



DEBRA BOWEN

CALIFORNIA SECRETARY OF STATE NEWS RELEASE

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Secretary of State Debra Bowen Moves To Tap ES&S's Escrowed Source Code After Vendor Violates Conditions of Its State Certification

SACRAMENTO – Secretary of State Debra Bowen has taken the unprecedented step of pursuing access to a voting system vendor's source code located in escrow after the vendor – Election Systems & Software, Inc. (ES&S) – refused to provide it to the Secretary of State's office as part of the top-to-bottom review of California's voting systems.

"I'm not going to stand by and watch ES&S ignore the State of California and, in particular, the voters of Los Angeles County by refusing to abide by the certification conditions that were imposed when ES&S's InkaVote Plus Voting System was certified last year," said Bowen. Secretary Bowen's letter to Iron Mountain, the escrow facility where ES&S stores its source code, is attached.

Secretary Bowen announced in February her intent to conduct a top-to-bottom review of the voting systems certified for use in California. ES&S was first notified 87 days ago – on March 26 – that it had 30 days, under the conditions imposed in April 2006 by the previous Secretary of State when he certified the InkaVote Plus Voting System, to provide the Secretary of State with its equipment, a certified version of the source code, funding to cover the reasonable cost of conducting the review, and an acknowledgement of the terms of a confidentiality agreement. The company has provided the Secretary of State's office with some voting system equipment, but nothing else.

"ES&S is clearly trying to undermine the review by refusing to abide by the conditions that were imposed in order for its InkaVote Plus system to be certified for use in California last year," continued Bowen. "That leaves me with no choice but to use the authority I have under the law to require the escrow company to provide me with a copy of ES&S's source code."

California Elections Code Section 19103 requires voting system vendors doing business in the state to place an exact copy of their certified source code for ballot tally software programs into an approved escrow facility. The law gives the Secretary of State broad authority to access the source code held in escrow for any purpose deemed necessary to fulfill the provisions of the Elections Code, including those concerning the review and approval of voting systems.

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The California Legislature gave the Secretary of State this broad power to access escrowed ballot tally source code in 2004 and since that time, a number of other states have adopted similar laws. However, it appears this is the first time anywhere in the nation that a Secretary of State has been forced to request a copy of a vendor's source code from an escrow facility in order to review it.

Of the four vendors that want to use a current version of their systems in California's 2008 elections, only ES&S has refused to provide all of the information necessary to conduct the top-to-bottom review. The system in question – the InkaVote Plus Voting System – is not used anywhere in California other than Los Angeles County.

“Every other vendor that has a voting system going through the top-to-bottom review has provided equipment, source code, an acknowledgement of the confidentiality agreement, and the funding necessary to pay for the reasonable cost of the review, as required under the certification of their systems,” noted Bowen. “ES&S is the only vendor that is continuing to ignore both the law that requires me to conduct a periodic review of the voting systems and the conditions the previous Secretary of State included when he certified the InkaVote Plus system last year.”

Elections Code Section 19222 is the basis for Secretary Bowen's top-to-bottom review. It reads in part:

“The Secretary of State shall review voting systems periodically to determine if they are defective, obsolete, or otherwise unacceptable. The Secretary of State has the right to withdraw his or her approval previously granted under this chapter of any voting system or part of a voting system should it be defective or prove unacceptable after such review.”

The complete ES&S InkaVote Plus certification document is online at http://www.sos.ca.gov/elections/voting_systems/cert_doc_inkavote.pdf. The relevant portion states that ES&S, as the vendor:

“... shall provide, to the Secretary of State, or to the Secretary of State's designee, within 30 (thirty) days of the Secretary of State's demand for such, a working version of the voting system, including all hardware, firmware and software of the voting system, as well as the source code for any software or firmware contained in the voting system, including any commercial off the shelf software or firmware that is available and disclosable by the vendor, provided that the Secretary of State first commits to the vendor in writing to maintain the confidentiality of the contents of such voting system or source code so as to protect the proprietary interests of the vendor in such voting system or source code. The terms of the commitment to maintain confidentiality shall be determined solely by the Secretary of State, after consultation with the vendor.”

When the top-to-bottom review got under way earlier this spring, it was assumed that eight voting systems would be reviewed. Since that time, four systems have been voluntarily dropped from the review because the vendors have stated those systems won't be used in 2008. Those systems are Los Angeles County's Micro Tally System, Hart InterCivic System 6.1, and the currently certified versions of the ES&S City & County of San Francisco and AutoMARK voting systems. ES&S has stated that it intends to submit upgraded versions of the San Francisco and AutoMARK systems to the Secretary of State for new certification testing prior to July 1, 2007, which would enable the systems to be used in the 2008 elections if they are certified.

More information on Secretary Bowen's top-to-bottom voting system review is at http://www.sos.ca.gov/elections/elections_vsr.htm.

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June 18, 2007

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By Fax and E-mail

**Re: Source Code for ES&S InkaVote Plus Precinct Counter Voting System,
Version 2.1**

Dear Mr. Strouse:

The Secretary of State requests immediate access to the source code for the InkaVote Plus voting system, Version 2.1, specifically the Unisyn Election Management System, version 1.1 and all of its components. This request is made pursuant to Section 19103, subdivision (c) of the California Elections Code, which provides in relevant part:

(c) The Secretary of State shall have reasonable access to the materials placed in escrow, under the following circumstances:

...

(3) In order to fulfill the provisions of this chapter related to the approval of voting systems.

...

(5) For any other purpose deemed necessary to fulfill the provisions of this code or Section 12172.5 of the Government Code.

The Secretary of State is currently conducting a review of voting systems certified for use in California pursuant to her duty under Section 19222 of the Elections Code. Section 19222 provides in relevant part:

David Strouse

6/18/2007

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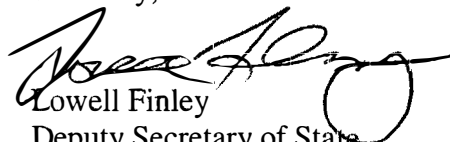
The Secretary of State shall review voting systems periodically to determine if they are defective, obsolete, or otherwise unacceptable. The Secretary of State has the right to withdraw his or her approval previously granted under this chapter of any voting system or part of a voting system should it be defective or prove unacceptable after such review.

The Secretary's review includes an expert evaluation of voting system source code, including source code for ballot tally software. All experts participating in the review are subject to strict nondisclosure agreements.

Please submit, by guaranteed overnight delivery to my attention at the address listed above, an encrypted copy of source code held in your escrow facility for the Unisyn Election Management System, version 1.1. Please deliver the encryption key by telephone or under separate cover by guaranteed overnight delivery. Please arrange delivery of both the source code and encryption key so that this office receives them no later than noon on Wednesday, June 20, 2007.

Thank you for your cooperation. Please feel free to contact me if you have any questions concerning this request.

Sincerely,



Lowell Finley

Deputy Secretary of State

Voting Systems Technology and Policy

cc: Judy Whitehurst, Principal Deputy County Counsel, Los Angeles County