

Date of Hearing: April 26, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 668 (Gonzalez Fletcher) – As Amended April 6, 2017

**AS PROPOSED TO BE AMENDED**

**SUBJECT:** Voting Modernization Bond Act of 2018.

**SUMMARY:** Places a \$450 million bond act on the June 5, 2018, statewide primary election ballot and authorizes the use of those bond funds for the purchase of specified voting equipment and related technology. Specifically, **this bill:**

- 1) Authorizes the issuance and sale of bonds not to exceed \$450 million to assist counties in the purchase of voting equipment and related technology. Requires bonds issued pursuant to this bill to be repaid within 10 years after being issued.
- 2) Provides that bond fund moneys shall be available to match expenditures by counties at the following ratios:
  - a) If the county conducts elections pursuant to the California Voter's Choice Act (CVCA), a ratio of \$3 of bond fund money for every \$1 of county money; and,
  - b) If the county does not conduct elections pursuant to the CVCA, a ratio of \$2 of bond fund money for every \$1 of county money.
- 3) Provides that bond fund moneys may be used for equipment purchased by a county on or after January 1, 2017, for which the county continues to make payments on the date the bond measure is approved by the voters. Provides that bond funds may be used only for the purchase of the following equipment:
  - a) Voting systems certified by the Secretary of State (SOS) that do not use prescored punch cards;
  - b) Electronic poll books;
  - c) Ballot on demand systems;
  - d) Vote by mail (VBM) ballot drop boxes;
  - e) Remote accessible VBM systems;
  - f) VBM ballot sorting and processing equipment; and,
  - g) Technology to facilitate electronic connection between polling places, vote centers, and the office of the county elections official or the office of the SOS.

- 4) Requires any voting system that is purchased using bond funds, and that does not require a voter to directly mark the ballot, to produce a paper version of the voted ballot or of all the ballots cast on the voting system. Requires the paper version to be retained by elections officials for use during the 1% manual tally of ballots cast or for any other recount, audit, or election contest.
- 5) Provides that the Voting Modernization Finance Committee (Finance Committee) is responsible for authorizing the issuance and sale of bonds authorized by this bill, and provides that the Voting Modernization Board (Modernization Board) is responsible for administering the fund into which bond proceeds are deposited.
- 6) Permits the Legislature to amend provisions of this bill regarding the county match required for bond funds, the purposes for which bond funds may be used, and the makeup and operations of the Modernization Board, by a statute approved by a two-thirds vote in each house of the Legislature if the statute is consistent with and furthers the purposes of this bill.
- 7) Includes related fiscal provisions regarding sales of bonds and implementation of this bill pursuant to the State General Obligation Bond Law.
- 8) Requires the provisions of this bill authorizing the issuance of bonds to be submitted to the voters at the June 5, 2018, statewide direct primary election, and provides that those provisions shall take effect upon approval by the voters.
- 9) Makes corresponding and technical changes.

**EXISTING LAW:**

- 1) Requires the SOS to adopt regulations governing the use of voting systems, electronic poll books, ballot on demand systems, and remote accessible VBM systems.
- 2) Prohibits a jurisdiction from using a voting system, electronic poll book, ballot on demand system, or remote accessible VBM system in an election unless it has been previously approved by the SOS, as specified.
- 3) Requires the SOS to adopt regulations establishing guidelines based on best practices for security measures for the use of VBM ballot drop boxes, as specified.
- 4) Establishes the Voting Modernization Bond Act of 2002 (VMBA), which authorized the issuance and sale of bonds not to exceed \$200 million, for the purpose of assisting counties in the purchase of updated voting systems.
- 5) Creates the Finance Committee, consisting of the Controller, the Director of Finance, and the Treasurer, and makes it responsible for authorizing the issuance and sale of bonds authorized by the VMBA.
- 6) Creates the Modernization Board, consisting of three members selected by the Governor and two members selected by the SOS, and makes it responsible for administering the fund that contains the proceeds of the bonds issued pursuant to the VMBA.

- 7) Permits counties, pursuant to the CVCA, to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed amendments to allow bond funds to be used for the purchase of VBM ballot sorting and processing equipment. This analysis reflects those proposed author's amendments.

- 2) **Purpose of the Bill:** According to the author:

California's voting machines are becoming outdated and nearing the end of their useful "lives".

Many voting machines are a decade old or even more, and need to be modernized in order to ensure our elections continue to be reliable. As voting systems age, the risks of failures or crashes increase. It is essential that investments in upgrading technology are made now, rather than waiting for our machinery to fail and possibly jeopardize electoral outcomes.

In addition to aging equipment and software, counties looking to transition to the vote center model of elections allowed under SB 450 (Allen 2016) will be able to save money in the long run but may need investments now in new systems for this new model of elections.

After the 2000 presidential election's controversies over equipment malfunctions in Florida, the federal government passed the Help America Vote Act [HAVA] to help fund system modernization throughout the states. California counties received about \$195 million in HAVA funds, and also passed a \$200 million bond to further help counties pay for new equipment.

Now, it seems unlikely that California's counties will see similar help from the federal government again. It is time for the state to step up on behalf of fair, reliable, and secure elections.

- 3) **State of Voting Equipment in California:** In the aftermath of the 2000 Presidential election, California and the federal government enacted legislation designed to modernize elections, including providing significant new funding to replace voting systems. In California, AB 56 (Shelley), Chapter 902, Statutes of 2001, established the VMBA, which authorized the sale of \$200 million in bonds for counties to use for the purchase of updated voting systems. At the federal level, HAVA established new standards for federal elections and provided funding to states to help implement its provisions. Of the nearly \$400 million in federal funds that California received as a result of HAVA, \$195 million was allocated to counties to help cover the costs of voting system upgrades.

In addition to providing funding for voting system upgrades, policy changes made at the state and federal level meant that many counties had to purchase new voting equipment, or to make modifications to their existing voting systems. At the state level, the SOS decertified two punch card voting systems due to concerns that such systems resulted in high levels of invalid votes. At the time they were decertified, those two systems were being used in nine California counties, with more than half of California voters residing in those counties. Additionally, the state and federal government both enacted new accessibility requirements for voting systems.

In order to comply with these new requirements, many counties purchased new electronic voting systems using the state and federal funding available for voting system upgrades. In 2007, however, then-Secretary of State Debra Bowen conducted a "top-to-bottom" review of many of the voting systems certified for use in California. According to Secretary Bowen, the review was "designed to restore the public's confidence in the integrity of the electoral process and to ensure that California voters cast their ballots on machines that are secure, accurate, reliable, and accessible." Secretary Bowen reported that the review uncovered a "number of security vulnerabilities in all the voting systems...tested."

Following the review, the SOS decertified and conditionally recertified electronic voting systems that were being used in numerous California counties. As a result, many of the affected counties were unable to use their electronic voting systems for general polling place voting, and replaced them with paper-based optical scan voting systems. A "Frequently Asked Questions" document that was released by the SOS shortly after the completion of the top-to-bottom review noted that the conditional recertification of voting systems had significantly restricted the use of polling place voting systems used by 21 counties. As a result, the document noted that "[e]xcept for the single [voting unit] allowed per polling place [in order to comply with state and federal accessibility requirements], these counties will have to adopt a new Election Day voting system."

Notwithstanding the fact that many counties were forced to acquire new voting systems after the 2007 top-to-bottom review, according to information compiled by the office of the SOS, the majority of California counties are using at least some voting equipment purchased in 2006 or earlier, with a few counties using equipment that is even older (according to this information, Los Angeles County still uses some voting equipment that was purchased in 1968). Most of the VMBA and HAVA funding for voting system replacement has been spent, though about \$96 million in funding remains between those two sources. Of the remaining funding available, however, nearly three-quarters is funding that remains in allocations set aside for Los Angeles County (approximately \$56 million remaining) and San Diego County (approximately \$15 million remaining). By contrast, 21 counties have exhausted all of the funding allocated to them under the VMBA and HAVA, while another 13 counties have less than 10% of their total allocated funding remaining.

Last month, the Legislative Analyst's Office (LAO) released a report in connection with the 2017-2018 budget process titled *Considering the State's Role in Elections*. In that report, the LAO noted that county governments are responsible for administering most local, state, and federal elections in California. While counties can bill other local governments for their

share of the costs of administering elections (with some exceptions), the state and federal governments generally do not pay the proportional share of costs for administering state and federal elections. The report noted that while the state and federal government have occasionally provided one-time funding for elections costs (including funding for voting equipment through the VMBA and HAVA), the state has not provided regular ongoing funding for election administration. One of the recommendations in the LAO report was that the Legislature should consider one-time support to replace counties' voting systems.

- 4) **Slow Development of New Voting Technology:** The use of aging voting equipment is not unique to California. In 2014, the bipartisan Presidential Commission on Election Administration (Commission), which was established by President Obama after the 2012 Presidential election, warned of an "impending crisis in voting technology." The Commission, which was co-chaired by the former General Counsel to President Obama's 2012 re-election campaign and by the former National Counsel to Mitt Romney's 2012 campaign for President, noted that a large portion of the voting systems that were purchased using HAVA funds are reaching the end of their usable lives. The Commission's report further noted that for a number of reasons, including a federal voting system standard-setting and certification process that the Commission described as "unworkable," the voting system options available did not meet the needs of election administrators and did not "employ the sorts of advances that have become commonplace in consumer products and other industries."

In fact, concerns about the federal voting system review process prompted California to change its process for reviewing and approving voting systems for use in the state. Until 2014, California's voting system review process was designed to augment the federal voting system review and approval process. Prior to undergoing state review, electronic voting systems were required to be approved at the federal level. In 2013, however, due in part to frustration with the federal voting system certification process, the Legislature approved and the Governor signed SB 360 (Padilla), Chapter 602, Statutes of 2013, which removed the requirement that electronic voting systems had to be approved at the federal level before undergoing state review, and instead required voting systems to undergo more extensive and thorough testing and review by the SOS prior to being used in the state.

SB 360 also was designed to facilitate a project that was then underway in Los Angeles County—the Voting Systems Assessment Project (VSAP). Because of Los Angeles County's size, diversity, and complexity, the County found that the commercial off-the-shelf voting systems available for purchase did not meet the county's needs. As a result, the county established VSAP to identify and implement a new voting system by first defining the kind of voting system it wanted, and then being directly involved in the system's development. Accordingly, SB 360 established a voting system review and approval process that envisioned a situation where a local jurisdiction might be involved in the research and development of a new voting system, rather than having a review and approval process designed around the assumption that all voting systems would be developed by private vendors that would then sell or lease their products to local jurisdictions. In addition to the VSAP in Los Angeles County, the City and County of San Francisco currently is considering developing its own voting system.

- 5) **California Voter's Choice Act and Voting Equipment:** In addition to the fact that many counties are using voting equipment that is reaching the end of its useful life, recent changes to state law are likely to change the types of voting equipment that California counties will use to conduct elections in the future. SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the CVCA, which permits counties to conduct elections in which all voters are mailed ballots, and voters have the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Fourteen specified counties are permitted to conduct elections under this system in 2018, while the remaining counties may use this system beginning in 2020.

Because the CVCA generally requires counties that conduct elections pursuant to its provisions to mail ballots to all registered voters, the CVCA likely will increase the use of VBM ballots. That, in turn, may increase counties' needs for VBM ballot processing equipment. The CVCA also requires counties to establish VBM ballot drop-off locations; many counties are likely to comply with this requirement by using VBM ballot drop boxes, which those counties may need to purchase. Additionally, counties that conduct elections under the CVCA are required to provide VBM ballots in an accessible format, which may require counties to purchase or otherwise procure remote accessible VBM systems.

Furthermore, the CVCA eliminates the requirement for counties to establish polling places for elections, but instead requires counties to establish vote centers. Vote centers are polling locations at which any registered voter in a county can cast a regular (i.e., non-provisional) ballot, regardless of the voter's precinct. Because the number of required vote centers is less than the number of polling places, the number of voting machines that a county has to purchase to accommodate in-person voting may be reduced under the CVCA. On the other hand, because voters have the option of casting a ballot at any vote center in the county, vote centers need to have a system that can provide any eligible voter in the county with the appropriate ballot. While smaller counties that have fewer ballot styles may be able to accommodate that need using pre-printed paper ballots, vote centers in larger jurisdictions likely will feature electronic voting systems that are pre-loaded with all the ballot types in the county, or ballot-on-demand printers that can produce the appropriate paper ballots as needed.

Finally, in order to verify the registration of voters, determine the correct ballot type for each voter, and ensure that a voter has not already cast a ballot, vote centers must have a mechanism to verify voter registration information. In addition, vote centers are required to offer same day voter registration for voters in the jurisdiction. In most jurisdictions, these requirements are likely to be met through the use of electronic poll books that can communicate with county and state election systems in real-time. As a result, in addition to purchasing electronic poll books, elections officials may need to purchase or lease equipment to facilitate electronic connectivity between vote centers and elections officials' offices.

This bill includes an incentive for counties to conduct elections under the CVCA by providing \$3 in state funds for every \$1 in local funds for counties that conduct elections using the CVCA. Counties that do not use the CVCA would still be eligible for state funding for voting equipment under this bill, but the state's match of local spending would be lower: \$2 in state funds for every \$1 in local funds.

- 6) **Money for Voting System Development & Potential Amendments:** As detailed above, at least two California counties are developing or considering developing their own voting systems, due in part to concerns that the commercially available voting systems that have been developed by private vendors do not adequately address those counties' voting system needs. In recognition of this situation, SB 360 sought to allow counties to use VMBA funding for research and development of voting systems. After the passage of SB 360, the Modernization Board voted to approve \$11.5 million in VMBA funds for Los Angeles County for costs associated with research and development of a new voting system. A lawsuit was filed challenging that approval, however, in which the plaintiffs alleged that the provisions of SB 360 that sought to permit the use of VMBA funds for research and development of voting systems were invalid. After the lawsuit was filed, the Modernization Board revoked its approval of VMBA funds for Los Angeles County's costs associated with the research and development of a new voting system, and the lawsuit was settled.

The language of this bill, which mirrors the original language of the VMBA, does not expressly permit funding made available by this bill to be used for voting system research and development. In light of the fact that multiple California counties have sought to develop their own voting systems due in part to a lack of adequate commercially available voting systems, and in light of the fact that the Legislature previously approved SB 360 in an attempt to allow state voting modernization funds to be used for voting system research and development, committee staff recommends that the author and the committee consider amending this bill to expressly permit the bond funds made available under this bill to be used for research and development of new voting systems, subject to the general conditions and rules established by SB 360. Additionally, to reflect the fact that counties increasingly have chosen to lease voting equipment, rather than purchase it outright, committee staff recommends that the author and the committee consider amending this bill to allow equipment to be either purchased or leased using bond funds.

- 7) **Secretary of State Equipment Approvals and Suggested Amendments:** As detailed above, existing law prohibits jurisdictions from using a voting system, electronic poll book, ballot on demand system, or remote accessible VBM system in an election in California unless it has been previously approved by the SOS. Additionally, existing law requires the SOS to adopt regulations establishing guidelines based on best practices for security measures for the use of VBM ballot drop boxes, though local jurisdictions that use VBM ballot drop boxes are not explicitly required to comply with those regulations.

When the state previously authorized the use of bond funds for voting system upgrades, it required that any voting system purchased using bond funds had to be certified by the SOS for use in state elections. Committee staff recommends that this bill be amended to similarly provide that bond funds will be available only for electronic poll books, ballot on demand systems, and remote accessible VBM systems that have been approved for use in California by the SOS. Additionally, committee staff recommends that this bill be amended to require any VBM ballot drop boxes that are procured using the bond funds authorized by this bill to comply with the regulations adopted by the SOS detailing the best practices and security measures for those drop boxes. Finally, to reflect changes made to the voting system certification process as part of SB 360, committee staff recommends that this bill be amended

to permit the bond funds authorized by this bill to be used for voting systems that are either certified by the SOS, *or* that have been conditionally approved by the SOS.

- 8) **Technical Amendments:** Committee staff recommends the following technical amendments to this bill:

On page 5, line 5, after "mail" insert "ballot"

On page 5, line 16, strike out "recount or other" and insert "tally described in Section 15360, or any"

- 9) **Amendments Requested:** The San Francisco Elections Commission, which does not have a formal position on this bill, has requested amendments to do the following:

- a) Match costs associated with the development and certification of open source voting systems at a ratio of \$4 of state bond funds for every \$1 in local funds;
- b) Set aside \$2 million of the bond funds to cover the cost of certifying open source voting systems; and,
- c) Cover not only the purchase, but also the leasing of voting systems.

- 10) **Arguments in Support:** In support of this bill, the California State Association of Counties writes:

Elections administration is a basic and important duty assigned to counties on behalf of the state for candidate contests and policy decisions at all levels of government, from the smallest school district to the national stage. While counties can recover direct costs for conducting elections from local agencies this does not contribute to their overall voting system needs. The last major investment in voting systems was in 2002... Most California counties used their funding to purchase new voting equipment prior to the 2006 election cycle. However, most systems were based on technology of the 1990's and still today rely on rapidly aging equipment and out-of-date technology.

Earlier this year, a report by the Legislative Analyst's Office examined voting administration and offered that the state has a clear interest in secure, timely, and uniform elections. They noted that while the state reaps regular benefits from county elections administration, it only sporadically provides funding to counties for election activities. We have every confidence that counties will continue to faithfully and expertly administer elections on behalf of the state to the best of their ability. However, we strongly believe a one-time investment now is critical to ensuring successful outcomes for all who are involved, including elections officials, state and local agencies, and the voters of California.

- 11) **Arguments in Opposition:** Six individuals submitted letters of opposition to this bill, all arguing that the bill should be amended to exclude funding for voting systems that do not use



open source software. Five of those letters included text that is substantially similar to the following:

It should be noted that although [AB 668] does not preclude open source (coined "non-proprietary") voting system funding, the fact the wording does not plainly state funding for the development, certification and deployment of specifically GPLv3 open source election systems raises flags and triggers alarms. The language should specifically INCLUDE open source voting systems, and exclude "secret software" voting systems. The people of California, as well as the people of the United States and the rest of the world, do not want corporations controlling the vote counting process.

Recent history until today shows an obvious resistance by government to open source as proprietary, vendors, lobbyists and interests fight for protection and retention of market share. With the current status of Federal investigative conclusion regarding foreign interference with United States elections, these efforts are now in direct conflict with national security. Proprietary code, whether disclosed or not, has no place in appropriately secure modern elections.

To state fund the current vendors, with criminal backgrounds and documented conduct violating law and ethic, to enable further deployment of voting systems concluded insecure by government study, is problematic as setting inappropriate precedent for national security. Other [states follow] California, and the bill in its current form is a nod toward security deficient, over-priced voting systems. The vendors are knowledgeable regarding their current "lock-in" of the market, and are opportunistically price-gauging. This bill caters to that scheme.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Secretary of State Alex Padilla (sponsor)  
California Association of Clerks and Election Officials  
California League of United Latin American Citizens  
California Nurses Association / National Nurses United  
California Professional Firefighters  
California State Association of Counties  
Courage Campaign  
Disability Rights California  
Madera County Board of Supervisors  
Madera County Clerk-Recorder & Registrar of Voters  
Monterey County  
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund  
Rock the Vote  
Santa Barbara County Registrar of Voters  
Santa Cruz County Clerk  
Shasta County Clerk / Registrar of Voters  
Urban Counties of California  
Voto Latino

**Opposition**

Howard Jarvis Taxpayers Association  
Six Individuals

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