



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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November 8, 2011

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 11111

TO: All County Clerks/Registrars of Voters

FROM:


Lowell Finley
Chief Counsel
Deputy Secretary of State, Voting Systems Technology & Policy

RE: Voting Systems: Ballot Marking Software

As you may be aware, a number of companies are currently marketing Internet-based systems to county elections officials, stating such systems will help county officials comply with the federal Military and Overseas Voter Empowerment (MOVE) Act.

The system capabilities include online delivery of sample ballots, polling place look-up, delivery of military and overseas absentee ballots that can be printed and hand marked by the voter to return by mail, and, at least in one instance, an option to mark votes on the ballot using the voter's computer before printing the voted ballot and returning it by mail.

The last feature – an option to mark votes on the ballot using the voter's computer – is not permitted for use in California under state law. Under the "voting system" definition in Elections Code section 362, a system must be treated as a voting system if it includes software to enable marking of votes on ballots using the voter's computer. Under Elections Code section 19217(a), no voting system or part of a voting system may be connected to the Internet at any time. Therefore, use of a voting system that delivers ballots to voters via the Internet and permits marking of votes on the ballots using the voter's computer or any other computer is prohibited. The Secretary of State cannot approve such a system, and elections officials cannot contract for or purchase such a system. A feature allowing the elections official to turn off the computer-marking feature would not meet the requirements of California law.

If the portion of software that allows for computer marking of votes on the ballot is removed from a blank ballot Internet delivery system, the system would fall outside the definition of a voting system under California law. Such a system could be sold and used in California without the need for federal certification and Secretary of State approval.

If you have any questions, please feel free to contact me at Lowell.Finley@sos.ca.gov or (916) 654-4666.