

**Introduced by Senator Padilla**February 20, 2013

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An act to amend Sections 19202, 19206, and 19250 of the Elections Code, relating to elections.

## LEGISLATIVE COUNSEL'S DIGEST

SB 360, as introduced, Padilla. Approval of voting systems.

Existing law prohibits a voting system from being used, and prohibits a jurisdiction from purchasing or contracting for a voting system, unless the voting system has received the approval of the Secretary of State. Existing law permits a person or corporation owning or being interested in a voting system or a part of a voting system to apply to the Secretary of State to examine the voting system and report on its accuracy and efficiency to fulfill its purpose.

This bill would specify that to request the Secretary of State to approve a voting system, the person, corporation, or county owning or being interested in the voting system or a part of the voting system must apply to Secretary of State to examine the voting system and report on its accuracy and efficiency to fulfill its purpose.

Existing federal law, the Help America Vote Act of 2002, permits a state to provide for the testing, certification, decertification, and recertification of its voting system hardware and software by laboratories accredited by the Election Assistance Commission.

Existing state law prohibits the Secretary of State from approving, and prohibits a city or county from contracting for or purchasing, a direct recording electronic voting system unless the system has received federal qualification, as defined, and includes an accessible voter verified paper audit trail. Existing law also requires all direct recording electronic

voting systems in use on January 1, 2006, to have received federal qualification and include an accessible voter verified paper audit trail.

This bill specifies that a county may develop, or contract with a vendor to develop, a direct recording electronic voting system before the voting system has received federal qualification, provided that it receives federal qualification prior to any election at which it is to be first used.

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 19202 of the Elections Code is amended  
2 to read:

3 19202. (a) ~~To request the Secretary of State to approve a~~  
4 ~~voting system, in whole or in part, the person or, corporation, or~~  
5 ~~county owning or being interested in a the voting system or a part~~  
6 ~~of a the voting system may shall~~ apply to the Secretary of State to  
7 examine it and report on its accuracy and efficiency to fulfill its  
8 purpose. As part of its application, the vendor of a voting system  
9 or the part of a voting system shall notify the Secretary of State in  
10 writing of any known defect, fault, or failure of the version of the  
11 hardware, software, or firmware of the voting system or a part of  
12 the voting system submitted. The Secretary of State shall not begin  
13 his or her examination until he or she receives a completed  
14 application from the vendor of the voting system or a part of the  
15 voting system. The vendor shall also notify the Secretary of State  
16 in writing of any defect, fault, or failure of the version of the  
17 hardware, software, or firmware of the voting system or a part of  
18 the voting system submitted that is discovered after the application  
19 is submitted and before the Secretary of State submits the report  
20 required by Section 19207. The Secretary of State shall complete  
21 his or her examination without undue delay.

22 (b) After receiving a vendor’s written notification of a defect,  
23 fault, or failure, the Secretary of State shall notify the United States  
24 Election Assistance Commission or its successor entity of the  
25 problem as soon as practicable so as to present a reasonably  
26 complete description of the problem. The Secretary of State shall  
27 subsequently submit a report regarding the problem to the United  
28 States Election Assistance Commission or its successor entity. The

1 report shall include any report regarding the problem submitted  
2 to the Secretary of State by the vendor.

3 (c) The following definitions apply for purposes of this article:

4 (1) “Defect” means any flaw in the hardware or documentation  
5 of an approved or conditionally approved voting system that could  
6 result in a state of unfitness for use or nonconformance to the  
7 manufacturer’s specifications.

8 (2) “Failure” means a discrepancy between the external results  
9 of the operation of any software or firmware in an approved or  
10 conditionally approved voting system and the manufacturer’s  
11 product requirements for that software or firmware.

12 (3) “Fault” means a step, process, or data definition in any  
13 software or firmware in an approved or conditionally approved  
14 voting system that is incorrect under the manufacturer’s program  
15 specification.

16 SEC. 2. Section 19206 of the Elections Code is amended to  
17 read:

18 19206. For the purpose of assistance in examining a voting  
19 system the Secretary of State may employ not more than three  
20 expert electronic technicians at a cost to be set by the Secretary of  
21 State. The compensation of the electronic technicians shall be paid  
22 by the person~~or~~, corporation, *or county* submitting the machine  
23 or device.

24 The Secretary of State may require the person~~or~~, corporation,  
25 *or county* submitting the machine or device to deposit sufficient  
26 funds to guarantee the payment of the examination charges. The  
27 Secretary of State may deposit the funds in an appropriate treasury  
28 trust account and, within 30 days after his or her report of  
29 examination, draw a refund check to the credit of the person or  
30 corporation for any amount in excess of costs.

31 SEC. 3. Section 19250 of the Elections Code is amended to  
32 read:

33 19250. (a) On and after January 1, 2005, the Secretary of State  
34 shall not approve a direct recording electronic voting system unless  
35 the system has received federal qualification and includes an  
36 accessible voter verified paper audit trail.

37 (b) ~~On~~(1) *Except as provided in paragraph (2), on* and after  
38 January 1, 2006, a city or county shall not contract for or purchase  
39 a direct recording electronic voting system unless the system has

1 received federal qualification and includes an accessible voter  
2 verified paper audit trail.

3 *(2) A county may develop, or contract with a vendor to develop,*  
4 *a direct recording electronic voting system before the voting system*  
5 *has received federal qualification, provided that the voting system*  
6 *receives federal qualification prior to any election at which it is*  
7 *to be first used.*

8 (c) As of January 1, 2006, all direct recording electronic voting  
9 systems in use on that date, regardless of when contracted for or  
10 purchased, shall have received federal qualification and include  
11 an accessible voter verified paper audit trail. If the direct recording  
12 electronic voting system does not already include an accessible  
13 voter verified paper audit trail, the system shall be replaced or  
14 modified to include an accessible voter verified paper audit trail.

15 (d) All direct recording electronic voting systems shall include  
16 a method by which a voter may electronically verify, through a  
17 nonvisual method, the information that is contained on the paper  
18 record copy of that voter's ballot.

19 (e) A paper record copy that is printed by a voter verified paper  
20 audit trail component shall be printed in the same language that  
21 the voter used when casting his or her ballot on the direct recording  
22 electronic voting system. For languages that lack a written form,  
23 the paper record copy shall be printed in English.