

March 22, 2006

Assemblymember Tom Umberg  
Chairman, Assembly Committee on Elections and Redistricting  
State Capitol, Room 2196  
Sacramento, CA 94249-0069

OPPOSE: AB 2097 (Goldberg- Open Source requirements in Voting Systems)

Dear Chairman Umberg:

On behalf of the Information Technology Association of America (ITAA) and its Election Technology Council (ETC), we are writing to express our opposition to California Assembly Bill 2097. Sponsored by Assemblymember Goldberg, the bill would in part prohibit the Secretary of State from approving a voting system for use in an election until its operation and specifications are publicly disclosed.

Through this letter, we seek to explain some of the likely negative consequences to the vendor community and, as we see it, to the State and its election jurisdictions – our valued customers whom we serve – if this bill were to pass. As the State seeks to procure and deploy new voting systems and technologies, the flaws in this proposal will create serious challenges for the States' Registrars and for its voters.

Our opposition to the bill stems from the proposal's impracticality as a new standard in government procurement policy and as a deviation from sound election management processes and practices.

- Requirements for adoption of open source software or source code disclosure in public sector technology environments are uncommon and go against the grain of current procurement policy and practice. The United States Government opposes public sector procurement restrictions giving preference to the open source development model or creating barriers to the acquisition of commercial software. Even the Free Software Foundation, an established advocate of open source software, opposes such approaches.
- The bill will lead to deterioration in voting systems procurement practices and decisions. In the state or county setting, voting systems acquisitions may depend to a greater or lesser degree on issues of cost, quality, qualification to federal guidelines, software performance or function, security requirements, or a universe of other factors that may lead a customer to prefer a certain type of system. A blanket policy, such as a mandate for open source or disclosed source software, can never capture these many nuances and can never allow a competent voting systems buyer to effectively weigh all factors.

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- The bill will impose on voting systems vendors to the State of California a procurement policy that will essentially strip them of their core software assets, intellectual property that has taken years and millions of dollars to develop. As companies move to protect such assets against the State of California's requirements, California registrars and citizens of the state will have fewer voting systems choices. Most technology companies rely on a broad range of intellectual property protections, including trade secret, trademark, copyright and patent protection. Over time the software industry has come to rely on intellectual property rights to promote an atmosphere of innovation, to create an environment for sustainable businesses, and one that provides incentives to encourage firms to invest substantial resources to create new products. In the voting systems market, the investments made are not just made in the development of software code, but in the time and labor intensive processes of product testing and certification, marketing and procurement responses, and servicing products that must remain in operation in the field for a decade or more. Maintaining compliance with evolving federal election laws and guidelines, and adapting systems to the variety of state election rules and regulations, requires significant and frequent expenditures on the part of vendors.
- The implementation of a requirement or preference for open source software or source code disclosure will create additional unforeseen election systems procurement and management challenges. A case in point is the State of North Carolina, the only state to pass a related requirement into law. In this case, the State dictated that all source code, including third party software source code, be placed into escrow for review by public officials, including political party leadership. Vendor licensing agreements with third party software providers would not allow such a deposit to be made to an escrow account. Much to the dismay of North Carolina counties, voters, and other observers, the State encountered great difficulty in completing a voting systems procurement, as vendors were unable, and legally not allowed access to these proprietary software, to provide the state with access to source code for most of the third-party software incorporated in their systems.

As a piece of election management policy and practice, the proposal contained in AB 2097 would present several new challenges and possible negative outcomes to the State and its County Registrars.

- The bill will not provide the legislature or the Secretary of State with a predictable outcome in the pursuit of enhanced transparency in California's voting systems. Current voting systems certification, inspection and review processes provide authorized reviewers with access to software code and reports on system performance, in a form of "disclosed source." Further testing in the election environment reveals whether or not the software is functioning as intended. Review of system source code by technical and elections laypersons operating outside the election environment, with no ability to provide regulated feedback into the State's election management process, will not increase the quality or security of voting systems software. Issues raised about voting systems without consideration to the election management processes and the environment in which voting systems are used will diminish public confidence in voting system.
- California's use of federal and state certification processes and pre-election testing would make the discovery through public review of any software anomalies in the final weeks leading up to an election an almost unmanageable situation. The State and its counties would be faced with hard choices between remedying the problem and seeking recertification on a fast-track basis, which at this time is infeasible under current Independent Testing Authority (ITA) practices. The other,

less attractive, option would be to run an election with known and publicized claims about software anomalies coming from members of the public. With an election imminent and polls favoring one candidate, less benevolent members of the opposition candidate's camp may be tempted to make maliciously false claims precisely to create uncertainty about an election.

- The State will serve as a laboratory for the implementation of yet another new voting technology and election management practice. As voting systems vendors and their customers have scrambled to comply with the State's Voter Verified Paper Audit Trail legislation, they have encountered many unexpected technology and process challenges. The injection of another unproven technology and management process via legislative mandate may spawn additional uncertainty into a situation already in flux.

There are several additional aspects of electronic voting systems and elections environments which may not be compatible with an open source, or disclosed source, software model. The ETC concurs with the many of the conclusions reached in the recently released report by the California Secretary of State to the legislature titled "Open Source Software in Voting Systems."<sup>1</sup> Among the findings, the report states:

"In several important aspects, electronic voting systems may not be currently congruent with the model of open source initiatives. The technical requirements for voting systems are much deeper and broader, extending from hardware through several layers of software. In addition, the use of voting systems is quite narrow yet demanding, encompassing just several hours per year with little opportunity for delay or repetition. The security requirements necessary for an electronic voting system are particularly unforgiving, with the need to eliminate, not merely detect, the possibility of compromise. The experience to date with open source software does not provide much basis for evaluating the ability of the open source model to meet these requirements."

Further, the technical requirements for all voting systems encompass more than just the software/firmware and include the hardware components and election management tools used to set up and manage an election. Those components and tools are used to meet the election rules and needs of many states and countries around the world. Putting such information out for public view would impact electronic voting operations far beyond California's borders.

Our recommendation to the Chair and Committee would be to pursue a course of responsible policy-making. The Committee should ask the Secretary of State or another appropriate and responsible body, to identify and evaluate the threats to voting systems. Similar research is underway at the US Department of Commerce National Institute of Standards and Technology (NIST) and the deliverables may prove useful to the State of California. The Secretary, or other authority, should then seek solutions that address those threats and challenge those solutions until it seems clear that the solution being adopted has strong advantages over other possible solutions. This is an accepted approach to building consensus on software security and technical standards. To leap to a single proposed approach, without evaluating other possible approaches, would do the State and its citizens a disservice.

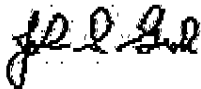
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<sup>1</sup> [http://www.ss.ca.gov/elections/open\\_source\\_report.pdf](http://www.ss.ca.gov/elections/open_source_report.pdf)

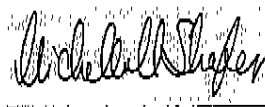
Thank you for your attention to our concerns. If you wish to follow up with questions on this letter, please contact Michael Kerr, Director of the Election Technology Council at [mkerr@itaa.org](mailto:mkerr@itaa.org) or 703.284.5324.

Above all, we are responsive to customer needs and are committed to providing safe, secure, accurate, reliable and accessible voting systems. We are all involved in this process together, and by working together we can improve the process of voting, voter access and participation.

Sincerely,



John S. Groh  
SVP, International Sales  
Election Systems & Software  
Chairman  
ITAA Election Technology Council



Michelle M. Shafer  
VP, Communications  
Sequoia Voting Systems  
Vice Chair  
ITAA Election Technology Council

Cc: Members of the California Assembly Committee on Elections and Redistricting  
The Honorable Bruce McPherson, California Secretary of State  
The Honorable Conny McCormack, President, California Association of Clerks & Election Officials  
The Honorable Debra Bowen, Chairwoman, Senate Elections, Reapportionment and Constitutional Amendments Committee

**About the ITAA Election Technology Council (ETC)**

The ITAA is one of the nation's oldest and largest trade associations for the information technology industry, representing approximately 350 companies. The ETC consists of companies which offer voting system technology hardware products, software and services to support the electoral process. These companies have organized as an association to work together to address common issues facing our industry. Current members of the ETC are: Advanced Voting Solutions, Danaher Guardian Voting Systems, Diebold Election Systems, Election Systems & Software, Hart InterCivic, Perfect Voting System, Sequoia Voting Systems, and UniLect Corporation. Membership in the ETC is open to any company in the election systems marketplace. Our members employ over 2,000 dedicated citizen employees, who all work hard to support the success of American elections.