

Date of Hearing: September 7, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 969 (Pellerin) – As Amended August 17, 2023

CONCURRENCE IN SENATE AMENDMENTS

SUBJECT: Elections: voting systems.

SUMMARY: Prohibits an elections official from performing a manual vote count in an election held on an established election date if there are more than 1,000 eligible registered voters, or an election held on a date other than an established election date if there are more than 5,000 eligible registered voters, as specified. Requires an elections official or any jurisdiction that administers elections to use a certified voting system for accessible voting and to tabulate votes, and prohibits a jurisdiction from terminating a contract for an existing certified voting system unless the jurisdiction has a plan to transition to a new voting system and has signed a new contract for a certified voting system.

The Senate amendments add the following substantive provisions to this bill:

- 1) Prohibit an elections official from performing a manual vote count in any election unless that manual count is conducted pursuant to a plan approved by the Secretary of State (SOS). Require a manual count plan to be consistent with the regulations adopted by the SOS regarding manual vote counts.
- 2) Require the SOS to adopt regulations regarding manual vote counts and to prepare a template of a manual count plan that an elections official may use when creating their manual count plan to submit to the SOS.
- 3) Prohibit an elections official from conducting a manual vote count in an election, and prohibits the SOS from approving a plan to conduct a manual vote count for that election, if either of the following are true:
 - a) The election is held on an established election date and there are more than 1,000 registered voters who are eligible to participate in that election as of 154 days before the election.
 - b) The election is held on a date other than an established election date and there are more than 5,000 registered voters who are eligible to participate in that election as of 154 days before the election.
- 4) Require an elections official or the governing body of any jurisdiction that administers elections to use a certified voting machine or voting system for accessible voting pursuant to state and federal law, and to tabulate votes.
- 5) Provide that if a jurisdiction that administers elections terminates a contract for an existing certified voting system, that termination shall be provisional and shall not become final unless and until the jurisdiction that administers elections has satisfied all of the following:

- a) The jurisdiction has a plan to transition to a new voting system that will ensure compliance with applicable state and federal laws; and,
 - b) The jurisdiction has finalized and signed a new contract for a certified voting system.
- 6) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Guarantees eligible voters' right to vote. (52 U.S.C. §10301, et seq.; California Constitution Article II, §2)
- 2) Provides that the following dates are established election dates:
 - a) The first Tuesday after the first Monday in March of each even-numbered year that is evenly divisible by four.
 - b) The first Tuesday after the first Monday in March of each odd-numbered year.
 - c) The second Tuesday of April in each even-numbered year.
 - d) The first Tuesday after the first Monday in June in each even-numbered year that is not evenly divisible by four.
 - e) The first Tuesday after the first Monday in November of each year. (Elections Code §1000)
- 3) Prohibits a voting system, in whole or in part, from being used unless it has been certified or conditionally approved by the SOS prior to any election at which it is to be used. (Elections Code §19202(a))
- 4) 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))
- 5) 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)
- 6) 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)
- 7) 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)
- 8) 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); 52 U.S.C. §20901, et seq.)

- 9) Permits hand counting of ballots, as specified. (Elections Code §§15270, 15290)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Prior Assembly Consideration of This Bill:** Subsequent to the Assembly's approval of this measure, it was amended in the Senate to add new substantive provisions to the bill. While the Senate amendments maintain the provisions from the Assembly-approved version of the bill, they also add provisions that limit when a manual ballot count may be conducted. Specifically the Senate amendments prohibit an election official from performing a manual vote count in an election held on an established election date if there are more than 1,000 eligible registered voters, or on an election held on a date other than an established election date if there are more than 5,000 eligible registered voters, as specified. Additionally, the Senate amendments require an elections official who intends to conduct a manual vote count to submit a manual count plan to the SOS for approval, and require the plan to be consistent with regulations adopted by the SOS regarding manual vote counts. Finally, the Senate amendments add an urgency clause, allowing this bill to take effect immediately upon enactment. The current provisions of this bill were approved by the Senate by a vote of 31-6 on September 5, 2023. The new provisions have not been considered by a policy committee in the Assembly during the current legislative session. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

- 2) **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, this threw Shasta County's ability to conduct an election which complied with the Elections Code [in] jeopardy.

Assembly Bill 969 simply says that a jurisdiction may not cancel their existing voting system before having another system ready to take its place. AB 969 requires that a voting system be used in regularly scheduled elections in which there are more than 1,000 registered eligible voters as of 154 days in advance of the election. This threshold increases to 5,000 registered eligible voters in non-regularly scheduled elections, such as special elections. The United States [US] has some of the longest ballots in the world because they contain contests at the local, state, and federal levels. In non-regularly scheduled elections, the ballots tend to only have one contest on the ballot, which allows for easier hand counting.

Manual tallies have been shown to be less accurate, slower, and more costly than machine tabulation. A 2018 study conducted by researchers from Harvard, MIT, and the University of Wisconsin examined statewide recounts conducted in Wisconsin and found that paper ballots counted by hand were less accurate than ballots counted with optical scanners. Tabulators are used by over 90% of US election jurisdictions. Hand counts are complex, imprecise, and resource-intensive. Voting systems allow for higher security, accuracy, and accountability than hand counting and ensure the secrecy of the ballot.

I have heard concerns that this impinges upon the local control of elections at the county level. This bill does not mandate that a county must use a specific voting system to conduct its elections. In California, all voting systems must be state certified and federally qualified; the selection of a voting system will continue to be governed by existing Elections Code. California has some of the strictest voting systems standards in the country, with our standards exceeding the federal minimums. It is already illegal for any part of a voting system to be connected to the internet at any time and no part of the voting system is permitted to receive or transmit wireless communications or wireless data transfers.

- 3) **Shasta County:** According to news 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. In March, the Board voted unanimously to pick Hart as their new provider of voting equipment and services in the county.
- 4) **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 this time.
- 5) **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."

- 6) **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 the many ballot styles required to be produced accurately and efficiently, 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."
- 7) **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 elections official 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 SOS "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."
- 8) **Hand Counting Ballots:** To ensure votes are accurately read and tallied by voting systems, existing law requires county elections officials to conduct a public 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 a report prepared by the Shasta County Clerk/Registrar of Voters entitled, “Analysis of Manual Tally Options for Shasta County,” the 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.

- 9) **Secretary of State Manual Vote Count Regulations:** This bill requires the SOS to adopt manual vote count regulations, and requires an elections official to submit for approval by the SOS a manual vote count plan that is consistent with the regulations. In May, the SOS released draft regulations governing the conduct of manual tallies of ballots that it was proposing to adopt. Following the release of those draft regulations, a 45-day public comment period was held through July 5, 2023, and a public hearing on those regulations was held on July 3, 2023. Based on the public comments received, the SOS made changes to the originally proposed regulations, which triggered another public comment period that was held from July 7, 2023 through July 24, 2023. The SOS submitted the final rulemaking file

for review to the Office of Administrative Law (OAL) on August 3, 2023, and the OAL has 30 working days to approve or disapprove the regulations. At the time of the preparation of this committee analysis, the proposed manual vote count regulations were still under review at OAL.

- 10) **Local November Election in Shasta County:** Shasta County is conducting a consolidated special election on November 7, 2023, and approximately 9,500 registered voters will vote to fill a school board vacancy, to fill three seats on a local fire district, and vote on two local ballot measures (one related to the formation of a fire district and the other related to the creation of a parcel tax).

As noted above, in May, Shasta County entered into a contract with Hart for a new voting system to comply with federal and state laws relating to voting access for voters with disabilities. However, based on the actions of the Shasta County Board of Supervisors, those machines will not be used to tally ballots – all ballots for all elections will be tallied by hand. If this bill is signed into law, it would prohibit Shasta County from doing a full manual vote count for the November 7, 2023 election, or for next year’s statewide elections.

- 11) **Urgency Clause:** This bill contains an urgency clause, which means that its provisions would take effect immediately if it is approved by the Legislature and signed by the Governor. This could happen as late as October 14, 2023, less than a month before the November 7, 2023, special election in Shasta County. The timing of when this bill is signed into law will determine how much time the Shasta County elections official has to prepare for their November special election. If this bill is signed into law on the last possible day, the elections officials would not know until 24 days before the election which method will be used to count ballots.

According to the author, the Shasta County elections official affirms that its office is in the process of finalizing policies to ensure an accurate, manual vote count of ballots cast in the November 7, 2023, special election and will be prepared to implement those policies should this bill not become law. At the same time, the elections official is confident they can pivot to a system to count the ballots electronically, even if this bill is signed into law (or becomes law without the Governor’s signature) on the last possible day.

- 12) **Arguments in Support:** In support of a prior version of this bill, the League of Women Voters of California (LWVC), wrote:

In January 2023, the Shasta County Board of Supervisors, in an act fueled by mis and dis-information and election denialism, voted to remove their Dominion electronic voting systems without an adequate replacement. The LWVC joined in a coalition letter to register concerns and urge reconsideration. The Board ignored the concerns expressed, and subsequently voted to require a hand count of all ballots in future elections. The LWVC joined in another letter registering further concerns, which, for the most part, was likewise disregarded by the Board. After prompting by the California Attorney General, the Board voted to purchase new machines to ensure state and federal voting accessibility requirements are met.

Shasta County’s precipitous moves places their elections at risk and diminishes the public’s trust in elections. Now there is the threat that these costly and

destabilizing actions will be repeated in other California counties. Hand-counting ballots requires sufficient multi-person teams of counters, sufficient resources to conduct the count, 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, a timely and accurate count of ballots, in anything other than a very small election, may be impossible.

AB 969 is a necessary exercise of the government's responsibility to protect fundamental voting rights. We cannot allow the irrational passions of uninformed political actors to disrupt the voting process and undermine our elections.

13) **Arguments in Opposition:** In opposition to a prior version of this bill, the Election Integrity Project California, Inc., wrote:

Clearly the genesis of AB 969 is the recent action taken by the Shasta County Board of Supervisors in deciding to conduct its county's elections without electronic assistance... The Shasta County Board of Supervisors acted responsibly. They did their due diligence and established a clear plan to meet the needs of their county based on the evidence presented and considerations discussed. THIS is the role of local government!

The messaging that has followed that action, that somehow it "can't be done," that Shasta will be in chaos and that their elections will cost millions more is categorically false and pure propaganda... AB 969 dictatorially removes from the table any election model other than one fully reliant on the very technology that so many people world-wide not only believe but know to be unreliable and manipulatable.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (prior version)
American Federation of State, County and Municipal Employees, AFL-CIO (prior version)
California Association of Clerks & Election Officials (prior version)
California Common Cause
California Democratic Party
California Secretary of State Shirley N. Weber, Ph.D. (prior version)
Disability Rights California (prior version)
League of Women Voters of California (prior version)
4 individuals

Opposition

Election Integrity Project California, Inc. (prior version)
42 individuals

Analysis Prepared by: Nichole Becker / ELECTIONS / (916) 319-2094