

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2631 (Dababneh) – As Amended: April 9, 2014

SUBJECT: Elections: voting machines.

SUMMARY: Updates the definition of a "voting machine" and revises other provisions of the Elections Code that apply to elections conducted on a lever voting machine. Specifically, this bill:

- 1) Updates the definition of a "voting machine" to mean any electronic device including, but not limited to, a precinct optical scanner and a direct recording electronic (DRE) voting system, into which a voter may enter his or her votes, and which, by means of electronic tabulation and generation of printouts or other tangible, human-readable records, furnishes a total of the number of votes cast for each candidate and for or against each measure, instead of any device upon which a voter may register his or her vote, and which, by means of counters, embossing, or printouts, furnishes a total of the number of votes cast for each candidate or measure.
- 2) Clarifies and modifies provisions of law that allow any voter using a vote by mail (VBM) ballot, prior to the close of the polls on election day, to vote the ballot at an election official's office or satellite office. Requires an elections official, where DRE voting systems are used, to provide sufficient DREs to include all ballot types in the election.
- 3) Modifies and repeals precinct board requirements and procedures related to the closing of the polls, which includes the locking and sealing of voting machines and the reading, posting, and inspection of the return of votes cast for that precinct.
- 4) Repeals obsolete provisions of law regarding ballot labels for lever voting machines.
- 5) Makes other conforming and technical changes.

EXISTING LAW:

- 1) Defines a voting machine to mean any device upon which a voter may register his or her vote, and which, by means of counters, embossing, or printouts, furnishes a total of the number of votes cast for each candidate or for each measure.
- 2) Defines a DRE voting system to mean a voting system that records a vote electronically and does not require or permit the voter to record his or her vote directly onto a tangible ballot.
- 3) Permits any voter using a VBM ballot, prior to the close of the polls on election day, to vote the ballot at the office or satellite office of an elections official. Allows the elections official, where voting machines are used, to provide one voting machine for each ballot type used within the jurisdiction. Permits an elections official to use electronic voting devices for this purpose if sufficient devices are provided to include all ballot types in the election.

- 4) Requires a precinct board, as soon as the polls are closed, to comply with specified requirements related to the closing of the polls, including, but not limited to, the locking and sealing of voting machines and the reading and posting of the statement of return of votes cast for the precinct.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

- 1) Purpose of the Bill: According to the author:

The current definition of “voting machines” in the California Elections Code refers to obsolete gear-and-lever mechanical devices that have not been deployed for a California election since Merced County discontinued their use following the November 1994 general election. The days of gear-and-lever voting machines are long gone so it is time to update the definitions in the Election[s] Code relating to voting machines and polling place procedures to capture the nuances of the newer machines currently in use to bring clarity and transparency to the law.

Assembly Bill 2631 (Dababneh) updates the definition of “voting machine” in California Elections Code and revises provisions regulating obsolete gear-and-lever voting machines. AB 2631 will reduce confusion by focusing statutory language on machines that are actually used in California elections. The current definition of “voting machine” was codified in the 1970s when the use of gear-and-lever machines was permitted, but those machines now fail to meet federal requirements specified in the federal Help America Vote Act of 2002 and statutes related to voting machines and polling place procedures fail to capture the nuances of newer machines currently in use. AB 2631 ensures that there is clarity in [the] Elections Code about the procedures and equipment used in California elections.

- 2) History of Mechanical Lever Machines: First introduced in the 1890s, mechanical lever voting machines were used in the 20<sup>th</sup> century. On a lever machine, the name of each candidate or ballot issue choice is assigned a particular lever in a rectangular array of levers on the front of the machine. A set of printed strips visible to the voters identifies the lever assignment for each candidate and issue choice. The levers are horizontal in their unvoted positions. The voter pulls down selected levers to indicate choices.

The first official use of a lever type voting machine, known then as the "Myers Automatic Booth," occurred in Lockport, New York in 1892. Later, they were employed on a large scale in the city of Rochester, New York, and soon were adopted statewide. By 1930, lever machines had been installed in virtually every major city in the United States, and by the 1960's well over half of the Nation's votes were being cast on these machines.

Because these machines are no longer made, the trend was to replace them with computer-based electronic systems. The outdated lever voting machines are no longer used in California elections.

- 3) Help America Vote Act of 2002: In 2002, Congress passed and President George W. Bush signed the Help America Vote Act (HAVA). Among its provisions, HAVA established

standards for voting equipment. In general, HAVA requires a voting system used in an election for federal office to notify the voter when he or she selects more than one candidate for a single office on the ballot, notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office, and provide the voter with the opportunity to correct the ballot before the ballot is cast and counted. Additionally, HAVA requires a voting system to meet certain requirements relating to audit capacity, alternative language accessibility, error rate, and accessibility for individuals with disabilities.

HAVA also provided federal matching grants to states to help pay for modernizing voting equipment. Most jurisdictions at the time did not have electronic voting systems, relying on punch cards, lever machines, and paper ballots. However, with the new HAVA voting system standards and HAVA funds, many jurisdictions purchased new voting systems, such as DRE voting systems and optical scanners. In April 2003, California received \$265 million in HAVA funds; including \$75 million for new voting equipment. These voting equipment funds were distributed to each county beginning in 2004. California counties were then authorized to purchase a new voting system. Nearly all California counties purchased their voting systems from five different vendors.

According to the author, not only are lever machines no longer used to conduct elections in California, but they fail to meet the federal HAVA requirements specified above. This bill, which updates the definition of a "voting machine" and revises other provisions of the Elections Code that apply to elections conducted on a lever voting machine, will bring greater clarity to the Elections Code and reduce confusion by focusing statutory language on machines that are actually used in California elections.

- 4) Changes to Existing Law: This bill updates the Elections Code to reflect that lever voting machines are no longer in use in California elections. The changes made to existing law by this bill are mostly non-substantive. First, this bill updates the definition of a "voting machine" to eliminate references of lever machines and instead reflect modern voting systems.

Second, this bill makes corresponding changes to provisions of the Elections Code regarding the procedures and equipment used in elections. For example, this bill repeals obsolete provisions of law regarding ballot labels that apply to elections that are conducted on a lever voting machine. In addition, this bill modifies precinct board requirements and procedures related to the closing of the polls, which includes the locking and sealing of voting machines and the reading, posting, and inspection of the return of votes cast for that precinct that apply to elections conducted on a lever voting machine.

Third, this bill clarifies and updates corresponding code sections where the term "voting machine" is used. Current law permits any voter using a VBM ballot, prior to the close of the polls on election day, to vote the ballot at an elections official office or satellite office. Existing law additionally allows the elections official, where voting machines are used, to provide one voting machine for each ballot type used within the jurisdiction. In practice most county elections officials use a DRE voting system to comply with this requirement because DREs have the ability to accept multiple ballot styles. This bill updates the code to reflect current practice and requires an elections official, where DRE voting systems are used, to provide sufficient DREs to include all ballot types in the election.

Finally, this bill makes other conforming changes.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen (sponsor)

Opposition

None on file.

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