



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 IMPERIAL HWY. – P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024 (562) 462-2716

CONNOR B. McCORMACK
Registrar-Recorder/County Clerk

January 25, 2006

TO: EACH SUPERVISOR

FROM: Conny B. McCormack, Registrar-Recorder/County Clerk

STATUS UPDATE ON VOTING SYSTEM ISSUE – COUNTY IMPACT

The January 1, 2006 deadline for compliance with the federal Help America Vote Act (HAVA) has now passed. However, the California Secretary of State (SOS) has not yet certified the voting equipment counties need to be able to use and/or purchase in order to be HAVA-compliant for the upcoming June 6, 2006 Primary Election. Last week an informational hearing on this topic was held by the State Senate Committee on Elections, Reapportionment and Constitutional Amendments (ER&CA). The ER&CA Committee requested testimony from the SOS and seven registrars. Attached is a copy of my testimony. It provides an overview of the current dire situation followed by a description of the path the County has chosen to take, which is to phase-in new voting equipment in multiple stages, and the status of our transition.

As you know your Board authorized release of an RFP in April 2005 to acquire an upgrade of the current InkaVote system to HAVA compliance (i.e. InkaVote Plus precinct-based system). Our Department worked with County Counsel and outside counsel and completed negotiations on a contract with the selected vendor. However, State law requires all voting systems to be certified by the Secretary of State (SOS) prior to their purchase and use. The contract with the vendor is ready to bring before your Board upon completion of the state certification process.

Federal testing and qualification of the InkaVote Plus system was completed in November 2005. Because the ballot format for the statewide Primary election in California is unique, i.e. the modified closed Primary format, the InkaVote Plus vendor was also required to submit the software needed to accommodate this format for additional federal qualification testing. That federal testing was recently successfully concluded. Because the policy of the SOS is to await completion of federal testing prior to commencing state testing (i.e. sequential rather than simultaneous) SOS testing of the InkaVote Plus system was delayed. The SOS testing did commence this week and it is my understanding that the testing is going well.

I will keep you apprised of the further progress and timeframe of the SOS testing of the InkaVote Plus system and status of state certification proceedings as soon as our office is informed. At that time a more complete report of the installation process and timeline will be provided. If you have additional questions, please call me.

Attachments

c: CAO
County Counsel
Secretary of State



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 IMPERIAL HWY. – P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024 (562) 462-2716

CONNIE B. McCORMACK
Registrar-Recorder/County Clerk

January 18, 2006

The Honorable Debra Bowen, Chair
Senate Committee on Elections, Reapportionment
And Constitutional Amendments
State Capitol, Room 2203
Sacramento, CA 95814

Dear Senator Bowen,

Thank you for the invitation extended to me and several other registrars to present testimony at today's informational hearing of the Senate Committee on Elections, Reapportionment and Constitutional Amendments (ER&CA) with regard to the status of voting systems for the 2006 elections. A copy of my testimony is attached. If you or any member, or staff, of the ER&CA Committee have follow-up questions following the hearing, I can be reached at (562) 462-2716.

Sincerely,

Conny B. McCormack
Registrar-Recorder/County Clerk

Attachment

C: ER&CA Committee Members
Senator Jim Battin, Vice Chair
Senator Joe Dunn
Senator Kevin Murray
Senator Charles Poochigian
Senator Gloria Romero

HEARING ON THE STATUS OF VOTING SYSTEMS FOR THE 2006 ELECTIONS

STATE SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT and CONSTITUTIONAL AMENDMENTS – January 18, 2006

Testimony of Conny B. McCormack,
Los Angeles County Registrar-Recorder/County Clerk

Thank you for the opportunity to appear before the Senate Committee on Elections, Reapportionment and Constitutional Amendments (ER&CA) to offer testimony and to submit written materials with regard to the impact to Los Angeles County, and other counties statewide, of the ongoing situation in California involving the dearth of state certified voting systems that meet both Federal and State legal requirements that became effective on January 1, 2006. This hearing offers the welcome opportunity to present fact-based information to your Committee to counter a number of allegations, misrepresentations and emotion-laden rhetoric that has been swirling for quite some time regarding both electronic and optical scan paper-based voting systems. My testimony will encompass an overview of the current voting system situation that has evolved due to a number of complex factors. Following that background information, I will describe the path that Los Angeles County has chosen to take, which is to phase-in new voting equipment in multiple stages, and also provide a status update of where we are in that transition.

OVERVIEW

I would like to begin by clearly stating that during my 24 years of experience as a registrar of voters my highest priority has always been, and will continue to be, utilizing only election equipment that is accurate, secure and reliable. I am sure that this key priority is shared by all election officials, members of County Boards of Supervisors who authorize the purchase of voting equipment, and members of the U.S. Congress and State Legislature. All of you were elected on voting equipment that met those criteria when tabulating the ballots. Elected officials also want and should be able to expect the release of speedy unofficial election results on election night.

In November 2005, a mere two months ago, a statewide election was held using state certified voting equipment that meets these criteria. At that election, over seven million ballots were cast on a variety of electronic and optical scan voting equipment without challenge or criticism directed at the administrative aspects of the election or the ballot tabulation equipment and processes in use.

What has changed is the addition of a new legal requirement – accessibility – to augment the previous requirements of accuracy, security and reliability of voting systems. Federal law, the Help America Act of 2002 (HAVA), mandates that voting systems used in every voting precinct in which federal candidates appear after January 1, 2006 must be capable of allowing blind and disabled voters the opportunity to cast their ballots without assistance and voters must be alerted to “overvotes”, i.e. if they inadvertently make a mistake by voting for more candidates in a contest than is allowable. On the day HAVA was signed into law

(October 29, 2002) there were then, and there continues to be now, a number of direct record electronic (DRE) voting systems that meet this criteria. Additionally, at the time of HAVA's passage several such DRE systems were certified for purchase and use in California and nationwide.

In other words, HAVA did not mandate the use of systems or components that were not in existence prior to passage of the federal law. California counties were able to select HAVA-compliant equipment from among several vendors' products and a number of California counties did so. While a few counties experienced initial problems with their first roll-out of new, electronic voting equipment, most counties – including Riverside, San Joaquin, Kern, Shasta, Napa, Santa Clara, San Bernardino, Los Angeles and others – reported positive experiences both in terms of equipment functioning and voter satisfaction. Several counties, including Riverside and Los Angeles, have been using DREs successfully for over five years since introducing this equipment to enthusiastic voters in 2000. Notably, even those counties where start-up problems occurred in the March 2004 Primary Election, the parallel monitoring report issued by the Secretary of State (SOS) in April 2004 clearly stated that the electronic voting equipment that was used during that election worked with 100% accuracy. Yet later that same month the former SOS chose to de-certify all DRE voting systems in use in California.

KEY ISSUES IN CURRENT SITUATION

The transition to DRE equipment without a paper audit trail that voters could examine raised anxiety among a number of vocal individuals (although that same DRE equipment does contain an internal paper record of the votes cast which is sufficient for compliance with Federal law and for recounts). In response, the State Legislature passed a law in 2004 requiring DRE equipment to be augmented with a printer to produce a contemporaneous voter-verified paper audit trail (VVPAT) effective January 1, 2006. In contrast to HAVA, this state law passed at a time when VVPAT printers were only in the conceptual, or at best prototype, stage and were not in actual use anywhere in the United States. Hindsight now reveals that the timeline for such equipment to be developed and then sequentially tested by Federal and State authorities has exceeded the legal deadline mandated by the passage of California's VVPAT law.

Even though the January 1, 2006 deadline has passed, there is still no DRE equipment that has been certified by the SOS for use in the upcoming June 6, 2006 Primary Election (or for use in the even more imminent April 11, 2006 Special Congressional Election in San Diego County). While it has become fashionable to place the blame for this untenable situation solely upon the voting equipment vendors, it is vital for your Committee and the general public to be fully apprised of the facts. These include:

- DRE voting equipment from multiple vendors, including Sequoia, Diebold, Election Systems and Software, Hart Intercivic and others, is and has been HAVA compliant in the configurations used in recent California elections as well as in many other States. Additionally, newer model DREs, that are now equipped with printers to comply with the State's additional VVPAT requirement, were successfully deployed

in several states during 2005 elections – these include the Sequoia Edge II and the Diebold TSX models. Several more states have recently certified these DRE systems equipped with VVPAT. Consequently, numerous states and counties nationwide have contracted to purchase these equipment models for use in the 2006 elections.

- In California to date only one DRE with VVPAT, the Diebold TSX unit, has successfully passed both Federal testing and recently established SOS requirements for voting system certification. The SOS requirements include stringent high volume testing as well as other mandates (the SOS website at www.ss.ca.gov includes information on the new “Ten Points” requirements the SOS adopted in October 2005). The SOS website also includes documentation of Diebold’s success in passing the high volume testing on August 28, 2005 – under the established parameters of less than 1% error. This successful testing led SOS technical staff to recommend the Diebold TSX with VVPAT for state certification in November 2005.

Yet despite passing all tests, the Diebold TSX equipment with VVPAT has not been certified by the SOS for use by California counties. Diebold’s successful passage of the latest Federal and State testing requirements, coupled with the short timeframe remaining for counties to prepare for the June 6, 2006 Primary Election, led 15 California election officials to write the SOS on November 17, 2005 urging state certification of the Diebold election equipment (Attachment A). A recent letter from Diebold Election Systems to the Chair of your Committee also provides a detailed explanation of the success of the TSX system with VVPAT in passing all Federal and State testing (Attachment B).

- While initially DREs without VVPAT were the target of electronic voting critics, more recently optically scanned paper ballot systems have also become the subject of criticism by some voter activists. The fact is that these paper ballot optical scan systems have been frequently and successfully used in California and nationwide for over a decade. With regard to the Diebold model optical scan equipment, allegations have been made decrying the vulnerability of a part of this system to nefarious and illegal “hacking” either prior to deploying the equipment from election officials’ warehouses or by pollworkers or others at the voting precincts. Such threat allegations are purely theoretical with no evidence of even a single occurrence anywhere in the United States. In response, in December 2005 the SOS first scheduled, and then inexplicably canceled, a “hack” test of this time-proven equipment.

That test was set to occur under real world conditions that many persons believe would have dispelled the viability of hacking into the memory card of this paper ballot voting system. Instead, on the eve of the scheduled test the SOS opted to send the memory card component for additional Federal testing thereby further delaying the certification process of all Diebold equipment (the SOS has refused the vendor and multiple counties’ requests to separate the optical scan from the Diebold DRE equipment in order to begin the installation of the HAVA and state law-compliant Diebold TSX with VVPAT).

The SOS decision to send the memory card for Federal testing was conveyed to Diebold in a December 20, 2005 letter containing the inflammatory and unsubstantiated statement that this action was taken due to “unresolved serious security concerns.” Yet the SOS was well aware that this same Diebold optical scan equipment, that has been successfully used for many years in numerous California counties, was to be used again less than a month later for the January 11, 2006 election to fill two vacant seats on the San Diego City Council. As in the past, that election was administered successfully last week using the Diebold paper ballot optical scan equipment without security incident.

LOS ANGELES COUNTY’S DIRECTION

Following the de-certification of the Votomatic punch card system by the Secretary of State in 2001 (that system had been used in our county for 33 years), Los Angeles County was legally required to install a replacement voting system no later than the March 2004 Primary Election. My recommended course of action, which the Los Angeles County Board of Supervisors adopted, was to phase-in new voting technology in multiple stages. A complete description of the rationale for the phased-in approach was documented in numerous memos sent to the Board of Supervisors over the past four years (one memo is found at Attachment C; all memos are available at www.lavote.net).

The multiple phases included transitioning to an optical scan voting system, InkaVote, that was deployed for the first time for use in our county’s November 2003 Uniform District Elections. The InkaVote system has been successfully used to tabulate over six million ballots in all subsequent elections conducted by our county. Given the environment of uncertainty and ever-changing regulations at the Federal and State levels, in 2004 I recommended an upgrade to bring the InkaVote system to HAVA compliance as the next phase in new system transition. That InkaVote Plus system will augment the current system by adding precinct-based equipment that enables blind and disabled voters to use an audio headset to produce an optical scan paper ballot that can be read, along with all ballots cast in each precinct, on a precinct tabulator. In April 2005 the Los Angeles County Board of Supervisors unanimously voted to release an RFP to acquire the InkaVote Plus system to upgrade the current system to HAVA-compliance.

The InkaVote Plus system recently passed all Federal testing and to date has been certified for use to meet HAVA requirements by the SOS of the mid-Western state of Missouri. Recently the second largest county in Missouri, Jackson County encompassing suburban Kansas City, purchased the InkaVote Plus system and is currently installing it for HAVA compliance. Los Angeles County has completed contract negotiations with the InkaVote Plus vendor. The contract is ready for submission to our Board of Supervisors upon system certification by the SOS. The SOS has scheduled testing of the InkaVote Plus system to commence on January 23, 2006. It is our hope and expectation that this system will be certified by the SOS

expeditiously in order for Los Angeles County to begin the roll-out of the InkaVote Plus system for the June 6, 2006 Primary Election.

Additionally, a key component of Los Angeles County's voting system for the past five years has been the option for any of our county's four million registered voters to cast a ballot using DRE voting equipment during the early voting period two weeks prior to every major election. Beginning in November 2000 and continuing through the November 2005 statewide election, hundreds of thousands of Los Angeles County voters have chosen the convenience of voting prior to election day using Diebold electronic voting equipment at their choice of up to 21 voting locations countywide. Feedback from voter surveys regarding the use of this DRE equipment has always been overwhelmingly positive. Many early voters choose this option when they learn that they will not be able to cast their votes on election day for any number of reasons. Additionally, blind and disabled voters, as well as voters whose native language is not English, have flocked to the DRE early voting locations as the electronic ballot provides voters with a choice of seven languages on the DRE.

In Los Angeles County our slogan has been "3 choices, no excuses" as every voter has the option of either voting prior to election day on DRE equipment at his/her choice among multiple locations, receiving an absentee InkaVote ballot by mail or going to his/her neighborhood polling place on election day to vote on the InkaVote system. However, due to the lack of certified DRE voting systems in California, the option for Los Angeles County's voters to continue to cast a ballot using DRE equipment during the early voting period is now in jeopardy. It goes without saying that should this occur a significant number of voters will be angry by this unnecessary reduction in a service tens of thousands of our county's voters have come to rely upon for each major election over the past five years.

CONCLUSION

For over a year registrars have been vocal in expressing alarm regarding the lack of certified voting systems in California to meet the January 1, 2006 Federal and State new legal requirements. The California Association of Clerks and Election Officials (CACEO), of which I am President, submitted a comprehensive report to the Joint Legislative Audit Committee (JLAC) on February 3, 2005 describing the untenable situation that counties are in. That report warned: "This is the current situation even though only 11 months remain to issue proposals for new voting equipment, review bids, award a contract, manufacture equipment, install and test the new system, and educate/train staff, poll workers and voters on use of the new system. Rushing any of these key steps has led to highly publicized failures in new voting system installations both within California and in other states." This message was strongly conveyed by CACEO officers during our first meeting with the new Secretary of State shortly after he took office in March 2005.

The January 1st legal deadline has now passed and the June 6, 2006 Primary Election looms in front of all counties. Candidate filing has already begun and ordering

election supplies and other preparations are in full operation. Yet many counties do not know what voting system they will be using. Counties are in the unenviable position of having all of the responsibility to conduct imminent 2006 elections but no authority to purchase legally-compliant voting systems to do so.

While the causes of the current untenable situation have been cited, the consequences of this environment of ever-changing laws and regulations has destabilized the election administration process. Court action(s) is considered likely. Election dates are set and the clock is ticking loudly....

Thank you for this opportunity to speak to your Committee today.

DIEBOLD CUSTOMERS IN CALIFORNIA

November 17, 2005

The Honorable Bruce McPherson
California Secretary of State
1500 11th Street
Sacramento, CA 95814

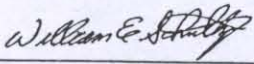
Dear Secretary McPherson:

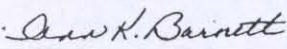
We, the undersigned election officials, based on results of federal qualification and rigorous examination and testing by your office, strongly urge you to certify the Diebold Election System voting equipment that is scheduled for public hearing before your Voting Systems Panel (VSP) on November 21, 2005.


Many counties have been using Diebold election equipment for years to count the ballots cast by voters accurately and securely. With new federal and state election equipment requirements becoming effective on January 1, 2006, all California counties must acquire new equipment to meet those legal requirements. It is our understanding that the above-referenced Diebold equipment not only meets those requirements but has passed the most extensive pre-certification testing ever conducted by your office, including the recent requirements established by your office for volume testing. Moreover, as of this date, it is our understanding that Diebold holds the unique position as the only vendor to have all of the products in its certification application federally qualified to the most current federal standards. And, finally, the Diebold equipment under consideration appears to meet all the conditions established in your October 2005 Certification Requirements document.

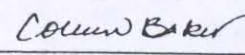
Given all the above, we support your staff's recommendation for certification and urge that you act as quickly as possible following the public hearing to ensure our ability to comply with the looming federal and state deadline.

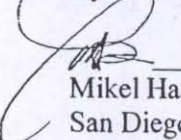
Sincerely,

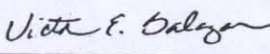

William E. Schultz
El Dorado County

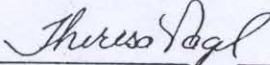

Ann K. Barnett
Kern County

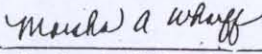

Michael Smith
Marin County

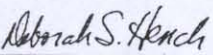

Colleen Baker
Siskiyou County

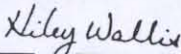

Mikel Haas
San Diego County

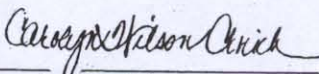

Victor E. Salazar
Fresno County

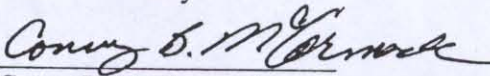

Theresa Nagel
Lassen County

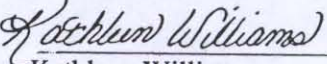

Marsha A. Wharff
Mendocino County

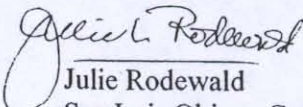

Deborah Hench
San Joaquin County

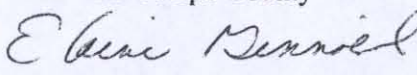

Hiley R. Wallis, Elec. Div. Mgr.
Tulare County


Carolyn Crnich
Humboldt County


Conny B. McCormack
Los Angeles County


Kathleen Williams
Plumas County


Julie Rodewald
San Luis Obispo County


Elaine Bennett
Alameda County



Diebold Election Systems, Inc.
1253 Allen Station Parkway
Allen, Texas 75002
(469) 675-8990 (office)
(214) 383-1596 (fax)

January 17, 2006

The Honorable Debra Bowen
California State Senate
State Capitol, Room 4040
Sacramento, California 95814

Dear Senator Bowen:

On behalf of Diebold Election Systems, I would like to respond to comments you recently offered in several letters to the editor in various newspapers.

San Joaquin:

- San Joaquin County purchased Diebold Election Systems' AccuVote-TSX touchscreen system in 2003. The voting system was certified by the California Secretary of State prior to its use in the March 2004 California Primary Election. The system worked well and received positive comments from voters. As San Joaquin County Registrar of Voters Debby Hensch testified before the April 21, 2004 California Voting Systems and Procedures Panel, "*Our TSX units worked without problem.*"
- During the March 2004 Primary Election there were issues with the batteries in some of the Precinct Control Module 500 (PCM) that generated voter access cards for the AccuVote-TSX units in San Diego and Alameda Counties (San Joaquin and several other AccuVote-TSX counties did not use the PCM 500 to generate voter access cards). The PCM 500 is a separate component from the AccuVote-TSX. While all components of a voting system must operate together during an election, the AccuVote-TSX units functioned well and the battery issue with the PCM 500 units has now been fully resolved. The entire AccuVote-TSX system with all components has passed all Federal testing and received Federal qualification.

San Diego:

- For the March 2004 Primary Election, San Diego County utilized the AccuVote-TSX for the first time. According to the San Diego Grand Jury (Report 2003/4-09, filed May 27, 2004), "*There were nearly 10,000 touch-screen machines [AccuVote-TSX] distributed to 1,611 polling places... There were no reported lost or spoiled votes caused by use of the touch-screens. They worked virtually flawlessly.*"

High volume state certification testing:

- On July 20, 2005 Diebold Election Systems participated in the Secretary of State's first high volume test of an electronic voting system with a voter verified paper audit trail (VVPAT). In that test 96 AccuVote-TSX voting machines containing the AccuView Printer Module application (that produces the VVPAT) were tested and 10,720 votes were recorded all with documented 100% accuracy. There were 19 screen freezes noted. However, not a single ballot or vote was lost (if a screen froze during actual voting, that machine was shut down and the voter was directed to another machine). Additionally, during the July 20 test, 11 paper jams occurred on the VVPAT printers out of the 10,720 ballots cast. There were no Pass/Fail criteria established by the Secretary of State prior to conducting this first volume test.
- Diebold Election Systems identified and corrected the issues regarding the paper jams and screen freezes, prior to the Secretary of State conducting a follow-up volume test of this equipment in September 2005. To resolve the printer jam issue, Diebold Election Systems adjusted the motor torque, added a Mylar paper guide, and added a small rubber tab to help keep the paper canister firmly in place. To resolve the screen freezes, we fixed an issue in the software application. In both cases, hundreds of thousands of ballots were tested in order to recreate the problems experienced in the July 20th test. After these modifications, we submitted the system revisions for federal qualification and passed.
- For the second high volume test in September 2005, the Secretary of State established testing criteria that stated:

The volume test shall be deemed successful if no more than 1% of the machines experience a failure that affects the record of the vote on the TSX or on the paper trail.

As stated in the testing report by the Secretary of State (which is posted on their website), during the second test over 11,000 votes were successfully cast on 100 voting machines within the parameters of the stringent pass/fail criteria noted above as established by the Secretary of State. Due to this successful testing, the AccuVote-TSX with AccuView Printer Module was subsequently recommended for state certification by the Secretary of State's Election staff.

California state certification testing:

- To date Diebold Election Systems is the only voting system vendor to have participated in and successfully passed the Secretary of State's recently established high volume testing requirement for state certification in California. No other voting system that meets ADA requirements has undergone this rigorous test or been state certified.

- In addition to the above-mentioned high volume testing as part of state certification, Diebold Election Systems is the only vendor in California to have met all of the other criteria outlined in the Secretary of State's ten point certification plan announced in October 2005 as a new requirement for voting systems to fulfill. These include: receipt of Federal qualification (NASED number) prior to being eligible for state certification; providing full documentation of the voting system; fully developed and Secretary of State approved Use Procedures; establishment of a California-based user group to review the voting system; deposit of system source code in an approved escrow facility; deposit a copy of the system source code and binary executables with the Secretary of State; and providing system hardware, firmware and software of the voting system to the Secretary of State.

Other testing and evaluation by the Secretary of State:

- In March and April 2004, the source code of Diebold Elections Systems' AccuVote-TSX was independently reviewed at the direction of California Secretary of State by Systest, one of the three Independent Testing Authority (ITA) certified companies. The report was never publicly released but found "None of the potential problems [in the source code] listed are such to warrant immediate decertifying."
- An external audit commissioned by the California Secretary of State (R&G Associates, April 16, 2004 "State Certification and Federal Qualification of County Voting Systems Components") stated that 12 Sequoia counties "had election management software that is not federally qualified and is state certified" and 8 ES&S counties "operated election management software that is not federally qualified or state certified."
- During every parallel monitoring review performed by the Secretary of State since the inception of the program, including the March 2004 Primary Election when AccuVote-TSX touch screens were used, Diebold Election Systems' touchscreen voting systems have successfully passed and have proven to be 100% accurate.

AccuVote-TSX:

- Nationwide, over 19,000 AccuVote-TSX touch screens equipped with AccuView Printer Module units (VVPAT) were successfully used for the first time in elections held in November 2005 in counties in Ohio and Utah. Over the past few weeks the AccuVote-TSX system with VVPAT printers were selected for use beginning in 2006 elections in the City of St. Louis, Kansas City, all counties in the State of Mississippi, and most counties in Illinois, Arizona and Iowa.

- The AccuVote-TSX touch screen units have the ability to display ballots in more than eight languages, including character-based languages. Additionally, blind, visually impaired and physically challenged voters are able to cast ballots unassisted and in complete privacy on this system.
- Finally, touch screen voting systems are dramatically more accurate than the punch card and paper ballot systems that preceded them. In a report released last year by the CalTech/MIT Voting Technology Project, researchers reported that improvements to voting machines and election administration saved over one million votes that otherwise would have gone uncounted in the 2004 elections.

Diebold Election Systems provides high-quality voting technology to jurisdictions of all sizes, along with comprehensive service and support capability. We are committed to the accuracy, security, integrity and accessibility of all elections. Furthermore, we believe that the integrity of the election process is of paramount importance and hold this as the primary requirement in all the things we do.

We have acknowledged publicly the difficulties we have experienced in California and have modified and further improved our products. Over the last 15 months we have enhanced our products, instituted a comprehensive compliance program and have fulfilled or are participating in every evaluation and test requirement of both the federal government and the California Secretary of State's Office. We are committed to providing excellent service for the voters in California counties and nationwide. If you have further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Byrd". The signature is fluid and cursive, with a large, sweeping initial "D" and "B".

Dave Byrd
President
Diebold Election Systems, Inc.

CC: California Diebold User Group



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 IMPERIAL HWY. – P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024/ (562) 462-2716

CONNOR B. McCORMACK
REGISTRAR-RECORDER/COUNTY CLERK

February 17, 2004

TO: Supervisor Don Knabe, Chair
Supervisor Gloria Molina
Supervisor Yvonne Brathwaite Burke
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

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UPDATE: NEW VOTING SYSTEM(S) IMPLEMENTATION

Overview

The recent announcement by Secretary of State (SOS) Kevin Shelley mandating an as yet unspecified voter-verified paper audit trail (VVPAT) as a required component of all electronic touchscreen voting systems in California as of 2005 impacts the County's voting system transition plans. This memo provides background information on your Board's action in August 2002 regarding acquiring and implementing new voting system technology in phases to replace the punch card voting system and the timeline that was subsequently established to meet that goal. That timeline contemplated release of a request for proposal (RFP) no later than February 2004 in order to fully convert to an electronic voting system by the 2006 Primary Election.

We recommend continuation of your decision to transition to new voting system technology in multiple phases. However, because there are no electronic voting systems as yet developed, federally tested or state certified that produce a VVPAT, writing system specifications for release of an RFP for acquisition of a fully compliant electronic voting system countywide is not feasible or advisable at this time. We recommend expanding the approach to new voting system(s) implementation by adding another phase as described herein to assure compliance with several new federal Help America Vote Act (HAVA) requirements that become effective in 2006.

The established plan to utilize the County's InkaVote optical scan paper-based voting system to conduct the March and November 2004 elections is not

impacted. As described in the Registrar's December 30, 2003 memo to your Board, InkaVote was successfully launched at the November 4, 2003 Election. The recommended approach at this time is to acquire enhancements to the InkaVote system that would bring it into HAVA compliance by January 1, 2006.

Background

1. Why implement new voting systems?

Los Angeles and eight other California counties are legally required to discontinue the use of punch card voting systems and replace such systems by the March 2004 Primary Election. This requirement stems from the September 2001 action by then California Secretary of State Bill Jones de-certifying further use of the punch card system and a March 2002 ruling by the Los Angeles federal district court that set the March 2004 deadline for implementing a replacement system.

2. What direction has your Board given to implement new system(s)?

In response to the punch card system de-certification, at the August 22, 2002 meeting your Board made the decision to implement new voting systems in multiple phases. This approach was chosen due to several factors including 1) insufficient time and funding to purchase and implement an electronic touchscreen voting system countywide by the March 2004 election (at an estimated cost of \$100+ million); 2) the rapidly evolving state of electronic voting technology; 3) the desire to learn from the experiences of other counties converting to electronic systems, and 4) the unique challenges of new system implementation in a County with four million voters, 5,000 voting precincts and the requirement to translate the ballot into seven languages. Consequently, the phased-in approach called for purchase and installation of an optical scan paper-based voting system, InkaVote, for use during an interim two year period (November 2003-November 2005), followed by countywide electronic voting system implementation by 2006. Thereafter, InkaVote would continue to be used for absentee voting by mail. Acquiring the InkaVote system cost approximately \$3 million.

In recognition that planning and successfully implementing two new voting systems in a two year period would require cooperation and assistance from multiple county departments, in March 2003 a "2 in 2" Task Force was established as a County consulting team to work with the Registrar-Recorder/County Clerk (RR/CC) to achieve this goal. Task Force members include the CAO, CIO, County Counsel, ISD Interim Director, DHR Director, DPSS Director and the Los Angeles City Clerk.

3. How has the Secretary of State's VVPAT mandate impacted the County's electronic voting system implementation plans?

Following the SOS announcement of the VVPAT requirement on November 21, 2003, the County's "2-in-2" Task Force (described above) met in December 2003 to discuss the ramifications and to develop recommendations to present to your Board. The unanimous consensus of the Task Force was that release of an RFP for countywide acquisition of electronic voting equipment is not a prudent course at this time due to the following obstacles:

- No technology currently exists to satisfy the Secretary's mandate to produce individual voter transcripts as contemplated by the VVPAT directive.
- The new requirement for a VVPAT sounds like a minor addition ("print a receipt") but in reality adds a host of complexities. No governmental jurisdiction has attempted this kind of system installation to date. Such equipment is still theoretical, untested and lacks required federal and state certification.
- The SOS mandate for VVPAT caused the City Clerk of Los Angeles to withdraw that City's intention to partner with the County in the financial and logistical acquisition and implementation of an electronic voting system until clarity of standards emerges. The City plans to use InkaVote to conduct municipal elections for the foreseeable future. The goal remains for the City and County to use the same voting system to eliminate voter and pollworker confusion.

4. What are the recommendations for revision to the timeline of phasing-in new system(s) implementation?

The "2 in 2" Task Force is recommending the following revisions to the County's approach to new voting system acquisition:

Phase I included the goal of conducting touchscreen voting at multiple locations in conjunction with the "early" voting period prior to each major countywide election. Since the November 2000 General Election, touchscreen early voting has been conducted with very positive feedback from voters. During the October 2003 Recall election, 42,000 of the County's 2.2 million total votes were cast on the touchscreen system during the early voting period at 12 locations. Also, in partnership with six cities throughout the County, the RR/CC successfully introduced touchscreen voting to all voters at all precincts in those cities on election day, March 4, 2003. For the March 2004 Primary Election your Board has approved 16 locations for early voting which will take place daily February 18-27, 2004.

Phase II involved meeting the mandate to replace the punch card system with an interim paper-based optical scan system. A small ballot optical scan voting system, InkaVote, was determined to be the most appropriate choice due primarily to its similarity to the familiar punch card system and low acquisition and operating cost. Approximately 40,000 InkaVote devices were manufactured throughout 2003. The existing inventory of ballot card readers was modified to tally InkaVote ballots. InkaVote was successfully launched at the November 4, 2003 Uniform District Elections at which 184,000 voters cast ballots. Voter feedback was positive. The March 2004 Primary Election will represent the first countywide use of InkaVote.

Phase III involves implementing a voting system that complies with new federal HAVA requirements by the November 2005 Election. HAVA requires that by January 1, 2006 a voting system must be in place that 1) allows voters who are blind or visually impaired to cast a ballot independently at every voting precinct in the County, and 2) has the capability to advise all voters if they mistakenly marked more than one voting selection in a contest (an "overvote"). New optical scanning equipment (i.e. precinct level ballot tabulators with an audio component for blind voters) is currently undergoing federal testing that would enable InkaVote and all other optical scan paper-based voting systems to meet the new federal requirements. Additionally, this enhancement would greatly speed up ballot counting and announcement of unofficial election results due to the ability of the equipment to encrypt and transmit election data by phone modem to the RR/CC's Norwalk headquarters. Such an enhanced paper-based system would provide an alternative to electronic systems with paper audit trails at substantially reduced cost (approximately \$20 million compared with an estimated \$110 million for acquisition of an electronic system with VVPAT capability). Federal and State certification of such HAVA-compliant optical scan voting system enhancements is anticipated by late 2004.

Phase IV involves continuing the pursuit of the goal to implement a fully tested electronic touchscreen voting system that would be fully compliant with state and federal requirements after development, testing, certification and successful installation of such systems in other counties.

6. How will the County pay for voting system acquisitions/enhancements?

The course charted by your Board in August 2002 to acquire new voting systems in phases was estimated to cost approximately \$107 million including \$100+ million for electronic touchscreen voting equipment and several million to purchase the InkaVote interim optical scan system. The cost of acquiring the InkaVote system, which was completed at the end of 2003, was approximately \$3 million.

Preliminary estimates indicate that connecting a sophisticated printer to each electronic voting device to produce the SOS-required VVPAT will add approximately 10%-15% to the acquisition cost of an electronic system. If that estimate is borne out, the cost would be between \$110 - \$115 million and would also entail greater ongoing costs for each election to purchase paper for the required printer component. Conversely, the proposed enhancement to the InkaVote system to bring it into HAVA compliance and with capabilities to produce speedier election night results (as described above) is estimated to cost approximately \$18-20 million.

State Proposition 41 funds

In 2002 voters approved Proposition 41, the Voting Modernization Bond Act. It authorized issuance of \$200 million for counties to purchase modern voting equipment and to replace punch card systems (3:1 State/County match). It established the Voting Modernization Board (VMB) to allocate these funds. Los Angeles County's reserved share of these funds is \$49.6 million. The County filed our initial plan to phase-in new voting system acquisition in late 2002 and that plan was formally accepted by the VMB. That same year the VMB established a deadline of January 2005 for counties to apply for funding with the understanding that the original allotment per county of remaining funds would be reserved for those counties' subsequent phases once their initial applications for Phase 1 funds were submitted and approved.

The County's application for Phase 1 funding, for reimbursement of our small inventory of touchscreen voting equipment purchased in 2002 for use during the early voting period in advance of major elections, was placed on the VMB's February 9, 2004 agenda. At that meeting the VMB approved the completion of the County's Phase 1 project. Consequently, a check in the amount of \$639,071.25 will be issued soon to reimburse (at 3:1 ratio) the County's expenses incurred to purchase that touchscreen equipment. Plans call for submitting our invoices for reimbursement of Phase II InkaVote voting system expenses later this year. Additionally, at the February 9th meeting the VMB learned that the majority of California counties have yet to apply for Proposition 41 funds and that seven counties are now planning phased-in implementations of new voting systems. They voted to defer discussion of extending the timeline for submitting initial funding applications and reviewing counties' phased-in plans to a subsequent meeting of the VMB.

Federal Help American Vote Act (HAVA) funds

It is still unknown how much HAVA funding will eventually flow from the Federal government through the SOS to the Counties. There are several components of HAVA funds including 1) "punch card buyout funds" that are formula based for the sole use by counties that utilized punch card equipment in the November

2000 General Election, and 2) upon receipt from the federal government, other HAVA funds that will be allocated by the SOS after determining how these funds meet multiple Federal requirements of HAVA. Of these two sources of HAVA funds, only the punch card buyout monies have been sent from the federal government to the SOS.

On November 4, 2003 your Board approved a Resolution applying to the SOS for the County's share - \$15.8 million – of California's allotment of punch card buyout funds. On January 26, 2004 the RR/CC received additional paperwork from the SOS to finalize the application process for these funds which we completed and submitted to that office at the end of January. These punch card buyout funds, together with a portion of either additional HAVA funds or Proposition 41 funds would be sufficient to purchase the InkaVote system upgrade which is estimated to cost approximately \$18-20 million.

Conclusion

In light of the recent SOS mandate to require printers to be attached to all electronic touchscreen voting systems in the State to produce a VVPAT by 2005, it is recommended that your Board postpone the previously planned release of an RFP to acquire a new electronic touchscreen voting system at this time. Currently no electronic voting systems have been developed, tested or certified through federal and state approval processes that produce a VVPAT and no standards or procedures have been promulgated. A decision to slow down acquisition of an electronic touchscreen voting system countywide in no way affects the March and November 2004 elections. The County can use its certified optical scan system, InkaVote, to bridge the gap between the punch card system and the goal of installing a fully electronic voting system in the future when there is less uncertainty and the cost of compliant systems funding has been fully identified.

Due to the above mentioned HAVA requirements, we plan to pursue enhancement of the InkaVote system as described herein. We will keep you advised of developments.

c: "2 in 2" Task Force:

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