

Dear Secretary Bowen:

Below are my public comments on the Draft for Public Comment published on March 22, 2007 concerning the review of voting systems currently certified by the State of California.

My comments are confined to the Section IV which reads:

Each certified voting system must be designed, configured and accompanied by sufficient documentation and training materials so that, in the absence of extraordinary circumstances, elections officials and poll workers can independently and without assistance or intervention by employees or contractors of an election system vendor, carry out all operations necessary to open the polls, set up and calibrate voting system equipment, instruct and assist voters in registering votes and casting ballots, respond to voting system error messages or temporary power failures, close the polls, print end-of-day vote totals, take down voting system equipment, transfer polling place results to central tally computers and tally final results.

The Secretary of State will conduct a review of each voting system's documentation and records regarding the use of the voting system by elections officials and poll workers in California elections. The Secretary of State may make written findings, based on the results of the review, that a voting system does not reasonably permit such independent operation. Based on such findings, the Secretary of State may immediately initiate the process to withdraw certification from the voting system.

Comment 1

A very significant aspect of usability is missing here; the ability of election officials to determine if a particular election system is or is not certified for use in the state. It has happened in California that a vendor has sold, installed, and misrepresented an system to election officials which was not certified for use. Demonstrating whether the system installed in Alameda County was or was not certified was difficult. This misrepresentation and the litigation which followed could have been obviated had the Alameda Election officials been able to confirm or deny the vendor claims that the system sold to them was or was not the same as the system certified by the state.

I would recommend that a physical configuration audit of the software and hardware components of each certified system be created and published by the state. So that the following system requirement can be met:

Each certified voting system will be accompanied by sufficient documentation and training materials so that, in the absence of extraordinary circumstances, elections officials can independently and without assistance or intervention by employees or contractors of an election system vendor, determine if a particular voting system or element thereof used within the jurisdiction of the election official does or does not belong to the certified voting system.

Such identification methods and identification data shall not rely on the publication, use or abridgement of intellectual property protected by any combination of the following: trade secrets, copyrights, or patents.

Comment 2

If Comment 1 is incorporated into the final criteria, then I would urge to Secretary to publish in a public manner both the methods for such system identification and the data used as the baseline in any such system identification.

Comment 3

If Comment 1 is incorporated into the final criteria, then I would urge the Secretary to submit any system identification information created or gathered by the state to the National Software Reference Library (NSRL) sponsored by the National Institute of Standards and Technology (NIST).

Comment 4

I am uncertain whether this comment is outside of the scope of this review, is a new section (e.g. section V), is a continuation of section IV, is a continuation of paragraph I(2)(b), or is a later implementation detail of paragraph I(2)(b). I would urge the Secretary to review the source code and election systems software escrowed by the State to confirm the source code held in escrow builds the election software held in escrow and to confirm the election software held in escrow is the same as the software of the certified systems used in the state. There is little point in performing a static source code review if there is no evidence the source code under review is or is not the source code of the software which executes on a certified system used to administer an election in the state. I would therefore suggest the following additional criterion:

Each certified voting system will be accompanied by sufficient documentation, tools, software, and source code such that, in the absence of extraordinary circumstances, the office of the Secretary of State can independently and without assistance or intervention by employees or contractors of an election system vendor, determine the source code held in escrow by the State of California does or does not belong to the certified voting system.