

Introduced by Senator PavleyFebruary 27, 2009

An act to amend Sections 13002, 13004, 13005, 13006, 18400, 19202, 19214, and 19214.5 of, to add Section 19212.5 to, and to repeal Section 13007 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as introduced, Pavley. Elections: ballot cards and voting systems.

Existing law requires the Secretary of State to adopt regulations governing the manufacture, distribution, and inventory control of punchcards, and requiring the inspection of facilities that manufacture and store punchcards. Existing law requires the Secretary of State to approve a punchcard manufacturer prior to the manufacturer's providing of punchcards for use in California elections.

This bill would instead require the Secretary of State to adopt regulations governing the manufacture, finishing, quality standards, and inventory control of ballot cards, and requiring the inspection of facilities that manufacture, finish, and store ballot cards. The bill would require that the costs of the inspection be paid for by the ballot card manufacturer or finisher. The bill would require that, no later than 5 days prior to inspection, the ballot card manufacturer or finisher disclose to the Secretary of State known flaws or defects in its current or past manufacturing or finishing process of ballot cards or manufactured or finished ballot cards that could adversely affect the casting or tallying of votes. The bill would require a manufacturer or finisher of ballot cards to notify the Secretary of State and affected local elections officials of defects that would adversely affect that casting or tallying of ballot

cards that it discovers after approval by the Secretary of State within 2 business days of their discovery.

Existing law provides for a revolving fund that is continuously appropriated for the purpose of purchasing ballot paper and punchcards.

This bill would repeal these provisions.

Existing law provides that a person or corporation owning or being interested in a voting system or part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. Existing law requires the Secretary of State to issue a report regarding whether, in his or her opinion, the voting system or part of a voting system can be safely used.

This bill would instead require that a vendor of a voting system or part of a voting system include in its application to the Secretary of State notification of a known defect, flaw, or error in the hardware, software, or firmware of the voting system or a part of the voting system. The bill would also require the vendor to notify the Secretary of State of such a defect, flaw, or error discovered either after the vendor submitted his or her application but prior to the issuance of the Secretary of State's report or after the voting system or the part of a voting system is approved by the Secretary of State. The bill would also require the Secretary of State to notify and issue a report to the United States Election Assistance Commission regarding the defects, flaws, or errors made known by the vendor at the initiation of, during, or after the approval process.

Existing law permits the Secretary of State to seek damages for the unauthorized change in hardware, software, or firmware in a certified or conditionally certified voting system.

This bill would instead permit the Secretary of State to seek civil penalties for an undisclosed defect, flaw, or error in hardware, software, or firmware in an approved or conditionally approved voting system and for a violation of the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 13002 of the Elections Code is amended
- 2 to read:
- 3 13002. ~~All ballot~~ *Ballot* paper and ~~punchcards~~ *ballot cards*
- 4 used by ~~any~~ a jurisdiction holding an election pursuant to the laws

1 of California, shall be tinted and watermarked or overprinted with
2 a design, to be furnished by the Secretary of State, so that the
3 watermark or overprint shall be plainly discernible.

4 SEC. 2. Section 13004 of the Elections Code is amended to
5 read:

6 13004. (a) The Secretary of State shall adopt regulations
7 governing the manufacture, *finishing, quality standards,*
8 distribution, and inventory control of ~~punchcards~~ *ballot cards* and
9 requiring the periodic inspection of the manufacturing, *finishing,*
10 and storage facilities involving ~~punchcards~~ *ballot cards*. The
11 Secretary of State shall also approve each ~~punchcard~~ *ballot card*
12 manufacturer *or finisher* prior to a manufacturer *or finisher*
13 providing ~~punchcards~~ *ballot cards* for use in California elections.

14 (b) *The costs associated with facility inspections shall be paid*
15 *by the ballot card manufacturer or finisher. Prior to inspection,*
16 *the Secretary of State may require the manufacturer or finisher to*
17 *deposit sufficient funds to guarantee the payment of the inspection*
18 *charges.*

19 (c) *No later than five working days before the Secretary of State*
20 *begins his or her initial inspection, the ballot card manufacturer*
21 *or finisher shall disclose to the Secretary of State in writing a*
22 *known flaw or defect in its current or past ballot card*
23 *manufacturing or finishing process or manufactured or finished*
24 *ballot cards that could adversely affect the casting or tallying of*
25 *votes. Once approved by the Secretary of State, the ballot card*
26 *manufacturer or finisher shall notify the Secretary of State and*
27 *the affected local elections officials in writing within two business*
28 *days after it discovers any flaw or defect in its ballot card*
29 *manufacturing or finishing process or manufactured or finished*
30 *ballot cards that could adversely affect the casting or tallying of*
31 *votes.*

32 SEC. 3. Section 13005 of the Elections Code is amended to
33 read:

34 13005. (a) Before ~~any~~ *a user may purchase punchcards* *ballot*
35 *cards, the user shall request in writing a release for a specific*
36 *quantity of these punchcards ballot cards from the Secretary of*
37 *State. If the request is in order, the Secretary of State shall then*
38 *issue a written release for that quantity to the manufacturer, or to*
39 *the authorized warehouse, and to the user. The format, text, and*

1 use of the request and release shall be governed by regulations
2 adopted by the Secretary of State.

3 (b) Nothing in this section shall be construed to prohibit a verbal
4 request or verbal release, provided that this verbal request or verbal
5 release is immediately confirmed in writing. The regulations shall
6 expressly deny the manufacturing of ~~punchcards~~ *ballot cards*
7 without a specific release.

8 SEC. 4. Section 13006 of the Elections Code is amended to
9 read:

10 13006. ~~No~~A user, vendor, or manufacturer shall *not* warehouse
11 for a subsequent election ~~any~~ ballot paper or ~~punchcards~~ *ballot*
12 *cards* furnished or released by the Secretary of State for a specific
13 election without first obtaining authorization in writing from the
14 Secretary of State for the storage. The authorization shall include
15 the particular details of the amount to be stored so that audit
16 controls may be established and maintained. ~~Any~~ ballot *Ballot*
17 paper or ~~punchcards~~ *ballot cards* not used in that election, not
18 authorized to be retained for subsequent elections, and not returned
19 to the Secretary of State, shall be destroyed. A certificate of
20 destruction setting forth the date of destruction and the amount of
21 the ballot paper or ~~punchcards~~ *ballot cards* destroyed shall be
22 transmitted to the Secretary of State.

23 SEC. 5. Section 13007 of the Elections Code is repealed.

24 ~~13007. There shall be a revolving fund for the purchase of~~
25 ~~ballot paper and punchcards. The fund shall be continuously~~
26 ~~appropriated and shall be continuously utilized without regard to~~
27 ~~fiscal years for the payment of expenses incurred by the Secretary~~
28 ~~of State in accordance with this section. The fund shall be used~~
29 ~~for the purchase of ballot paper and punchcards, as provided in~~
30 ~~this chapter, and shall be reimbursed by the receipts from the~~
31 ~~jurisdiction obtaining the ballot paper or punchcards in accordance~~
32 ~~with this chapter. The fund shall at all times be intact and~~
33 ~~represented either by cash in the State Treasury, ballot paper, or~~
34 ~~punchcards in the custody of the Secretary of State, or accounts~~
35 ~~receivable representing ballot paper or punchcard sales.~~

36 SEC. 6. Section 18400 of the Elections Code is amended to
37 read:

38 18400. ~~Any~~A person who makes, uses, keeps, or furnishes to
39 others, ~~any~~ paper or ~~punchcards~~ *cards* watermarked or overprinted
40 in imitation of ballot paper or ~~punchcards~~ *ballot cards* is punishable

1 by a fine not exceeding one thousand dollars (\$1,000), or by
2 imprisonment in the state prison for 16 months, two or three years,
3 or by both the fine and imprisonment.

4 SEC. 7. Section 19202 of the Elections Code is amended to
5 read:

6 19202. ~~Any~~(a) A person or corporation owning or being
7 interested in ~~any~~ a voting system or a part of a voting system may
8 apply to the Secretary of State to examine it and report on its
9 accuracy and efficiency to fulfill its purpose. *As part of its*
10 *application, the vendor of a voting system or the part of a voting*
11 *system shall notify the Secretary of State in writing of a known*
12 *defect, flaw, or error in the hardware, software, or firmware of*
13 *the voting system or a part of the voting system. The Secretary of*
14 *State shall not begin his or her examination until he or she receives*
15 *a completed application from the vendor of the voting system or*
16 *the part of the voting system. The vendor shall also notify the*
17 *Secretary of State in writing of a defect, flaw, or error in the*
18 *hardware, software, or firmware of the voting system or a part of*
19 *the voting system discovered after the application is submitted and*
20 *before the Secretary of State submits the report required by Section*
21 *19207. The Secretary of State shall complete his or her examination*
22 *without undue delay.*

23 (b) *Within 72 hours after receiving a vendor's written*
24 *notification of a defect, flaw, or error, the Secretary of State shall*
25 *notify the United States Election Assistance Commission or its*
26 *successor entity of the problem. Within 30 days after receiving a*
27 *vendor's written notification of a defect, flaw, or error, the*
28 *Secretary of State shall submit a report regarding the problem to*
29 *the United States Election Assistance Commission or its successor*
30 *entity.*

31 SEC. 8. Section 19212.5 is added to the Elections Code, to
32 read:

33 19212.5. (a) When a voting system or a part of a voting system
34 has been approved by the Secretary of State, the vendor shall notify
35 the Secretary of State and all local elections officials who use the
36 system in writing of a defect, flaw, or error in the hardware,
37 software, or firmware of the voting system or a part of the voting
38 system within five working days after the vendor learns of the
39 defect, flaw, or error.

1 (b) No later than January 8, 2010, the vendor of a voting system
 2 or a part of a voting system that has been approved by the Secretary
 3 of State prior to the effective date of this section shall notify the
 4 Secretary of State and all local elections officials who use the
 5 system in writing of a defect, flaw, or error in the hardware,
 6 software, or firmware of the voting system or a part of the voting
 7 system the vendor was aware of prior to January 1, 2010.

8 (c) Within 72 hours after receiving a vendor's written
 9 notification of a defect, flaw, or error pursuant to subdivision (a)
 10 or (b), the Secretary of State shall notify the United States Election
 11 Assistance Commission or its successor entity of the problem.
 12 Within 30 days after receiving a vendor's written notification of
 13 a defect, flaw, or error, the Secretary of State shall submit a report
 14 regarding the problem to the United States Election Assistance
 15 Commission or its successor entity.

16 SEC. 9. Section 19214 of the Elections Code is amended to
 17 read:

18 19214. The Secretary of State may seek injunctive and
 19 administrative relief when a voting system *or a part of a voting*
 20 *system* has been compromised by the addition or deletion of
 21 hardware, software, or firmware without prior approval *or is*
 22 *defective due to an undisclosed hardware, software, or firmware*
 23 *flaw, defect, or error.*

24 SEC. 10. Section 19214.5 of the Elections Code is amended
 25 to read:

26 19214.5. (a) The Secretary of State may seek all of the
 27 following relief for an unauthorized change *or undisclosed defect,*
 28 *flaw, or error* in hardware, software, or firmware ~~to any~~ *in a voting*
 29 ~~system-certified approved~~ *or conditionally-certified approved* in
 30 California:

31 (1) ~~Monetary damages~~ *A civil penalty* from the offending party
 32 or parties, not to exceed ten thousand dollars (\$10,000) per
 33 violation. For purposes of this subdivision, each voting ~~machine~~
 34 *system component* found to contain the unauthorized hardware,
 35 software, or firmware *or an undisclosed hardware, software, or*
 36 *firmware flaw, defect, or error* shall be considered a separate
 37 violation. ~~Damages~~ *A penalty* imposed pursuant to this subdivision
 38 shall be apportioned 50 percent to the county in which the violation
 39 occurred, if applicable, and 50 percent to the Office of the Secretary
 40 of State for purposes of bolstering voting systems security efforts.

1 (2) Immediate commencement of ~~decertification~~ proceedings
2 *to withdraw approval* for the voting system in question.

3 (3) Prohibiting the manufacturer or vendor of a voting system
4 from doing ~~any~~ elections-related business in the state for one, two,
5 or three years.

6 (4) Refund of all moneys paid by a ~~locality~~ *local agency* for a
7 ~~compromised~~ voting system *or a part of a voting system that is*
8 *compromised by an unauthorized change or modification or is*
9 *defective due to an undisclosed hardware, software, or firmware*
10 *flaw, defect, or error*, whether or not the voting system has been
11 used in an election.

12 (5) Any other remedial actions authorized by law to prevent
13 unjust enrichment of the offending party.

14 (b) Prior to seeking any measure of relief under this section, the
15 Secretary of State shall hold a public hearing. The Secretary of
16 State shall give notice of the hearing in the manner prescribed by
17 Section 6064 of the Government Code in a newspaper of general
18 circulation published in Sacramento County. The Secretary of
19 State also shall transmit written notice of the hearing, at least 30
20 days prior to the hearing, to each county elections official, the
21 offending party or parties, ~~any~~ *a person* that the Secretary of State
22 believes will be interested in the hearing, and ~~any~~ *a person* who
23 requests, in writing, notice of the hearing.

24 (c) The decision of the Secretary of State, to seek ~~any~~ relief
25 under this section, shall be in writing and state ~~the~~ *his or her*
26 findings ~~of the secretary~~. The decision shall be open to public
27 inspection.