



## OPEN VOTING CONSORTIUM

Alan Dechert, President  
9560 Windrose Lane  
Granite Bay, CA 95746 USA

Phone-916-791-0456 Fax-916-772-5360  
[www.openvotingconsortium.org](http://www.openvotingconsortium.org)

**Thursday, May 25, 2006**

Honorable Judy Chu  
Chair, Appropriations Committee  
California State Assembly  
Sacramento, California

Dear Assembly Member Chu:

I wish to comment on the Secretary of State's letter to you dated May 24 regarding AB 2097. Some of my comments also have to do with a meeting last Friday that I attended along with the Appropriations Committee consultant, Chuck Nicol, and several members of the Secretary of State's staff as well as several county election officials.

AB 2097 declares that the people have the right to know exactly how their votes are processed. It seems that the Secretary is imagining this to be extremely difficult and costly. He and his staff exhibit a lack of familiarity with the intent and letter of the proposed law.

This increased public scrutiny is critically needed. Public confidence in the voting system is low and getting worse almost daily. Until fundamental problems are addressed with respect to voting system procurement and voting system certification, this situation will not improve. Some election officials are taking sides with the vendors.

There are two basic scenarios contemplated should AB 2097 pass and be signed into law this year: 1) Vendors comply with the disclosure requirements, and, 2) One or more vendors decides to abandon existing customers rather than comply.

### **Scenario 1: Vendors Comply**

Vendors are likely to comply. The elections business is on-going, and there is money to be made here on an on-going basis. The push for open source software for elections is nationwide (worldwide, too). Vendors see the handwriting on the wall and realize they will have to adapt to the new way sooner or later. In the Friday meeting, I asked election officials if they had any indication from vendors — in writing or otherwise — that they would refuse to comply. There was nothing presented to support that conjecture.

The Secretary has not made the case for any additional expenditure with this scenario. The only new requirement for certification is disclosure. He is exaggerating the need to “re-examine and recertify currently certified systems.” Simply, the vendor is asked to provide a disclosure package suitable for public distribution.



The Secretary has staff that handles certification already, and they should be able to check the contents of the disclosure packages to see that all required items are included.

The sections in the Secretary's May 24 letter labeled **Voter's Inspection and Testing Rights** and **Web Site** show a serious misreading of the intent and letter of the proposed law. The intent here is that the public will provide *more eyes on the code*. There is no intent that the Secretary be involved in making hardware available for anyone, "on demand," that wants to run some tests. For people or groups that want to run the software on the production hardware, that can be left to the testers and vendors to work out details. It is also assumed here that vendors will provide sufficient details so that test engineers can create virtual machines if they so desire (so the software can run in a simulated environment).

The Secretary's role should be more of a conduit between the people and the vendors. The web site should be largely automated to accept input from the public and vendors. Each comment from the public should be automatically routed to the vendor of the particular system to which the comment applies. There are any number of off-the-shelf software packages that could be installed for this purpose. The functionality envisioned is standard and routine. The Secretary already has a web page that lists the various systems from the vendors. Adding a link to the download package provided by the vendor should take a few minutes. The cost of adding the issue tracking system should be minimal.

The Secretary's staff should monitor the dialogue and watch for significant issues that may arise. Since the Secretary of State is charged with the responsibility of certifying voting systems, this is work that he or she should be doing anyway.

## **Scenario 2: Vendors Refuse to Comply**

In the Friday meeting, Jill LaVine of Sacramento County claimed that it was her understanding that if her vendors abandoned their contract, she would still be legally prohibited from using the hardware because the contract says the hardware can only be used with the vendor's software. Does this make sense to you?

Suppose I was an office manager that signed a contract to have some computer hardware and software installed and serviced in my office. And suppose a substantial portion of the cost was the hardware, which was purchased (not leased). If the vendor disappeared, I think I would install some new software or hire someone else to do it. I might also try to recover the costs due to the vendor's non-performance on the contract.



Secretary McPherson seems to agree with Jill LaVine that, in this case, we'd just have to go buy all new systems. Apparently, the Secretary believes the vendors would have the right to just take the money and run, and we would just have to scrap all the hardware. Why?

Although vendors' voting systems are proprietary and incorporate some custom designed enclosures, they use standard processors. Election vendors don't manufacture chips. Vendors are moving away from more exotic designs in favor of more standardized components. ES&S, the largest vendor, is already starting to use the Linux operating system (open source) in some of its products.

Clearly, the existing hardware could be used with new software. Therefore, the Secretary's claim that "a similar cost or higher would be required to fund the new equipment and software" has no credence.

Underlying the Secretary's analysis is the assumption that since we just spent all this money on new voting systems, it isn't necessary to replace anything so these replacement costs would all be unnecessary additional costs. This belies his own statements from recent months.

In his recommendation last year to veto SB 370, Secretary McPherson claimed that the implementation of the paper trail printers was unsuitable. The bill was signed into law over his objection. There are numerous issues that have come to light with respect to the new equipment purchased with the Proposition 41 funds and the HAVA funds. Is he now claiming that all this hardware and software is just fine and we don't need to make any improvements?

In fact, the voting system upgrade is not complete. Some of the money spent on new systems was squandered on technology that was not ready for prime time. Some bad decisions were made. Improving the voting system is an ongoing expense. There is much work left to be done. Money will continue to be spent on voting system hardware and software next year, the year after that, and every year after that for the foreseeable future. Will we continue to accept whatever the vendors want to sell us, or will the state use its leverage to get something better?

Secretary McPherson has misread the clause regarding foregoing federal testing should the state develop its own voting software. The bill says the Secretary *may* forego this process. If the Secretary wants to use the existing test labs, he or she may do so. A period of one year is provided for replacement software development. This should be adequate, even given some moderate delays with the labs. If a better and faster testing process can be found, the Secretary should have the option to use that instead. AB 2097 provides for that possibility.



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The section labeled **Development & Maintenance Costs** is all wrong. The Secretary makes the incredible assumption that the “Secretary of State would be required to provide ongoing system maintenance, security, and support of all counties using the system.” The bill does not specify this and would undoubtedly have the opposite effect in this scenario. There would be more vendors willing and able to provide these services because certified hardware and software would be decoupled from the vendors providing these support services.

Counties always contract with vendors to provide these services. The Secretary assumes that if existing election vendors leave the state, no other vendors would step in to provide these services.

As Brian D. Newby, Election Commissioner, Johnson County, Kansas, explains,

*I think we have to realize a vision where elections software is ubiquitous and interoperable between hardware vendors. Voting equipment providers today utilize proprietary software, effectively locking in the vendor for the foreseeable future. As communities grow their fleets of voting machines, replacing an entire fleet at once will be cost-prohibitive and utilizing two different systems is operationally restrictive. Thus, the ability to place systems out for re-bid is compromised. Without any realistic threat of being unseated as a provider of choice, even the best vendors will be less aggressive in developing system enhancements and will have a captive market for potential support price increases that will continue to drive up the cost of elections. Without ubiquitous software, I believe the long-term costs of elections will be increasing greatly, and most Americans, as well as policy makers, are unaware of the potential for impending increases.*

Last year, Ion Sancho of Leon County Florida invited an independent engineer to test his Diebold equipment, and uncovered horrendous security faults in the system. Diebold tried to get him fired, and the other major vendors, ES&S and Sequoia, also black listed him until he was exonerated by a study conducted by UC scientists. Mr. Sancho applauds AB 2097 and says that this bill could never see the light of day in Florida. He wrote that, “Fair and open elections in the twenty first century requires more, not less, transparency.”

California needs to take a leadership role to bring about trustworthy election systems. Please move the bill along today so that it can be heard on the Assembly floor.

Sincerely,

Alan Dechert

Cc: Assembly Member Jackie Goldberg  
Secretary of State Bruce McPherson