

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 969 (Pellerin) – As Amended March 23, 2023

SUBJECT: Elections: voting systems.

SUMMARY: Prohibits a county board of supervisors from terminating an existing voting system contract without a transition plan and a replacement contract in place.

EXISTING LAW:

- 1) Guarantees eligible voters' right to vote. (52 U.S.C. §10301, et seq.; California Constitution Article II, §2)
- 2) Prohibits a voting system, in whole or in part, from being used unless it has been certified or conditionally approved by the Secretary of State (SOS) prior to any election at which it is to be used. (Elections Code §19202(a))
- 3) Prohibits a jurisdiction from purchasing or contracting for a voting system unless it has been certified or conditionally approved by the SOS. (Elections Code §19202(d))
- 4) Authorizes the governing board of a local jurisdiction to adopt a voting system for use in an election if the system has been certified or conditionally approved by the SOS, as specified. (Elections Code §19207)
- 5) Defines a voting system to mean a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both. (Elections Code §362)
- 6) Defines a voting machine to mean any electronic device, including, but not limited to, a precinct optical scanner and a direct recording voting system, into which a voter may enter their 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. (Elections Code §361)
- 7) Requires, at each polling place, that at least one voting unit certified or conditionally approved by the SOS provide voters with disabilities the access required under the federal Help America Vote Act of 2002 (HAVA). (Elections Code §19242(b))

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

COMMENTS:

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

In January of 2023, the Shasta County Board of Supervisors voted to end their voting systems contract with Dominion Voting Systems. Ending this voting systems contract almost three years early is extremely expensive, and there is no doubt that this action by the Board of Supervisors has put the county elections

official's ability to conduct the next election at great risk.

Every county in California has a voting systems contract with one of four approved vendors. In the event that county elections officials are not able to secure a contract with an approved replacement voting system vendor, it is unclear whether they would even be able to conduct their next election under current Election Code requirements. To ensure stability regarding counting votes, AB 969 states that county Boards of Supervisors may not terminate an existing voting systems contract without a replacement contract and transition plan in place.

- 2) **Shasta County:** According to recent news and media articles, on January 24, 2023, the Shasta County Board of Supervisors (Board) voted to cancel the county's voting system lease agreement with Dominion Voting Systems effective after Shasta County's March 7th special election. At the time that decision was approved, the Board did not provide a plan or describe how they would conduct future elections. At a subsequent Board meeting, on February 28, 2023, the Shasta County Elections Department presented an agenda item to recommend the Board select a certified voting system or vote to rescind the cancellation of the Dominion lease agreement. Instead, the Board voted to explore hand counting (a "manual tally") of paper ballots. On March 28, 2023, the Board voted to direct staff to: (1) establish a procedure for the manual tally of ballots; (2) select either Electronic Systems & Software (ES&S) or Hart InterCivic (Hart) to provide voting equipment and associated software to satisfy all state and federal laws relating to voting access for persons with disabilities; and, (3) submit the plan to the SOS for approval for use at the county's next election. According to a recent news article, earlier this month, the Board voted unanimously to pick Hart as their new provider of voting equipment and services in the county.
- 3) **Other Counties:** Earlier this year, the Kern County Board of Supervisors considered canceling their contract with Dominion Voting Systems. However, according to media reports, in late February, after hours of debate, the Board voted 3-2 to renew their contract with Dominion. Committee staff is unaware of any other counties that are considering canceling their voting system vendor contracts. At the time of the preparation of this analysis, committee staff had not received a response to inquiries about whether the office of the SOS was aware of other counties that are considering canceling their voting system vendor contracts.
- 4) **Accessibility Requirements:** Existing federal and state law contain requirements that some argue cannot be satisfied without voting technology that includes a voting system and other voting equipment. For instance, existing federal and state law require elections to be accessible. Specifically, HAVA requires a voting system to "be accessible for individuals with disabilities...in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." Additionally, HAVA requires any voting system to use "at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." To comply with these requirements, accessible voting machines, including ballot-marking devices, are used for in-person voting at polling places and vote centers. These voting machines have features that enable voters with visual or dexterity impairments to vote privately and independently. Additionally, remote accessible vote by mail (RAVBM) systems enable private and independent voting by mail for some voters with disabilities by allowing them to complete a

ballot on their own computer using their own assistive technology. State law requires that all voters be permitted to use a RAVBM system, including voters with disabilities, and military and overseas voters.

According to a February 27, 2023 letter sent from the California Attorney General's (AG) office on behalf of the SOS's office to the Shasta County Board of Supervisors, "California counties fulfill their duty to protect the right to vote by, among other measures, using electronic voting systems. Absent an electronic voting system, a county will not be able to fulfill the accessibility requirements of federal and state law."

- 5) **Ballot Requirements:** Current law prescribes how ballots are printed, and different ballot styles are created for each election that include the names and information for every contest and ballot measure listed on the ballot. Voting systems enable elections officials to create accurately and efficiently the many ballot styles required to be produced so voters are able to vote on the contests for which they are eligible to vote. According to a March 23, 2023 letter sent by a coalition of nonprofit, nonpartisan California-based organizations to the Shasta County Board of Supervisors, "[without] a computerized voting system, county elections officials would have to figure out some other way to create all required ballot styles with the correct names and information for every contest and every ballot measure. They would also have to figure out how to manage the voluminous information that determines what appears and how it appears, as required by law, on each ballot."
- 6) **Canvassing and Reporting Requirements:** Current law requires county elections officials to comply with numerous canvassing and reporting requirements. The letter from the AG's office points out that the "official canvass—a multi-step process involving the inspection, reconciliation, and counting of votes—must begin no later than the Thursday following the election" and must be completed no later than the 30th day after the election. At that time, the election officials is required to submit a certified statement of the results of the election to the SOS that includes the number of total votes cast and vote totals for each candidate or measure for every precinct, including overvotes and undervotes. The letter states that "[certified] electronic voting systems facilitate all of these Elections Code obligations" and the "Secretary questions whether a county can complete these processes—all of which have strict deadlines and are critical to establishing the accuracy and integrity of elections—without using an approved electronic voting system."
- 7) **Hand Counting Ballots:** To ensure votes are accurately read and tallied by voting systems, existing law requires county elections officials to conduct public a manual tally (hand count) of ballots to verify the election results and check the accuracy of the vote count. There are two methods in which this may be accomplished and counties are required to use one or both to certify the results of every election. Elections officials are required to conduct a one percent manual tally, in which elections officials manually tally all the ballots in one percent of the precincts, selected at random by the elections officials. For each race that is not included in the initial group of precincts, the elections officials are required to count one additional precinct to include all races in the manual tally. Additionally, elections officials may conduct risk-limiting audits, and are required to do so if they are using an experimental voting system as part of a pilot program conducted pursuant to existing law. In a risk-limiting audit, elections officials manually tally randomly selected ballots, stopping as soon as it is implausible that a full recount would show a different result than the ballots reviewed.

The required manual tallies conducted to verify election results are typically conducted on a small percentage of ballots. As mentioned above, the Shasta County Board of Supervisors requested the election department to establish a procedure for the manual tally of all ballots. According to Shasta County Clerk/Registrar of Voter's report entitled, "Analysis of Manual Tally Options for Shasta County," Shasta County "has never conducted a hand count at the scale currently proposed, and the complexity, resources, and time required for a manual tally increase as the number of contests and ballots subjected to the manual tally increase." The report states that Shasta County has 111,503 voters and the typical turnout ranges from 50,000 voters in a primary to a high of 94,084 votes in the November 2020 Presidential general election. In the November 2022 general election, there were 47 ballot types, 42 contests, and 114 candidates and there were over 2.8 million ovals counted across the ballots.

According to information found in the Statement of the Vote that is prepared by the SOS for each statewide election, and information in a report titled *History of Voting Systems in California* that was prepared by the office of the SOS in 1999, it appears that no California county has conducted a full manual tally of all ballots cast at a statewide election since 1984. Only five counties (Alpine, Mariposa, Modoc, Sierra, and Trinity) have conducted a full manual tally of ballots at a statewide election since 1980, and each of those manual tallies involved fewer than 6,000 ballots. Nearly 70% of California counties have not conducted a full manual tally of all ballots cast at a statewide election since at least the 1960s.

The March 23, 2023 coalition letter that is referenced above notes that "[hand-counting] ballots requires sufficient multi-person teams of counters, sufficient resources to conduct the count (including facilities, tables, and funding to pay for staff, space, and supplies), and enough time to complete the count before the legal deadlines for post-election auditing and reporting the official results." Without a computerized voting system, it is unclear whether Shasta County can timely count the ballots cast in any election other than a small special election.

Furthermore, because counties generally have not conducted full manual tallies of ballots cast in statewide elections for nearly 40 years, it is unclear whether existing state law contains appropriate processes, procedures, and safeguards for administering an election in which all ballots will be manually tallied. Recent news articles state that the SOS is currently working on draft regulations governing the hand count of ballots, which will go through the regulatory process.

- 8) **Future Elections in Shasta County:** While the next regularly scheduled election in Shasta County is the March 2024 statewide presidential primary election, the county may also be required to conduct one or more special elections before that time. According to a report to the Shasta County Board of Supervisors by the County Clerk/Registrar of Voters at the Board's April 6, 2023 meeting, the county has received inquiries from two local jurisdictions about potentially holding special elections on November 7, 2023. While the Board approved the purchasing of Hart voting equipment, as detailed above, it is unclear whether that equipment will be procured and deployed in time to be used in those upcoming elections, including the time that will be needed for preparations such as testing the equipment and training staff and poll workers on how to properly deploy and use it.
- 9) **Voting Technology:** The Legislature has approved various bills to ensure California has the most rigorous and stringent voting system and voting equipment standards and approval

procedures. Notably, SB 360 (Padilla), Chapter 602, Statutes of 2013, made significant changes to procedures and criteria for the certification and approval of a voting system, required the SOS to adopt and publish voting system standards and regulations governing the use of voting systems, and required those standards to meet or exceed federal voluntary voting system guidelines (VVSG) set forth by the US Election Assistance Commission (EAC) or its successor agency, as specified.

Accordingly, in 2014, California established its own standards – California voting system standards (CVSS) – for electronic components of voting systems which were derived from the EAC’s VVSG versions 1.1 and 2.0. The CVSS provides a set of specifications and requirements to which voting systems are required to be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems.

In counties that use electronic voting systems, state law requires election officials to provide paper ballots at the polling place. State law additionally prohibits any part of a voting system from being connected to the Internet at any time, and California's voting system standards prohibit voting systems from having the capability to communicate individual votes or vote totals over public communications networks or from having wireless communications capabilities.

10) **Approved Voting Systems:** According to the SOS’s website, as of April 4, 2023 there are four voting systems vendors whose voting equipment is certified to be sold and used in California: Hart Verity Voting, Dominion Voting System, ES&S, and Los Angeles County Voting Solution for All People (only applicable to Los Angeles County). Dominion Voting Systems provides voting systems for 40 of California's 58 counties.

11) **Arguments in Support:** In support of this bill, the California Association of Clerks and Election Officials (CACEO) writes:

Existing law authorizes the governing board of a local jurisdiction to adopt a voting system for use in an election if the system has been certified or conditionally approved by the Secretary of State.

This bill would prohibit a county board of supervisors from terminating an existing voting system contract without a transition plan and a replacement contract in place.

CACEO greatly appreciates Assemblymember Pellerin’s desire to ensure that voters in each county with a State-certified voting system will always have a voting system in place to conduct elections.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials

Opposition

None on file.

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