5 below. In addition, such voting systems, as a condition of approval of their use in subsequent elections, must comply with the following conditions:
  - a. The voting system must include a fully tested, federally qualified and state certified accessible, voter verified paper, audit trail; **or**
  - b. There must be compliance with the following conditions:
    - (1) Permit every voter to have the option at his or her polling place of casting a ballot on a paper ballot which may be satisfied by providing an adequate number of paper ballots to each polling place based on each County's assessment of the number of persons who may request them. The cost of additional paper ballots specified in this paragraph shall be borne by the vendor of the voting system that sought its certification or approval for use in California, or the vendor's successor in interest;
    - (2) At the time the ballot is cast or during the period allowed for conducting the official canvass, a paper version or representation of each ballot cast on each unit of the voting system shall be printed out on paper. The paper version shall not be provided to the voter but shall be retained by elections officials for use during the one percent manual recount or other recount or contest. The cost of printing a paper version or representation of each ballot cast on each unit and the storage

of such printouts specified in this paragraph shall be borne by the vendor of the voting system that sought its certification or approval for use in California, or the vendor's successor in interest;

- (3) The voting system shall be subject to "parallel monitoring" as directed by the Secretary of State;
  - (4) At least 46 days prior to any election in which the voting system is proposed to be used, the elections official conducting the election shall submit a Technical Security Plan that is consistent with the directives of the Secretary of State and the recommendations contained in the *Trusted Agent Report to the Maryland Department of Legislative Services by RABA Innovative Solution Cell (RiSC)* dated January 20, 2004 (RABA Report) (<http://www.raba.com/press.html?id=9>) to the extent that the recommendations are applicable to the voting system proposed for use;
5. All DRE voting systems used in California, including those that include an accessible, voter verified paper audit trail, as defined by the Secretary of State, must meet the following conditions:
- a. Certification and Testing
    - (1) Federal Testing and Qualification The voting system, and all of its hardware, software, and firmware, including all of its peripheral equipment, has been fully tested by and qualified for use by the appropriate federal entities, if applicable;
    - (2) State Testing and Certification The voting system, and all of its hardware, software, and firmware, including all of its peripheral equipment, has been approved for use in California elections by the Secretary of State of the State of California following full testing;
    - (3) Documentation
      - (a) The Source Code for any software and firmware used as part of any of the voting system, including commercial off the shelf software that is available to and disclosable

by the vendor, shall, upon demand of the Secretary of State, at any time before or after approval is requested, be provided to the designee or designees of the Secretary of State for analysis, subject to any reasonable time and confidentiality restrictions, as determined by the Secretary of State;

(b) The full record of all documents submitted or resulting from the federal qualification process shall, upon demand of the Secretary of State, at any time before or after approval is requested, be provided to the designee or designees of the Secretary of State for analysis, subject to any reasonable time and confidentiality restrictions, as determined by the Secretary of State;

(c) Complete documentation of each hardware, software and firmware version for any component of the voting system, including detailed change logs, for any part of the voting system, shall, upon demand of the Secretary of State, at any time before or after approval is requested, be provided to the designee or designees of the Secretary of State for analysis, subject to any reasonable time and confidentiality restrictions, as determined in the sole discretion of the Secretary of State;

(d) Complete documentation regarding the development environment and development process for any software or firmware used in any component of the voting system, including but not limited to configuration files, translators, libraries, and options sufficient to allow exact reconstruction of the object code used in any component of the voting system, shall, upon demand of the Secretary of State, at any time before or after approval is requested, be provided to the designee or designees of the Secretary of State for analysis, subject to any reasonable time and confidentiality restrictions, as determined by the Secretary of State;

(4) Functional Systems Provided to Secretary of State Upon demand of the Secretary of State, at any time before or after approval is requested, the vendor seeking approval or whose

voting system has been approved, shall provide to the Secretary of State, a working version of the components, including all hardware, software and firmware, of the voting system that is proposed to be used at an election, for purposes of analysis and testing, staff reference and public education. The components shall be maintained in working order by the vendor;

- (5) Limits on Requests for Late Modifications A request for a change or modification of the voting system that might impair the accuracy and efficiency of the voting system shall not be submitted to the Secretary of State, unless specifically authorized by the Secretary of State, within 46 days prior to any election in which the voting system is proposed to be used.

b. Security

- (1) Telephone Connections No component of the voting system shall be permitted to receive official elections results through an exterior communication network, including the public telephone system;
- (2) No Wireless Connection Hardware No component of the voting system shall include the hardware necessary to permit wireless communications or wireless data transfers to be transmitted or received;
- (3) No Internet Connections No component of the voting system shall be physically connected at any time, directly or indirectly, to the Internet;
- (4) Physical Security Plans At least 90 days prior to any election in which the voting system is proposed to be used, the elections official conducting the election shall submit to the Secretary of State, a Physical Security Plan regarding all of the components of the voting system, including the details of how a chain of custody with respect to all of the components is monitored and documented;
- (5) Compliance with Directives The elections officials conducting an election using the voting system, and the vendor of the voting system that has sought its certification or approval for use in Califor-

nia, or the vendor's successor in interest, shall abide by any directive issued by the Secretary of State of California, in writing, that is designed to safeguard or enhance the security of the voting system and its use, including, but not limited to, directives related to random audits, poll monitoring, parallel monitoring, security plans, election observer plans, Logic and Accuracy Tests, the providing of tabulation software for escrow with the Secretary of State, and physical security plans. Any such directive will be issued within a reasonable timeframe before the election to allow for full compliance;

c. Poll Workers

(1) Training The elections official conducting the election shall, at least 46 days prior to the election in which the voting system is proposed to be used, submit to the Secretary of State the Poll Worker Training Plan for the election in every jurisdiction using that system, including a copy of the materials to be provided to the poll workers. The training must provide adequate, hands-on training for each poll worker for the voting system being used, including instruction on the use of each component part and the steps to follow if any component of the voting system fails or appears to fail to function properly;

(2) Communication Plan The elections official conducting the election shall, at least 46 days prior to the election in which the voting system is proposed to be used, submit to the Secretary of State a Communications Plan detailing how elections officials and polls workers at each polling place will communicate on Election Day.

d. Polling Places

(1) Provisional Ballots Provisional voters must cast ballots on paper ballots;

(2) Disability Access Devices Disability Access Devices, intended to benefit voters who desire to use such devices, shall be connected to voting machines prior to the time the polls open;

(3) Posting of Results A copy of the results from each voting unit that is capable of printing out a tabulation of the results shall be



posted for public inspection for at least 48 hours outside each polling place;

- (4) Tampering Penalties Posted There shall be posted at polling places, in all applicable languages, a notice regarding the penalties for tampering with any component of the voting system;

**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, there is good cause why notice of the withdrawal of approval of voting systems, as specified above, is necessary to be shorter than six months. I also find and determine that it is necessary that such notice be effective immediately in order to provide 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 30<sup>th</sup> day of April, 2004.



  
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KEVIN SHELLEY  
Secretary of State