

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair
AB 623 (Berman) – As Introduced February 15, 2019

SUBJECT: Elections: printing requirements.

SUMMARY: Deletes various provisions of law requiring certain text to be printed on the ballot in a particular size or font type and makes other ballot layout changes, as specified. Makes other technical changes.

EXISTING LAW:

- 1) Requires ballot headings, instructions, and other ballot layout specifications to be printed on the ballot in specific font sizes and font types, as specified.
- 2) Prescribes the format for the county voter information guide and requires the envelope containing the guide to print a notice in heavy-faced gothic type, not smaller than 12-point font stating that a vote by mail application is enclosed.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

1) **Purpose of the Bill:**

Under California state law, ballots must follow certain requirements, such as instructions to voters, font type, font size, margin widths, spacing of contests, voting square size, and write-in spacing, among other prescribed formats and conditions. According to the county elections officials, many of these requirements are outdated and create barriers for county elections officials to design new ballot layouts compatible with new voting systems and new methods of conducting elections.

Moreover, most voting systems currently used in California are antiquated. With the influx of state and federal funding last year to replace and upgrade aging voting equipment, many counties are actively looking to purchase or lease new voting systems. Accordingly, the time is right to allow counties to also review and update the design of ballots.

AB 623 would enhance voters' experience by providing elections administrators more flexibility when designing ballot layouts that are user friendly and compatible with new voting systems. Specifically, this bill removes outdated Election Code sections related to ballot layouts, font sizes, and font types.

- 2) **Governor's Budget and New Voting Machines:** The Governor's 2018-2019 budget included \$134 million in one-time General Fund spending to purchase new equipment for county voting systems. The equipment included hardware, software, and initial licensing to replace existing systems and technology. Under the proposal, counties provide a dollar-for-dollar match to receive the state funding.

- 3) **Federal Election Security Funding:** On March 23, 2018, President Trump signed the Consolidated Appropriations Act of 2018 (Act)—the omnibus spending bill for the federal fiscal year ending on September 30, 2018. Among other provisions, the Act provided \$380 million in Help America Vote Act funding to the U.S. Elections Assistance Commission (EAC) to make payments to states for activities to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements. States that receive federal funds are required to provide a match of five percent of the funds received within two years of receiving the federal funds.

According to information from the EAC, California's share of the federal funding is \$34,558,876, and the state's required five percent match totals \$1,727,944. The EAC notes that a joint explanatory statement prepared by Congress to indicate congressional intent on how the funds may be spent specifies that states may use the funds to replace electronic voting equipment that does not have a paper trail; to implement a post-election audit system; to upgrade election-related computer systems to address cyber vulnerabilities; to facilitate cybersecurity training for state and local election officials; to implement established cybersecurity best practices; and to fund other activities that will improve the security of elections for federal office.

- 4) **Secretary of State (SOS) Decertification of Certain Voting Systems:** Earlier this year, the SOS withdrew certification and conditional approval of all California voting systems, in whole or in part, not tested and certified to the California Voting System Standards (CVSS), effective August 27, 2019. Under current law the SOS is permitted to decertify any voting system or part thereof, determined to be defective, obsolete, or unacceptable. The voting systems being decertified contain obsolete hardware and software components, and employ end-of-life operating systems that are no longer supported. According to an advisory sent to county elections officials, the Notice of Withdrawal does not apply to other voting technology such as remote accessible vote by mail systems or electronic pollbooks.

According to the SOS's county advisory, there are three voting systems that have been tested and certified to the CVSS and there three more systems that are currently being reviewed and tested to CVSS.

The withdrawal is effective August 27, 2019, however, pursuant to existing law, any election scheduled six months from August 27, 2019, shall not be affected by this action. Therefore, any federal, state, county, municipal, district or school election scheduled from August 27, 2019, until February 27, 2020, may continue to use voting systems not tested and certified to CVSS. Additionally, in the advisory the SOS acknowledged that there may be circumstances that may hinder a jurisdiction from implementing a CVSS certified voting system by February 27, 2020, including, but not limited to, delays in the procurement process or a county budget. In recognition of unique challenges a county may face, the advisory stated that a written Request for Conditional Approval for Extension of Use may be submitted by a county to the SOS seeking to utilize a decertified system for any election scheduled after February 27, 2020.

- 5) **National Conference of State Legislatures (NCSL) Ballot Design Report:** According to a 2011 report by the NCSL, good design doesn't mean making ballots pretty, it means making a ballot easy to understand, use, and count. Good ballot design encompasses wording, images, color, layout, spacing, typeface, and usability and applies to polling place signs,

ballots, absentee ballot envelopes, voter information cards, voter registration applications— every piece of paper, image, or webpage about an election. However, the report acknowledges that good design is also a moving target and what was state-of-the-art in 1920 may be hard-to-read now. Back then, ballot designers had few options to make words stand out, so many states mandated by statute that large blocks of text be centered or that uppercase letters be used for candidate names or for the full text of various parts of the ballot. Research has since proven that centered text and uppercase letters are actually hard to read.

The NCSL report suggests the following to improve ballot design: 1) ask state election officials for a review of existing laws to identify archaic or overly prescriptive language and to suggest potential improvements; 2) review all legislative proposals to ensure they promote flexibility in design, rather than hard-and-fast rules that may become cumbersome later on; 3) adopt “plain language” requirements for ballots; 4) use a design checklist; 5) require, or at least encourage, usability testing of ballots; 6) consult the National Institute of Standards and Technology’s publications on language, style, color, clear writing, and usability for election design; or, 7) fund a “design fellow” position in a state’s elections office.

- 6) **Arguments in Support:** The sponsor of this bill, the California Association of Clerks and Election Officials, writes:

AB 623 will permit counties to have flexibility to use different font types when designing and printing ballots. This change will allow counties to create ballots that comply with new voting systems and will enhance the voting experience for their voters.

Under the current law many Elections Codes dictate what font style and size must be used when creating ballots. Many of these font styles are no longer used or have been determined to be not readable or accessible to voters with disabilities. Removing the specific font style and size requirements will allow county election officials the flexibility to create a ballot that contains all the required contests in a font style that is accessible and easy to read, allowing voters to have a better voting experience.

AB 623 also will allow counties to create a ballot that will comply with the new voting systems that are currently available. Many of the elections codes dealing with font size and style were created for voting systems that are no longer in use or have been decertified for use by the Secretary of State. The specific layout found in the code is difficult for counties to adapt to the new voting systems approved for use. With a large majority of the counties purchasing new voting systems for use in the 2020 election cycle, the flexibility when designing ballots will make the transition easier and will create a complete picture for the voter.

- 7) **Previous Legislation:** AB 2552 (Berman) of 2018, would have, among other provisions, required the SOS to establish a ballot design advisory committee to make recommendations for improving ballot design and the readability of ballot instructions, as specified. AB 2552 was vetoed by Governor Brown stating that, “In recent years, California's ballot and ballot pamphlet have become a hodgepodge of confusing, excessive and often redundant words and explanations. The Secretary of State -- with or without a committee -- should fix this festering problem. A bill is not necessary.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials (sponsor)

Opposition

None on file.

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