

DEBRA BOWEN

CALIFORNIA SECRETARY OF STATE NEWS RELEASE

DB10:101

FOR IMMEDIATE RELEASE
September 30, 2010

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Secretary of State Bowen Secures Increased Safeguards and Transparency in California Elections

Landmark law requires vendors to disclose voting system flaws

SACRAMENTO – Voting system vendors will be required to notify the Secretary of State about previously undisclosed flaws in their products thanks to landmark legislation sponsored by Secretary of State Debra Bowen and signed this week by the Governor.

Senate Bill 1404 helps ensure the integrity of California’s voting process by requiring voting system vendors and ballot manufacturers to report product flaws they discover before and after the products are approved for use in California.

“Reliable voting systems are critical to a successful democracy, but also to people’s confidence in the electoral process,” said Secretary Bowen, who sponsored similar legislation that the Governor vetoed last year. “Companies that make cars, toys and thousands of other products have to report product flaws and even issue recalls of seriously troubled items. There is no reason that the same philosophy of transparency should not apply to the voting equipment on which millions of Californians rely to record and tally their votes.”

The California Secretary of State is responsible for inspecting voting systems and ballot manufacturing facilities for potential problems or flaws before approving their use in elections. However, existing law does not require a company to notify the Secretary of State of any flaws or bugs in a product that are discovered before or after the Secretary’s inspection.

Beginning January 1, voting system vendors and ballot manufacturers will be required to notify the California Secretary of State, in writing, of every known problem in their respective systems. In turn, the Secretary of State is required to submit a report of all disclosed problems to the U.S. Election Assistance Commission (EAC), making it possible for voters and elections officials in all states to benefit from California’s transparency. Companies may be liable for civil penalties of up to \$50,000 per violation for failing to disclose known product flaws.

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The Governor's signature on SB 1404 comes just days after the Brennan Center for Justice issued a report calling for states and the EAC to adopt a reporting system as created by SB 1404. The Center's report, available at http://brennan.3cdn.net/c5b929b2020a596ecc_eem6bbtcz.pdf, notes:

“Failed voting machines, frustrated voters and lost votes: these have been a constant in news reports following every recent major election cycle. That should not be surprising. The voting systems used in the United States today are complicated machines; each runs on tens of thousands of lines of software code. As with automobiles and airplanes, automatic garage door openers and lawnmowers, occasional malfunctions are inevitable – even after rigorous product testing.

“When it comes to system failures, however, voting machines are different from automobiles and airplanes, and other products, in at least one important respect: for the vast majority of voting systems in use today, (1) manufacturers are not required to report malfunctions to any government agency, and (2) there is no agency that either investigates such alleged failures or alerts election officials and the general public to possible problems (let alone requires voting system manufacturers to fix such problems).

“As this report demonstrates, the consequence of this lack of oversight is predictable. Voting systems fail in a particular county in one election, and then again later, under similar circumstances, but in a different locale. These repeated failures disenfranchise voters and damage public confidence in the electoral system.”

In recent years, undisclosed defects with voting or ballot systems came to light only after incidents in Humboldt, San Francisco, Sutter, Calaveras and Yolo Counties. Errors were caught by government officials or election observers, and no election results were compromised. “Voters have to put their faith in a voting system every time they cast ballots,” added Bowen. “This new law helps ensure that faith need not be blind.”

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