SENATE BILL  
No. 541

Introduced by Senator Pavley

February 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.
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.

State-mandated local program: no.

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

SECTION 1. Section 13002 of the Elections Code is amended
to read:
13002. All ballot paper and punchcard ballot cards
used by any a jurisdiction holding an election pursuant to the laws
of California, shall be tinted and watermarked or overprinted with a design, to be furnished by the Secretary of State, so that the watermark or overprint shall be plainly discernible.

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

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

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

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

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

13005. (a) Before any user may purchase punchcard ballot cards, the user shall request in writing a release for a specific quantity of these punchcard ballot cards from the Secretary of State. If the request is in order, the Secretary of State shall then issue a written release for that quantity to the manufacturer, or to the authorized warehouse, and to the user. The format, text, and
use of the request and release shall be governed by regulations
adopted by the Secretary of State.
(b) Nothing in this section shall be construed to prohibit a verbal
request or verbal release, provided that this verbal request or verbal
release is immediately confirmed in writing. The regulations shall
expressly deny the manufacturing of punchcards ballot cards
without a specific release.
SEC. 4. Section 13006 of the Elections Code is amended to
read:
13006. No user, vendor, or manufacturer shall not warehouse
for a subsequent election any ballot paper or punchcards ballot
cards furnished or released by the Secretary of State for a specific
election without first obtaining authorization in writing from the
Secretary of State for the storage. The authorization shall include
the particular details of the amount to be stored so that audit
controls may be established and maintained. Any ballot Ballot
paper or punchcards ballot cards not used in that election, not
authorized to be retained for subsequent elections, and not returned
to the Secretary of State, shall be destroyed. A certificate of
destruction setting forth the date of destruction and the amount of
the ballot paper or punchcards ballot cards destroyed shall be
transmitted to the Secretary of State.
SEC. 5. Section 13007 of the Elections Code is repealed.
13007. There shall be a revolving fund for the purchase of
ballot paper and punchcards. The fund shall be continuously
appropriated and shall be continuously utilized without regard to
fiscal years for the payment of expenses incurred by the Secretary
of State in accordance with this section. The fund shall be used
for the purchase of ballot paper and punchcards, as provided in
this chapter, and shall be reimbursed by the receipts from the
jurisdiction obtaining the ballot paper or punchcards in accordance
with this chapter. The fund shall at all times be intact and
represented either by cash in the State Treasury, ballot paper, or
punchcards in the custody of the Secretary of State, or accounts
receivable representing ballot paper or punchcard sales.
SEC. 6. Section 18400 of the Elections Code is amended to
read:
18400. Any person who makes, uses, keeps, or furnishes to
others, any paper or punchcards cards watermarked or overprinted
in imitation of ballot paper or punchcards ballot cards is punishable
by a fine not exceeding one thousand dollars ($1,000), or by
imprisonment in the state prison for 16 months, two or three years,
or by both the fine and imprisonment.
SEC. 7. Section 19202 of the Elections Code is amended to
read:
19202. Any (a) A person or corporation owning or being
interested in any a voting system or a 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. As part of its
application, the vendor of a voting system or the part of a voting
system shall notify the Secretary of State in writing 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 Secretary of
State shall not begin his or her examination until he or she receives
a completed application from the vendor of the voting system or
the part of the voting system. The vendor shall also notify the
Secretary of State in writing of a defect, flaw, or error in the
hardware, software, or firmware of the voting system or a part of
the voting system discovered after the application is submitted and
before the Secretary of State submits the report required by Section
19207. The Secretary of State shall complete his or her examination
without undue delay.
(b) Within 72 hours after receiving a vendor’s written
notification of a defect, flaw, or error, the Secretary of State shall
notify the United States Election Assistance Commission or its
successor entity of the problem. Within 30 days after receiving a
vendor’s written notification of a defect, flaw, or error, the
Secretary of State shall submit a report regarding the problem to
the United States Election Assistance Commission or its successor
entity.
SEC. 8. Section 19212.5 is added to the Elections Code, to
read:
19212.5. (a) When a voting system or a part of a voting system
has been approved by the Secretary of State, the vendor shall notify
the Secretary of State and all local elections officials who use the
system in writing of a defect, flaw, or error in the hardware,
software, or firmware of the voting system or a part of the voting
system within five working days after the vendor learns of the
defect, flaw, or error.
(b) No later than January 8, 2010, the vendor of a voting system or a part of a voting system that has been approved by the Secretary of State prior to the effective date of this section shall notify the Secretary of State and all local elections officials who use the system in writing of a defect, flaw, or error in the hardware, software, or firmware of the voting system or a part of the voting system the vendor was aware of prior to January 1, 2010.

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

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

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

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

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

(1) Monetary damages. A civil penalty from the offending party or parties, not to exceed ten thousand dollars ($10,000) per violation. For purposes of this subdivision, each voting machine system component found to contain the unauthorized hardware, software, or firmware or an undisclosed hardware, software, or firmware flaw, defect, or error shall be considered a separate violation. Damages A penalty imposed pursuant to this subdivision shall be apportioned 50 percent to the county in which the violation occurred, if applicable, and 50 percent to the Office of the Secretary of State for purposes of bolstering voting systems security efforts.
(2) Immediate commencement of decertification proceedings to withdraw approval for the voting system in question.

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

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

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

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

(c) The decision of the Secretary of State, to seek any relief under this section, shall be in writing and state the findings of the secretary. The decision shall be open to public inspection.