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Honorable Judy Chu
Chair, Assembly Appropriations Committee
State Capitol, Room 2203
Sacramento, CA 95814

Assemblymember Chu:

After reviewing AB 2097 (Goldberg) which would prohibit the Secretary of State, as of June 30, 2007, from approving a voting system for use in an election until its operation and specifications are publicly disclosed, I must take an opposed position. The provisions of AB 2097 would create substantial costs, in the millions of dollars, for the Secretary of State and the State General Fund, in order to maintain the security, accuracy, and accessibility of voting systems used in California.

Certification Restrictions - AB 2097 would prohibit the Secretary of State from approving an application for voting system certification in California unless the vendor agreed to specified conditions, and would require the Secretary of State to review voting systems certified prior to June 30, 2007, the effective date of the bill, to determine if the vendors of those systems meet the bill's requirements for open source code and public inspection and testing. This would require the Secretary of State to re-examine and recertify currently certified systems, an extremely labor intensive process. **This process would require one additional staff position.**

Voter's Inspection and Testing Rights - AB 2097 would require vendors to grant individual voters the right to inspect and test the voting system, to refrain from asserting copyright or trade secret rights and to provide to the public all voting system source code, detailed software building instructions and hardware specifications and drawings. The bill would give an unlimited number of individual voters the right to inspect and test voting systems

Given the five vendors, each with multiple voting systems, that are currently certified in California, and assuming a minimal process, it would take at least one additional position to manage this public inspection and testing process alone. The Secretary of State would have the responsibility to manage a potentially massive public involvement process that sets no boundaries on public input and provides no funding for that process. **One additional staff position would be required and more may be needed.**

Testing a voting system involves considerable expenses: Defining and programming test elections; printing and proofing test ballots; staff time to process/monitor/verify the casting of votes; and generation/analysis of vote results.

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The bill provides that this must be done almost "on demand" for any member of the public who so requests. It does not specify who will pay those costs. It also states that the Secretary of State shall require minimal notice, implying that it is the Secretary of State's responsibility to set-up/stage such tests, and that they should be done in such a manner as to "not burden the vendor with significant costs beyond making the system available", thus requiring that the Secretary of State should bear those additional costs.

Additionally, unlike most "open source" environments, very few persons have access to the equipment needed for testing election software. Presumably, this bill would require that the state provide such equipment to persons interested in testing the software. Monitoring the equipment, tracking its use, and maintaining its security would take **one additional staff position**.

Web Site - This bill would require the Secretary of State to establish and maintain a complex web site that would both provide information about voting systems certified and pending certification for downloading by the public, to collect input from the public and report to the public voting system findings, problems and problem resolution, as well as comments from the public, vendors and the Secretary of State, and to publish standards used by the Secretary of State to evaluate all voting systems, including test plans and specific test cases. The bill would require all of this without providing funding for this purpose.

Under AB 2097, there are substantial amounts of data about voting systems that must be provided and kept up to date. There must be significant staff time devoted to collecting and reviewing the public data, evaluating it for accuracy and establishing priorities for the issues identified in the type of "bug tracking system" proposed by the author. The bill would require all of this without providing funding for this purpose. **Establishing and maintaining this website would require at least one additional staff person with a good understanding of voting systems and the related processes to provide such appraisal.**

Federal Testing - Under AB 2097, if a vendor has not complied with the bill's requirements to provide open source code, public testing, detailed building instructions for software, hardware specifications, or has refused to waive its copyright or trade secret rights, then the Secretary of State would be required to irrevocably decertify the system and could **replace** it with a system that has not been subjected to the federal testing and certification process. By exempting the replacement system from federal testing, this bill would create an extraordinary vulnerability for elections in California. The certification process in California has always relied on independent testing authorities at the federal level as the first critical step to test proposed voting systems, or modifications to those voting systems. The Help America Vote Act (HAVA) created the Election Assistance Commission and vested it with the responsibility to develop standards for voting equipment. These standards go beyond the issues of security and accuracy that the author wishes to address through open source. The standards include requirements for safety, reliability, usability, accessibility, etc. This bill would permit the replacement system to

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completely by-pass this process. Thus, the burden would fall directly on the state to conduct all of the tests the federal Independent Testing Authorities (ITAs) now conduct, in addition to our own state testing, to ensure the security, reliability, and accuracy of the systems. **This testing process for replacement systems would require six additional staff positions with considerable technical skills and experience.**

Replacement Costs - The state anticipates spending nearly \$400 million (\$200 million from Proposition 41 funds, and nearly \$200 million from HAVA) to modernize and replace voting equipment in the state. In a worst-case scenario, in which all voting equipment was decertified and had to be replaced because vendors were unable or unwilling to meet the requirements of the bill, it is very likely that a similar cost or higher would be required to fund the new equipment and software.

Below is a sampling of what it previously cost to replace the systems in a few counties:

| <u>County</u> | <u>Total System Cost</u> |
|---------------|--------------------------|
| Contra Costa | \$7,201,853.00 |
| Monterey | \$2,838,135.00 |
| Sacramento | \$10,970,897.00 |
| Tulare | \$2,331,047.00 |
| Santa Clara | \$18,904,509.00 |
| Ventura | \$6,163,133.00 |

Development & Maintenance Costs - This bill would require the Secretary of State to develop and administer a process to create new voting systems. Once developed, and assuming that the state would own the systems (rather than the recipient of the no bid contract proposed by this bill), the Secretary of State would be required to provide ongoing system maintenance, security, and support to all counties using the system. **This would require the creation of a new function within the Office of the Secretary of State, and would include:**

- **Several new staff positions within the office (software engineers, database managers, security experts, testing experts, certification professionals, program managers, and others);**
- **Field staff to provide on-site technical support to counties using the replacement system.**

Alternatively, if a contract was let to a third party (presumably the University of California, a contract that would cost in excess of \$1. million) the bill does not address the ongoing costs that party would incur for providing ongoing code maintenance and development (business process

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changes, user enhancements, bug fixes and security fixes) and testing. These required activities would be the same, regardless of whether they were done by a third-party or the Secretary of State. If done by a third-party, the Secretary of State would still have to provide project management and oversight. These costs would exceed \$1 million per year.

Additionally, even the Open Voting Consortium (of which AB 2097's sponsor, Alan Dechert, is a key member) proposed, on September 21, 2005, that this type of open source voting system structure would cost \$1.4 million. That proposal did not include substantial ongoing general fund costs, and we believe it was unrealistic based on the above-articulated reasons.

I fully support transparency and security in voting system certification; however, AB 2097 does not further these purposes.

If you or your staff have any further questions please contact me or my Assistant Secretary of State for Legislative and Constituent Affairs, Theresa Taylor Carroll at (916) 653-6774.

Sincerely,



BRUCE McPHERSON
Secretary of State

cc: Members, Assembly Appropriations Committee
Assemblywoman Jackie Goldberg