

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2352 (Low) – As Amended April 18, 2018

SUBJECT: Elections: reportable errors.

SUMMARY: Requires a county elections official to document reportable errors, as defined, and submit information on these errors to the Secretary of State (SOS) for review and guidance, as specified. Specifically, **this bill:**

- 1) Requires the SOS to do all of the following:
 - a) Promulgate regulations by January 1, 2020, establishing which errors in election administration constitute “reportable errors.” Requires the regulations to be consistent with all of the following:
 - i) A “reportable error” must affect at least 100 individuals or 0.01 percent of the registered voters, whichever is greater.
 - ii) A “reportable error” includes, but is not limited to, instances when a voter is provided election-related materials from a county elections official that is incorrect or incomplete. Defines, for the purposes of this bill, “election-related materials” to include, but not be limited to, ballots, sample ballots, voter information guides, and polling place notifications that are sent to a voter by mail, email, or text.
 - iii) A “reportable error” is not a minor or technical typographical or formatting error, as determined by the SOS.
 - b) Require a county elections official to submit specified information about reportable errors to the SOS within a prescribed time.
 - c) Review submitted information about reportable errors and issue appropriate guidance to address those errors, if necessary.
- 2) Requires a county elections official to document reportable errors, consistent with the provisions above, and requires a county elections official to submit specified information about these errors to the SOS after each election, as required.
- 3) Requires a jurisdiction, at the time that it requests for the county elections official to conduct an election on its behalf, to provide the county elections official with both of the following:
 - a) The boundaries of the jurisdiction; and,
 - b) Any districts within the jurisdiction.
- 4) Makes the following findings and declarations:

- a) A fair, accessible, and equitable electoral process is central to our democracy.
- b) Each county's registrar of voters administers the federal, state, and local elections.
- c) Errors related to the electoral process can be detrimental to our democracy and each registrar of voters should be accountable for their policies and procedures.
- d) Appropriate measures should be taken to avoid electoral process errors as much as possible.
- e) Keeping the public's faith in a fair, accessible, and equitable electoral process is of utmost importance.
- f) A recent report by the State Auditor indicates that processing errors in the County of Santa Clara might have been avoidable.
- g) It is vital that other counties learn from the errors that occurred in the County of Santa Clara and take the appropriate steps to avoid making similar errors that jeopardize the integrity of the electoral process.

EXISTING LAW:

- 1) Requires the SOS to mail to all households in which voters are registered a state voter information guide, as specified.
- 2) Requires the state voter information guide to contain information including, but not limited to, a complete copy of each state measure, arguments and rebuttals for and against each state measure, and an analysis of each state measure.
- 3) Requires county elections officials to mail a county voter information guide to each voter in the jurisdiction, as specified.
- 4) Requires the county voter information guide to contain, among other things, a copy of the official ballot (sample ballot), a notice of the polling place, a complete copy of each local measure, and an analysis of each measure.
- 5) Permits the governing body of any city or district, by resolution, to request the board of supervisors of a county to permit the county elections official to render specified services to the city or district relating to the conduct of an election.
- 6) Requires any city that requests the board of supervisors to permit the elections official to prepare the city's election materials to supply the county elections official with a list of its precincts, or consolidated precincts no later than 61 days before an election.
- 7) Requires a county elections official, by the 88th day before an election, to divide a jurisdiction into voting precincts, as specified.
- 8) Requires an elections official to divide a jurisdiction into precincts and prepare detailed maps or exterior descriptions of the precincts, as specified. Requires all jurisdictions to submit

political boundary line adjustments to the elections official at least 125 days before an election for the changes to be in effect for the election.

- 9) Requires the SOS to prepare, certify, and file a statement of the vote, as specified, no later than the 38th day after the election.
- 10) Requires a county elections official to retain and preserve certain election records, as specified.

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

COMMENTS:

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

All voters deserve access to free and fair elections. Last year, I requested an audit of the Santa Clara County Elections Office following a series of administrative errors over the last few election cycles. The audit found that inadequate policies and procedures had led to errors in election materials, and that the county failed to notify voters consistently and effectively when mistakes were made. While the errors uncovered in the Santa Clara County audit did not influence the outcome of an election, they may have undermined voter confidence in the electoral process.

As such, the report included several recommendations for the Santa Clara County Elections Office to reduce errors, and the Secretary of State to enhance oversight over county elections offices. AB 2352 will prevent similar mistakes from being made in local elections across the state.

AB 2352 requires the Secretary of State to establish regulations to determine which election administration errors are “reportable,” and require those errors to be submitted to the Secretary of State for review. The bill would also require a local jurisdiction, when requesting the county elections official to conduct an election on their behalf, to provide district boundaries to the county in a format specified by the county.

Maintaining the public’s faith in a fair, accessible, and equitable electoral process is of utmost importance.

- 2) **State Audit of the Santa Clara Registrar of Voters:** Due to a number of well publicized administrative mistakes and errors in elections conducted by the Santa Clara County Registrar of Voters' (Santa Clara) office since 2010, last year Assemblymember Low submitted a request to the Joint Legislative Audit Committee (JLAC) requesting an audit of the Santa Clara County Registrar of Voters. Specifically, the audit requested the State Auditor to examine Santa Clara's elections processes and procedures and to assess the degree to which the problems in recent elections (2010-2016) were isolated errors, or were evidence of a more systemic problem. Additionally, the audit requested to identify the root causes of the errors, and to assess risks and vulnerabilities in order to prevent future mistakes.

In March of last year, JLAC approved the audit request and directed the State Auditor to audit Santa Clara's policies, procedures, and practices for the creation, review, and distribution of election-related materials. Last October, the State Auditor completed the audit and released her report. According to the report, the State Auditor reviewed Santa Clara's policies, procedures, and practices regarding its review and distribution of election-related materials, oversight of its vendors, and actions associated with errors in election-related materials that occurred from 2010 through 2016. Additionally, the audit included interviews with election officials from five other California counties regarding similar types of processes and errors related to producing and distributing election-related materials.

According to the audit report, Santa Clara reported that it had administered nearly 30 elections between 2010 through 2016 and identified 26 errors in its development and distribution of election-related materials. The errors largely originated from incorrect mapping of voting districts, vendor mistakes, and inadequate proofreading and publication processes. This report concluded that Santa Clara's insufficient policies and procedures led to errors in their election-related materials, and Santa Clara's responses were inconsistent and sometimes inadequate when notifying the public of the errors. The audit report made the following general conclusions: (1) inadequate and often unwritten policies, procedures and practices led to errors in election-related materials; 2) Santa Clara did not ensure that it notified voters consistently and effectively about errors in election-related materials; and 3) to help prevent errors in election-related materials and processes, the SOS should enhance its oversight of county election officials.

- 3) **Audit Report Findings:** As mentioned above, the State Auditor's made three general conclusions. The first conclusion found that Santa Clara has inadequate and often unwritten policies, procedures and practices which led to errors in their election-related materials. The findings stated that errors consisted of mapping errors, typographical errors, missing or incorrect information, mailing errors, or technical errors and that the errors were generally attributed to mistakes made by Santa Clara's staff or vendors as well as staff members' failures to ensure that voting districts provided Santa Clara with correct information. In all, the report states that these errors affected a cumulative 10 percent of Santa Clara's total registered voter population for all elections over the seven-year audit period.

Some of Santa Clara's more significant errors resulted from inadequacies in its mapping process. Consequently, voters were provided with voter information guides and ballots designated for other voting districts, and the county failed to provide some voters with the appropriate election-related materials within the timeframe required by state law. Moreover, the report states that the majority of these mapping errors occurred because the county did not confirm that the data they were working from reflected the voting districts' most accurate and up-to-date boundary maps. Additionally, some errors in election-related materials were attributed to vendors that were contracted for printing, translating, and mailing election-related materials. The audit found that several errors primarily related to software programming, material assembly, or mailing, that caused the vendors to omit certain information from ballots when printing them, sending voters the wrong ballots, or sending voters' ballots to the wrong addresses. Errors that were attributed to Santa Clara's staff included omissions of candidate statements or arguments from voter information guides. Lastly, the report found that Santa Clara does not track the number

and types of errors in its election-related materials and that compiling the list of errors was done by using Santa Clara staff members' collective memories and information it found in documents, emails, and press releases.

Secondly, the State Auditor concluded that Santa Clara did not ensure that it notified voters consistently and effectively when errors were discovered in their election-related materials. The report found that Santa Clara issued errata letters or press releases to notify voters about most of its errors, however because Santa Clara does not have any written formalized contingency plans or processes to inform its decision making on how to best address election-related errors, its response was inconsistent and sometimes inadequate when notifying the public. According to the report, although state law or regulations do not require counties to have contingency plans for responding to election-related errors, the Auditor believes that implementing such a plan is a best practice. Moreover, the audit found that, in general, Santa Clara took steps to notify voters about errors, but it did not explain the causes of the errors or how the county planned to prevent similar errors from reoccurring. Again, the report notes that state law does not require such explanations, however the Auditor contends that disclosing this information is a best practice that promotes transparency and helps foster the public's trust.

Lastly, the report concluded that to help prevent errors in election-related materials and processes, the SOS should enhance its oversight of county election officials. The report states that although state law provides the SOS with oversight responsibility for county election activities and practices, the SOS does not actively monitor or review counties' election-related materials, and provides limited guidance to election officials about what constitutes an error or how to address errors in election-related materials. The report contends that if the SOS were to actively identify the types and frequency of errors that occur in the election-related materials prepared and distributed by counties, it could help identify and mitigate the causes of those errors. Moreover, the report states that the SOS does not define the criteria for determining the types of mistakes in election-related materials that constitute reportable errors and that this omission may contribute to inconsistencies in counties' interpretations of election laws and regulations and to disparities in counties' efforts to disclose errors to the public. Lastly, the report contends that by increasing its monitoring efforts, the SOS could more readily identify statewide issues to better focus the direction it provides to counties, including guidance that helps ensure that counties are providing accurate information to voters and are addressing errors consistently.

- 4) **Audit Report Recommendations:** The State Auditor's report makes various recommendations for both Santa Clara and the SOS. In summary the report recommends Santa Clara document its policies and procedures for the creation, review, and distribution of election related materials. Additionally, to reduce mapping errors, the report recommends Santa Clara to send voting districts the boundary maps it has on file and require the districts to verify the boundaries or updated boundary maps before each election, coordinate with other county departments to maximize its available mapping resources, and research its opportunities to integrate its mapping technology with its election management software to reduce the risk of staff errors. Additionally, the report recommends Santa Clara to implement a contingency plan to ensure that it consistently and effectively addresses errors in the election-related materials it provides to voters. Moreover, to increase transparency and the public's trust, the report recommends Santa

Clara to explain in its postelection reports why errors occurred and how it plans to ensure that similar errors will not recur in the future.

With regards to the SOS, the audit recommends the SOS to adopt regulations defining the criteria for mistakes in election-related materials that constitute reportable errors, require counties to report errors to the SOS, and recommends the SOS to use this information to enhance the guidance it provides to county election officials. Additionally, the report recommends the SOS to conduct annual reviews of a selection of county election officials' offices to ensure that these offices are complying with state election laws and regulations.

- 5) **Jurisdictional Boundaries:** Current law requires an elections official to divide a jurisdiction into precincts and prepare detailed maps or exterior descriptions of the precincts. However, if jurisdictional boundary lines change, current law requires all jurisdictions to submit the political boundary line adjustments to the elections official by a certain time. Last year the Legislature passed and the Governor signed AB 1730 (Elections & Redistricting Committee), which lengthened the timeframe from 88 days to 125 days before an election for the changes to be in effect for the election. AB 1730 ensures elections officials have sufficient time to accurately incorporate and implement boundary changes into their election management systems and place every voter in the correct political jurisdiction.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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