

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 360

Introduced by Senator Padilla

February 20, 2013

An act to amend Sections 19202, 19206, and 19250 of the Elections Code, relating to elections. An act to amend Section 19100 of, to amend the heading of Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 of, to amend the headings of Chapter 3 (commencing with Section 19200) and Chapter 3.5 (commencing with Section 19260) of Division 19 of, to amend the heading of Division 19 (commencing with Section 19001) of, to amend and renumber Sections 19103, 19200.5, 19202, 19203, 19204, 19207, 19209, 19210, 19211, 19212, 19212.5, 19213, 19214, 19214.5, 19215, 19216, 19217, 19220, 19221, 19222, 19223, 19225, 19226, 19227, 19227.5, 19228, 19229, 19229.5, 19230, 19231, 19232, 19233, 19234, 19234.5, 19235, 19236, 19237, 19238, 19239, 19240, 19241, 19242, 19243, 19244, 19245, 19250, 19251, 19253, 19254, 19255, 19260, 19261, 19262, 19263, 19264, 19267, 19269, 19270, 19271, 19272, 19273, 19274, and 19275 of, to amend and renumber the headings of Article 2 (commencing with Section 19220), Article 2.5 (commencing with Section 19225), Article 3 (commencing with Section 19230), and Article 4 (commencing with Section 19250) of Chapter 3 of Division 19 of, to amend, renumber, and add Sections 19101, 19102, and 19201 of, to add Sections 19006, 19282, 19283, and 19286 to, to add Article 2 (commencing with Section 19220) to Chapter 3 of Division 19 of, to repeal Sections 19205, 19208, 19252, 19265, 19266, and 19268 of, and to repeal and add Section 19206 of, the Elections Code, relating to voting systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Padilla. ~~Approval of voting systems.~~
Certification of voting systems.

(1) Existing law establishes various procedures and criteria for the approval by the Secretary of State of voting systems, including ballot marking systems, to be used in elections.

This bill would recast and revise those provisions by changing the term “approval” to the term “certification” and would authorize the Secretary of State to certify, conditionally approve, as specified, or withhold approval of a voting system. The bill would provide that it is the intent of the Legislature that the Secretary of State certify all voting systems before they are used in future elections, adopt and publish testing standards, and encourage the development of voting systems that are easy for the public to audit. The bill would require the Secretary of State to adopt and publish voting system standards, as specified, and would require the Secretary of State to study the performance of the voting systems in use in the state.

This bill would additionally require the Secretary of State to publish requirements for the approval of testing agencies, as defined, that are authorized to conduct the testing and examination of voting systems and to approve and publish a list of authorized testing agencies. The bill also would provide that the person, corporation, or public agency applying for certification of a voting system is responsible for all costs associated with the testing of the voting system.

(2) Within 30 days after completing the examination of any voting system, existing law requires the Secretary of State to file a report stating whether the voting system can safely be used, as specified.

This bill would instead require the Secretary of State to file a report within 60 days after the completion of the examination of the voting system, as specified.

(3) Existing law authorizes a governing board to provide for the experimental use of a voting system in one or more precincts without formally adopting the system and provides that the experimental use of the system at the election is valid for all purposes as if it were lawfully adopted.

This bill would authorize a governing board to conduct a pilot program for the experimental use of voting systems, as specified, and would require the Secretary of State to adopt and publish regulations governing a pilot program. No later than 9 months before the election

at which a pilot program is proposed to be conducted, the bill would require the governing board to submit to the Secretary of State a plan for the proposed pilot program, and would require the Secretary of State to approve or reject the plan within 3 months of receipt of the plan. Upon completion of the pilot program, the bill would require the governing board to notify the Secretary of State in writing of any defect, fault, or failure in the hardware, software, or firmware of the voting system.

(4) Upon examination of a voting system or a ballot marking system, existing law provides that if a report is issued that states that the voting system or ballot marking system can be used, it is deemed approved by the Secretary of State for use at elections.

This bill would delete the above provision and would make conforming changes.

(5) Existing law authorizes the use of a direct recording electronic voting system under specified conditions and prohibits the use of moneys from the General Fund for those purposes.

This bill would remove the prohibition on the use of General Fund moneys for purposes related to a direct recording electronic voting system.

~~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~~

1 *SEC. 4. Section 19101 of the Elections Code is amended and*
2 *renumbered to read:*

3 ~~19101.~~

4 19103. The Chairperson of the Senate Standing Committee
5 on Elections and ~~Reapportionment~~ *Constitutional Amendments*
6 and the Chairperson of the Assembly Standing Committee on
7 ~~Elections, Reapportionment Elections and Constitutional~~
8 ~~Amendments Redistricting~~ shall meet with the Secretary of State
9 and assist the Secretary of State to the extent that the participation
10 is not incompatible with their positions as Members of the
11 Legislature. For the purposes of this division, the chairpersons of
12 the committees named shall constitute a joint interim legislative
13 committee on the subject of this chapter and Chapter 3
14 (commencing with Section 19200) and shall have the powers and
15 duties imposed upon those committees by the Joint Rules of the
16 Senate and Assembly.

17 *SEC. 5. Section 19101 is added to the Elections Code, to read:*

18 19101. (a) *The Secretary of State shall adopt and publish*
19 *voting system standards. The Secretary of State may also adopt,*
20 *in whole or in part, voluntary federal voting system standards*
21 *established by the United States Election Assistance Commission*
22 *or its successor agency.*

23 (b) *Voting system standards adopted by the Secretary of State*
24 *pursuant to subdivision (a) shall include, but not be limited to, all*
25 *of the following requirements:*

26 (1) *The machine or device and its software shall be suitable for*
27 *the purpose for which it is intended.*

28 (2) *The system shall preserve the secrecy of the ballot.*

29 (3) *The system shall be safe from fraud or manipulation.*

30 (4) *The system shall be accessible to voters with disabilities and*
31 *to voters who require assistance in a language other than English*
32 *if the language is one in which a ballot or ballot materials are*
33 *required to be made available to voters.*

34 *SEC. 6. Section 19102 of the Elections Code is amended and*
35 *renumbered to read:*

36 ~~19102.~~

37 19104. The Secretary of State may investigate any alleged
38 violation of this code or the Secretary of State's regulations with
39 the power to subpoena all necessary persons and records.

40 *SEC. 7. Section 19102 is added to the Elections Code, to read:*

1 19102. *The Secretary of State shall study the performance of*
2 *voting systems in use in the state.*

3 SEC. 8. *Section 19103 of the Elections Code is amended and*
4 *renumbered to read:*

5 19103.

6 19212. (a) (1) No later than 10 business days after the
7 Secretary of State *certifies or conditionally* approves the use of a
8 new or updated voting system, the ~~vendor~~ *applicant* of the voting
9 system shall cause an exact copy of the approved source code for
10 each component of the voting system, including complete build
11 and configuration instructions and related documents for compiling
12 the source code into object code, to be transferred directly from
13 the United States Election Assistance Commission or the voting
14 system testing ~~laboratory, which~~ *agency that* evaluated the voting
15 system and is accredited by the United States Election Assistance
16 Commission, and deposited into an approved escrow facility.

17 (2) No later than 10 business days after the Secretary of State
18 ~~approves the use of~~ *certifies* a new or updated ballot marking
19 system, the ~~vendor~~ *applicant* of the ballot marking system shall
20 cause an exact copy of the approved source code for each
21 component of the ballot marking system, including complete build
22 and configuration instructions and related documents for compiling
23 the source code into object code, to be deposited into an approved
24 escrow facility.

25 (b) The Secretary of State shall adopt regulations relating to all
26 of the following:

27 (1) The definition of source code components of a voting system
28 or ballot marking system, including source code for all firmware
29 and software of the voting system or ballot marking system.
30 Firmware and software shall include commercial off-the-shelf or
31 other third-party firmware and software that is available and able
32 to be disclosed by the ~~vendor~~ *applicant* of the voting system or
33 ballot marking system.

34 (2) Specifications for the escrow facility, including security and
35 environmental specifications necessary for the preservation of the
36 voting system or ballot marking system source codes.

37 (3) Procedures for submitting voting system or ballot marking
38 system source codes.

39 (4) Criteria for access to voting system or ballot marking system
40 source codes.

1 (5) Requirements for the ~~vendor~~ *applicant* to include in the
 2 materials deposited in escrow build and configuration instructions
 3 and documents so that a neutral third party may create, from the
 4 source codes in escrow, executable object codes identical to the
 5 code installed on ~~approved~~ *certified* voting systems or ballot
 6 marking systems.

7 (c) The Secretary of State shall have reasonable access to the
 8 materials placed in escrow, under the following circumstances:

9 (1) In the course of an investigation or prosecution regarding
 10 vote counting or ballot marking equipment or procedures.

11 (2) Upon a finding by the Secretary of State that an escrow
 12 facility or escrow company is unable or unwilling to maintain
 13 materials in escrow in compliance with this section.

14 (3) In order to fulfill the provisions of this chapter related to the
 15 examination and ~~approval~~ *certification* of voting systems or ballot
 16 marking systems.

17 (4) In order to verify that the software on a voting ~~system, voting~~
 18 ~~machine, vote tabulating device, or ballot marking~~ system is
 19 identical to the ~~approved~~ *certified* version.

20 (5) For any other purpose deemed necessary to fulfill the
 21 provisions of this code or Section 12172.5 of the Government
 22 Code.

23 (d) The Secretary of State may seek injunctive relief requiring
 24 the elections officials, approved escrow facility, or any vendor or
 25 manufacturer of a voting ~~machine, voting system, vote tabulating~~
 26 ~~device, system or ballot marking part of a voting~~ system to comply
 27 with this section and related regulations. Venue for a proceeding
 28 under this section shall be exclusively in Sacramento County.

29 (e) This section applies to all elections.

30 *SEC. 9. The heading of Chapter 3 (commencing with Section*
 31 *19200) of Division 19 of the Elections Code is amended to read:*

32
 33 CHAPTER 3. ~~APPROVAL OF~~ CERTIFICATION OF VOTING SYSTEMS

34
 35 *SEC. 10. The heading of Article 1 (commencing with Section*
 36 *19200) of Chapter 3 of Division 19 of the Elections Code is*
 37 *amended to read:*

38
 39 Article 1. Procedures for ~~Approval~~ *Certification* of Voting
 40 Systems

1 SEC. 11. Section 19200.5 of the Elections Code is amended
2 and renumbered to read:

3 ~~19200.5.~~

4 19204. The Secretary of State shall not ~~approve~~ *certify or*
5 *conditionally approve* any voting system that ~~permits~~ *includes*
6 *features that permit* a voter to ~~exit a polling place with a~~ *produce*
7 *a copy or facsimile of the ballot cast by* ~~that the~~ voter at that polling
8 place.

9 SEC. 12. Section 19201 of the Elections Code is amended and
10 renumbered to read:

11 ~~19201.~~

12 19202. (a) ~~No~~

13 A voting system, in whole or in part, shall *not* be used unless it
14 ~~has received the approval of the~~ *been certified or conditionally*
15 *approved by the* Secretary of State prior to any election at which
16 it is to be first used.

17 (b) ~~No jurisdiction may purchase or contract for a voting system,~~
18 ~~in whole or in part, unless it has received the approval of the~~
19 ~~Secretary of State.~~

20 SEC. 13. Section 19201 is added to the Elections Code, to read:

21 19201. The Secretary of State may conditionally approve a
22 voting system or part of a voting system in lieu of certification
23 under any of the following circumstances:

24 (a) A voting system or part of a voting system is out of
25 compliance due to a regulatory change.

26 (b) A voting system or part of a voting system has been
27 decertified.

28 (c) A voting system or part of a voting system will be
29 implemented for experimental use in a pilot program pursuant to
30 Section 19209.

31 SEC. 14. Section 19202 of the Elections Code is amended and
32 renumbered to read:

33 ~~19202.~~

34 19210. (a) ~~A person person, corporation, or corporation public~~
35 ~~agency owning or being interested having an interest in the sale~~
36 ~~or acquisition of a voting system or a part of a voting system may~~
37 ~~apply to the Secretary of State to examine it for certification that~~
38 ~~includes testing and report on its accuracy and efficiency to fulfill~~
39 ~~its purpose. examination of the applicant's system by a~~
40 ~~state-approved testing agency and a report on the findings, which~~

1 *shall include the accuracy and efficiency of the voting system. As*
2 *part of its application, the ~~vendor of a voting system or the part of~~*
3 *a ~~voting system~~ applicant shall notify the Secretary of State in*
4 *writing of any known defect, fault, or failure of the version of the*
5 *hardware, software, or firmware of the voting system or a part of*
6 *the voting system submitted. The Secretary of State shall not begin*
7 *his or her ~~examination~~ certification process until he or she receives*
8 *a completed ~~application from the vendor of the voting system or~~*
9 *a ~~part of the voting system~~ application. The ~~vendor~~ applicant shall*
10 *also notify the Secretary of State in writing of any defect, fault, or*
11 *failure of the version of the hardware, software, or firmware of*
12 *the voting system or a part of the voting system submitted that is*
13 *discovered after the application is submitted and before the*
14 *Secretary of State submits the report required by Section ~~19207.~~*
15 *19213. The Secretary of State shall complete his or her ~~examination~~*
16 *certification process without undue delay.*

17 *(b) The Secretary of State shall publish and make publicly*
18 *available on his or her Internet Web site a quarterly report of*
19 *regulatory activities related to voting systems.*

20 ~~(b)~~

21 *(c) After receiving a ~~vendor's~~ an applicant's written notification*
22 *of a defect, fault, or failure, the Secretary of State shall notify the*
23 *United States Election Assistance Commission or its successor*
24 *entity of the problem as soon as practicable so as to present a*
25 *reasonably complete description of the problem. The Secretary of*
26 *State shall subsequently submit a report regarding the problem to*
27 *the United States Election Assistance Commission or its successor*
28 *entity. The report shall include any report regarding the problem*
29 *submitted to the Secretary of State by the ~~vendor~~ applicant.*

30 ~~(e)~~

31 *(d) ~~The following definitions apply for purposes of~~ As used in*
32 *this article:*

33 *(1) "Defect" means any flaw in the hardware or documentation*
34 *of an ~~approved~~ a certified or conditionally approved voting system*
35 *that could result in a state of unfitness for use or nonconformance*
36 *to the manufacturer's ~~specifications~~ specifications or applicable*
37 *law.*

38 *(2) "Failure" means a discrepancy between the external results*
39 *of the operation of any software or firmware in an ~~approved~~ a*
40 *certified or conditionally approved voting system and the*

1 manufacturer's product requirements for that software or firmware
2 *or applicable law.*

3 (3) "Fault" means a step, process, or data definition in any
4 software or firmware in ~~an approved~~ *a certified* or conditionally
5 approved voting system that is incorrect under the manufacturer's
6 program specification *or applicable law.*

7 *SEC. 15. Section 19203 of the Elections Code is amended and*
8 *renumbered to read:*

9 ~~19203.~~

10 *19223.* The Secretary of State ~~may make all arrangements for~~
11 ~~the time and place~~ *shall use a state-approved testing agency to*
12 ~~examine voting equipment systems or parts of voting systems~~
13 ~~proposed to be sold for use or sale~~ in this state. He or she shall
14 furnish a complete report of the findings of the ~~examining engineers~~
15 *examination and testing* to the Governor and the Attorney General.

16 *SEC. 16. Section 19204 of the Elections Code is amended and*
17 *renumbered to read:*

18 ~~19204.~~

19 *19211. (a)* ~~Prior to giving its publishing his or her decision~~
20 ~~approving to certify, conditionally approve, or withholding~~
21 ~~approval withhold certification of any a voting machine, voting~~
22 ~~device, system or vote tabulating device, part of a voting system,~~
23 the Secretary of State shall ~~hold~~ *provide for a 30-day public review*
24 *period and conduct a public hearing to give persons interested an*
25 *opportunity to review testing and examination reports and express*
26 *their views for or against certification or conditional approval of*
27 ~~the machine or device.~~ *voting system.*

28 *(b)* The Secretary of State shall give notice of the *public review*
29 *period and hearing* in the manner prescribed in Section 6064 of
30 the Government Code in a newspaper of general circulation
31 published in Sacramento County. The Secretary of State shall also
32 *provide notice of the public review period and hearing on his or*
33 *her Internet Web site. The Secretary of State shall transmit written*
34 *notice of the public review period and hearing, at least 30 days*
35 *prior to the public review period and hearing, to each county*
36 *elections official, to any person that the Secretary of State believes*
37 *will be interested in the public review period and hearing, and to*
38 *any person who requests, in writing, notice of the public review*
39 *period and hearing.*

1 (c) The decision of the Secretary of State, either approving
2 *State to certify, conditionally approve, or withholding withhold*
3 approval of a voting machine, voting device, system or vote
4 tabulating device, part of a voting system shall be in writing and
5 shall state the findings of the secretary. *Secretary of State.* The
6 decision shall be open to public inspection.

7 *SEC. 17. Section 19205 of the Elections Code is repealed.*

8 ~~19205. The Secretary of State shall establish the specifications
9 for and the regulations governing voting machines, voting devices,
10 vote tabulating devices, and any software used for each, including
11 the programs and procedures for vote tabulating and testing. The
12 criteria for establishing the specifications and regulations shall
13 include, but not be limited to, the following:~~

14 ~~(a) The machine or device and its software shall be suitable for
15 the purpose for which it is intended.~~

16 ~~(b) The system shall preserve the secrecy of the ballot.~~

17 ~~(c) The system shall be safe from fraud or manipulation.~~

18 *SEC. 18. Section 19206 of the Elections Code is repealed.*

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

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

31 *SEC. 19. Section 19206 is added to the Elections Code, to read:*

32 *19206. If more than one voting system is used to count ballots,
33 the names of candidates shall, insofar as possible, be placed on
34 the primary voting system. If more than one voting system or a
35 combination of a voting system and paper ballots is used to count
36 ballots, a single ballot measure or the candidates for a single office
37 may not be split between voting systems or between a voting system
38 and paper ballots.*

39 *SEC. 20. Section 19207 of the Elections Code is amended and
40 renumbered to read:*

1 ~~19207.~~

2 ~~19213.~~ Within ~~30~~ 60 days after ~~completing~~ the *completion of*
 3 *the* examination of ~~any~~ a voting system, the Secretary of State
 4 shall ~~place on file~~ *make publicly available* a report stating whether
 5 ~~in his or her opinion the kind of voting system examined can safely~~
 6 ~~be used. The report shall also contain a written~~ *has been certified*
 7 ~~or printed description and drawings and photographs clearly~~
 8 ~~identifying the machine conditionally approved, or device and its~~
 9 ~~mechanical operation. whether certification has been withheld.~~
 10 *The report shall also contain a written or printed description and*
 11 *drawings and photographs that clearly identify the machine or*
 12 *device and its mechanical operation.*

13 *SEC. 21. Section 19208 of the Elections Code is repealed.*

14 ~~19208.~~ If the report states that the voting system can be used,
 15 ~~it shall be deemed approved by the Secretary of State and machines~~
 16 ~~or devices of its kind may be adopted for use at elections.~~

17 *SEC. 22. Section 19209 of the Elections Code is amended and*
 18 *renumbered to read:*

19 ~~19209.~~

20 ~~19214.~~ Within 10 days after *issuing and filing the report, the*
 21 *a certification decision and associated testing reports, the* Secretary
 22 of State shall ~~send a copy~~ *make available* to the public *a full and*
 23 *complete copy of the certification report and all associated*
 24 *documentation, except that portions of the report or documentation*
 25 *that contain information that the Secretary of State determines to*
 26 *be confidential or proprietary shall not be made publicly available.*
 27 *The Secretary of State shall also notify the board of supervisors*
 28 *and elections official of each ~~county.~~ *county of the availability of*
 29 *the report and associated documentation.**

30 *SEC. 23. Section 19210 of the Elections Code is amended and*
 31 *renumbered to read:*

32 ~~19210.~~

33 ~~19207.~~ The governing board may adopt for use at elections
 34 any kind of voting system, any combination of voting systems, *or*
 35 any combination of a voting system and paper ballots, provided
 36 that ~~the use of the voting system or systems involved~~ ~~has~~ *have*
 37 *been certified or conditionally approved by the Secretary of State*
 38 ~~or specifically authorized by law.~~ *State.* The voting system or
 39 systems may be used at any or all elections held in any county,
 40 city, or any of their political subdivisions for voting, registering,

1 and counting votes cast. ~~When more than one voting system is~~
 2 ~~used to count ballots, the names of candidates shall, insofar as~~
 3 ~~possible, be placed upon the primary voting system. When~~ *If* more
 4 than one voting system or a combination of a voting system and
 5 paper ballots is used to count ballots, a single ballot measure or
 6 *used at an election*, the candidates for a single office may not be
 7 split between voting systems or between a voting system and paper
 8 ballots.

9 *SEC. 24. Section 19211 of the Elections Code is amended and*
 10 *renumbered to read:*

11 ~~19211.~~

12 *19209. (a) The governing board, without formally adopting*
 13 ~~a system that it might lawfully adopt, voting system,~~ may provide
 14 for ~~its~~ *the* experimental use of a voting system in a pilot program
 15 held at an election in one or more precincts, *as follows:* ~~¶~~

16 *(1) If the voting system is publicly owned, uses nonproprietary*
 17 *software, or implements risk-limiting audits conducted pursuant*
 18 *to Section 15560, the voting system need not be certified or*
 19 *conditionally approved prior to its experimental use. Its use at the*
 20 *election is as valid for all purposes as if it were lawfully adopted.*
 21 *adopted and certified.*

22 *(2) No later than nine months before the election at which the*
 23 *pilot program of a voting system is proposed to be conducted, the*
 24 *governing board shall submit to the Secretary of State a plan for*
 25 *the pilot program. The Secretary of State shall approve or reject*
 26 *the plan no later than three months after receipt of the plan.*

27 *(3) Upon completion of the pilot program, the governing board*
 28 *shall notify the Secretary of State in writing of any defect, fault,*
 29 *or failure of the hardware, software, or firmware of the voting*
 30 *system or a part of the voting system.*

31 *(b) The Secretary of State shall adopt and publish regulations*
 32 *governing pilot programs for the experimental use of voting*
 33 *systems.*

34 *SEC. 25. Section 19212 of the Elections Code is amended and*
 35 *renumbered to read:*

36 ~~19212.~~

37 *19208. The governing board may provide for the payment of*
 38 *the cost of the voting system equipment in any manner and by any*
 39 *method as it may deem deems best for the best local interests, and*
 40 *also may for that purpose issue bonds, certificates of indebtedness,*

1 or other obligations that shall be a charge on the county or city.
 2 The bonds, certificates, or other obligations may be issued with
 3 or without interest, payable at any time as the authorities may
 4 determine, but shall not be issued or sold at less than par. The
 5 governing board may enter into lease agreements or lease-purchase
 6 agreements for the use of equipment.

7 *SEC. 26. Section 19212.5 of the Elections Code is amended*
 8 *and renumbered to read:*

9 ~~19212.5.~~

10 *19215.* (a) ~~When~~*If* a voting system or a part of a voting
 11 system has been *certified or conditionally* approved by the
 12 Secretary of State, the vendor ~~or proprietor county, in cases where~~
 13 *the system is publicly owned*, shall notify the Secretary of State
 14 and all local elections officials who use the system in writing of
 15 any defect, fault, or failure of the hardware, software, or firmware
 16 of the voting system or a part of the voting system within 30
 17 calendar days after the vendor learns of the defect, fault, or failure.

18 ~~(b) Not later than January 8, 2011, the vendor of a voting system~~
 19 ~~or a part of a voting system that has been approved by the Secretary~~
 20 ~~of State prior to the effective date of this section shall notify the~~
 21 ~~Secretary of State and all local elections officials who use the~~
 22 ~~system in writing of any defect, fault, or failure of the hardware,~~
 23 ~~software, or firmware of the voting system or a part of the voting~~
 24 ~~system the vendor was aware of prior to January 1, 2011.~~

25 *(b)* After receiving a vendor's written notification of a defect,
 26 fault, or failure pursuant to subdivision ~~(a) or (b)~~; *(a)*, the Secretary
 27 of State shall notify the United States Election Assistance
 28 Commission or its successor entity of the problem as soon as
 29 practicable so as to present a reasonably complete description of
 30 the problem. The Secretary of State shall subsequently submit a
 31 report regarding the problem to the United States Election
 32 Assistance Commission or its successor entity. The report shall
 33 include any report regarding the problem submitted to the Secretary
 34 of State by the vendor. *State.*

35 *SEC. 27. Section 19213 of the Elections Code is amended and*
 36 *renumbered to read:*

37 ~~19213.~~

38 *19216.* ~~When~~*If* a voting system or a part of a voting system
 39 has been *certified or conditionally* approved by the Secretary of
 40 State, it shall not be changed or modified until the Secretary of

1 State has been notified in writing and *has* determined that the
2 change or modification does not impair its accuracy and efficiency
3 sufficient to require a reexamination and *recertification, conditional*
4 *approval, or* reapproval pursuant to this article. The Secretary of
5 State may adopt rules and regulations governing the procedures
6 to be followed in making his or her determination as to whether
7 the change or modification impairs accuracy or efficiency.

8 *SEC. 28. Section 19214 of the Elections Code is amended and*
9 *renumbered to read:*

10 ~~19214.~~

11 *19217.* The Secretary of State may seek injunctive and
12 administrative relief ~~when~~ *if* a voting system or a part of a voting
13 system has been compromised by the addition or deletion of
14 hardware, software, or firmware without prior approval or is
15 defective due to a known hardware, software, or firmware defect,
16 fault, or failure that has not been disclosed pursuant to Section
17 ~~19202 19210 or 19212.5.~~ *19215.*

18 *SEC. 29. Section 19214.5 of the Elections Code is amended*
19 *and renumbered to read:*

20 ~~19214.5.~~

21 *19218.* (a) The Secretary of State may seek all of the following
22 relief for an unauthorized change in hardware, software, or
23 firmware in a voting system ~~approved~~ *certified* or conditionally
24 approved in California:

25 (1) A civil penalty from the offending party or parties, not to
26 exceed ten thousand dollars (\$10,000) per violation. For purposes
27 of this subdivision, each voting system component found to contain
28 the unauthorized hardware, software, or firmware shall be
29 considered a separate violation. A penalty imposed pursuant to
30 this subdivision shall be apportioned 50 percent to the county in
31 which the violation occurred, if applicable, and 50 percent to the
32 Office of the Secretary of State for purposes of bolstering voting
33 systems security efforts.

34 (2) Immediate commencement of proceedings to withdraw
35 *certification or conditional* approval for the voting system in
36 question.

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

1 (4) Refund of all moneys paid by a local agency for a voting
2 system or a part of a voting system that is compromised by an
3 unauthorized change or modification, whether or not the voting
4 system has been used in an election.

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

7 (b) (1) The Secretary of State may seek all of the following
8 relief for a known but undisclosed defect, fault, or failure in a
9 voting system or part of a voting system—~~approved~~ *certified* or
10 conditionally approved in California:

11 (A) Refund of all moneys paid by a local agency for a voting
12 system or part of a voting system that is defective due to a known
13 but undisclosed defect, fault, or failure, whether or not the voting
14 system has been used in an election.

15 (B) A civil penalty from the offending party or parties, not to
16 exceed fifty thousand dollars (\$50,000) per violation. For purposes
17 of this subdivision, each defect, fault, or failure shall be considered
18 a separate violation. A defect, fault, or failure constitutes a single
19 violation regardless of the number of voting system units in which
20 the defect, fault, or failure is found.

21 (C) In addition to any other penalties or remedies established
22 by this section, the offending party or parties shall be liable in the
23 amount of one thousand dollars (\$1,000) per day after the
24 applicable deadline established in Section ~~19212.5~~ *19215* until the
25 required disclosure is filed with the Secretary of State.

26 (2) A penalty imposed pursuant to subparagraph (B) or (C) of
27 paragraph (1) shall be deposited in the General Fund.

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

38 (d) The decision of the Secretary of ~~State~~, *State* to seek relief
39 under this ~~section~~, *section* shall be in writing and state his or her
40 findings. The decision shall be open to public inspection.

1 *SEC. 30. Section 19215 of the Elections Code is amended and*
2 *renumbered to read:*

3 ~~19215.~~

4 19219. (a) The Secretary of State may seek injunctive relief
5 requiring an elections official, or any vendor or manufacturer of
6 a voting machine, voting system, or vote tabulating device, to
7 comply with the requirements of this code, the regulations of the
8 Secretary of State, and the specifications for voting machines,
9 voting devices, vote tabulating devices, and any software used for
10 each, including the programs and procedures for vote tabulating
11 and testing.

12 (b) Venue for a proceeding under this section shall be
13 exclusively in Sacramento County.

14 *SEC. 31. Section 19216 of the Elections Code is amended and*
15 *renumbered to read:*

16 ~~19216.~~

17 19203. The Secretary of State shall not ~~approve any~~ *certify or*
18 *conditionally approve a voting system or a part of a voting system*
19 *that uses paper ballots unless the paper used for the ballots is of*
20 *sufficient quality that it maintains its integrity and readability*
21 *throughout the retention period specified in Chapter 4 (commencing*
22 *with Section 17300) of Division 17.*

23 *SEC. 32. Section 19217 of the Elections Code is amended and*
24 *renumbered to read:*

25 ~~19217.~~

26 19205. A voting system shall comply with all of the following:

27 (a) ~~No voting system or part of a~~ *the* voting system shall be
28 connected to the Internet at any time.

29 (b) ~~No voting system or part of a~~ *the* voting system shall
30 electronically receive or transmit election data through an exterior
31 communication network, including the public telephone system,
32 ~~when if~~ the communication originates from or terminates at a
33 polling place, satellite location, or counting center.

34 (c) ~~No voting system or part of a~~ *the* voting system shall receive
35 or transmit wireless communications or wireless data transfers.

36 *SEC. 33. The heading of Article 2 (commencing with Section*
37 *19220) of Chapter 3 of Division 19 of the Elections Code is*
38 *amended and renumbered to read:*

1 Article 2. 3. Inspection of *Certified and Conditionally Approved*
2 Voting Systems

3
4 SEC. 34. Section 19220 of the Elections Code is amended and
5 renumbered to read:

6 ~~19220.~~

7 19230. The elections official of any county or city using a
8 voting ~~or vote tabulating equipment~~ system shall inspect the
9 machines or devices at least once every two years to determine
10 their accuracy. Any county or city using leased or rented equipment
11 shall determine if the equipment has been inspected for accuracy
12 within the last two years before using it for any election. The
13 inspection shall be made in accordance with regulations adopted
14 and promulgated by the Secretary of State. The elections official
15 shall certify the results of the inspection to the Secretary of State.

16 SEC. 35. Article 2 (commencing with Section 19220) is added
17 to Chapter 3 of Division 19 of the Elections Code, to read:

18
19 Article 2. Voting System Testing Agencies

20
21 19220. For purposes of this division, “testing agency” means
22 a person or entity that is authorized to conduct the testing and
23 examination of a voting system in connection with certification of
24 the voting system pursuant to this division.

25 19221. The Secretary of State shall do all of the following:

26 (a) Publish requirements for the approval of testing agencies
27 that are authorized to conduct the testing and examination of voting
28 systems.

29 (b) Approve and publish a list of authorized testing agencies.

30 19222. The person, corporation, or public agency applying
31 for certification of a voting system is responsible for all costs
32 associated with the testing of the voting system.

33 19223. The Secretary of State may contract with one or more
34 expert technicians to assist with the certification of a voting system,
35 including testing and examination of the voting system.

36 SEC. 36. Section 19221 of the Elections Code is amended and
37 renumbered to read:

38 ~~19221.~~

39 19231. (a) If the Secretary of State has reason to believe that
40 a local inspection of equipment is not adequate, he or she may

1 cause the equipment to be reexamined, at any time prior to six
2 months before a statewide election, to ~~insure~~ *ensure* that ~~they~~ *the*
3 *voting system or parts of the voting system perform to adopted*
4 *standards and tabulate votes accurately.*

5 (b) For the purpose of reexamining voting equipment the
6 Secretary of State ~~may employ not more than three expert~~
7 ~~technicians at a cost to be determined by the Secretary of State.~~
8 ~~The compensation of the technicians shall be paid by use~~
9 ~~state-approved testing agencies at the county using cost of the~~
10 ~~equipment examined.~~ *elections official.*

11 (c) The Secretary of State ~~may make all arrangements for the~~
12 ~~time and place to examine the voting equipment, and shall furnish~~
13 a complete report of the findings of the ~~examining engineers~~ to
14 the Governor, to the Attorney General, to each county elections
15 official, to the ~~chairmen~~ *chairpersons* of the elections committees
16 of the Assembly and Senate, and to the manufacturer of the
17 equipment.

18 *SEC. 37. Section 19222 of the Elections Code is amended and*
19 *renumbered to read:*

20 ~~19222.~~

21 *19232.* The Secretary of State shall review voting systems
22 periodically to determine if they are defective, obsolete, or
23 otherwise unacceptable. The Secretary of State has the right to
24 withdraw his or her *certification or conditional* approval previously
25 granted under this chapter of any voting system or part of a voting
26 system should it be defective or prove unacceptable after such
27 review. Six months' notice shall be given before withdrawing
28 *certification or conditional* approval unless the Secretary of State
29 for good cause shown makes a determination that a shorter notice
30 period is necessary. Any withdrawal by the Secretary of State of
31 his or her previous *certification or conditional* approval of a voting
32 system or part of a voting system shall not be effective as to ~~any~~
33 *an* election conducted within six months of that withdrawal.

34 *SEC. 38. Section 19223 of the Elections Code is amended and*
35 *renumbered to read:*

36 ~~19223.~~

37 *19233.* The Secretary of State shall conduct random audits of
38 the software installed on direct recording electronic voting systems,
39 as defined in Section ~~19251, 19271,~~ to ensure that the installed
40 software is identical to the software that has been approved for

1 use on that voting system. The Secretary of State shall take steps
2 to ensure that the process for conducting random audits does not
3 intentionally cause a direct recording electronic voting system to
4 become more vulnerable to any unauthorized changes to the
5 software that has been approved for its use.

6 *SEC. 39. The heading of Article 2.5 (commencing with Section*
7 *19225) of Chapter 3 of Division 19 of the Elections Code is*
8 *amended and renumbered to read:*

9

10 Article ~~2.5~~. 4. Accessible Voting Systems

11

12 *SEC. 40. Section 19225 of the Elections Code is amended and*
13 *renumbered to read:*

14 ~~19225.~~

15 *19240.* The Legislature finds and declares as follows:

16 (a) Microchip and digital technologies are increasingly changing
17 the way Americans vote.

18 (b) State and political subdivisions are replacing antiquated
19 voting methods and machines with computer and electronic-based
20 voting systems, but nonvisual access, whether by speech, braille,
21 or other appropriate means, is often overlooked in certifying and
22 purchasing the latest voting technology.

23 (c) Voting technology and systems that allow the voter to access
24 and select information solely through a visual means are a barrier
25 to access by individuals who are blind or visually impaired, thereby
26 discouraging them from exercising the right to vote, the most
27 fundamental right of citizenship in a free and democratic society.

28 (d) Software and hardware adaptations have been created so
29 that voters can interact with voting technology and systems through
30 both visual and nonvisual means allowing blind and visually
31 impaired people to cast a secret ballot and independently verify
32 their vote.

33 (e) In promoting full participation in the electoral process, the
34 goals of the state and its political subdivisions must recognize the
35 incontrovertible right of all citizens regardless of blindness or
36 visual impairment to vote.

37 (f) This right must include the opportunity for individuals who
38 are blind or visually impaired to cast and verify their ballots
39 independently.

1 SEC. 41. Section 19226 of the Elections Code is amended and
2 renumbered to read:

3 ~~19226.~~

4 19241. As used in this article:

5 (a) “Access” means the ability to receive, use, select, and
6 manipulate data and operate controls included in voting technology
7 and systems.

8 (b) “Nonvisual” means synthesized speech, braille, and other
9 output methods ~~that do not requiring~~ require sight.

10 SEC. 42. Section 19227 of the Elections Code is amended and
11 renumbered to read:

12 ~~19227.~~

13 19242. (a) The Secretary of State shall adopt *and publish*
14 rules and regulations governing any voting technology and systems
15 used by the state or any political subdivision that provide blind
16 and visually impaired individuals with access that is equivalent to
17 that provided to individuals who are not blind or visually impaired,
18 including the ability for the voter to cast and verify all selections
19 made by both visual and nonvisual means.

20 (b) *State voting system standards shall require voting systems*
21 *to provide blind and visually impaired individuals with access that*
22 *is equivalent to that provided to individuals who are not blind or*
23 *visually impaired.*

24 ~~(b)~~

25 (c) At each polling place, at least one voting unit *certified or*
26 *conditionally approved pursuant to subdivision (a)* by the Secretary
27 of State shall provide access to individuals *with disabilities,*
28 *including nonvisual accessibility for individuals who are blind or*
29 *visually impaired and accessibility for individuals who have other*
30 *disabilities as set forth by the federal Help America Vote Act of*
31 *2002 (42 U.S.C. Sec. 15301 et seq.).*

32 ~~(e)~~

33 (d) A local agency is not required to comply with subdivision
34 ~~(b)~~ (c) unless sufficient funds are available to implement that
35 provision. Funds received from the proceeds of the Voting
36 Modernization Bond Act of 2002 (Article 3 5 (commencing with
37 Section ~~19230~~), 19250)), from federal funds made available to
38 purchase new voting systems, or from any other source except the
39 General Fund, shall be used for that purpose.

1 SEC. 43. Section 19227.5 of the Elections Code is amended
2 and renumbered to read:

3 ~~19227.5.~~

4 19243. In requiring nonvisual access pursuant to this article,
5 the Secretary of State shall obtain recommendations from
6 representatives of blind consumer organizations, experts in
7 accessible software and hardware design, and any other individual
8 or organization the Secretary of State determines to be appropriate.

9 SEC. 44. Section 19228 of the Elections Code is amended and
10 renumbered to read:

11 ~~19228.~~

12 19244. Compliance with this article in regard to voting
13 technology and systems purchased prior to the effective date of
14 this article shall be achieved at the time of procurement of an
15 upgrade or replacement of existing voting equipment or systems.

16 SEC. 45. Section 19229 of the Elections Code is amended and
17 renumbered to read:

18 ~~19229.~~

19 19245. (a) A person injured by a violation of this article may
20 maintain an action for injunctive relief to enforce this article.

21 (b) An action for injunctive relief shall be commenced within
22 four years after the cause of action accrues.

23 (c) For ~~the~~ purposes of this section, a cause of action for a
24 continuing violation accrues at the time of the latest violation.

25 SEC. 46. Section 19229.5 of the Elections Code is amended
26 and renumbered to read:

27 ~~19229.5.~~

28 19246. This article does not apply to voting by vote by mail
29 ballot.

30 SEC. 47. The heading of Article 3 (commencing with Section
31 19230) of Chapter 3 of Division 19 of the Elections Code is
32 amended and renumbered to read:

33

Article 3- 5. Voting Modernization Bond Act of 2002
(Shelley-Hertzberg Act)

36

37 SEC. 48. Section 19230 of the Elections Code is amended and
38 renumbered to read:

1 ~~19230.~~

2 *19250.* This article shall be known and may be cited as the
3 Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act).

4 *SEC. 49.* *Section 19231 of the Elections Code is amended and*
5 *renumbered to read:*

6 ~~19231.~~

7 *19251.* The State General Obligation Bond Law (Chapter 4
8 (commencing with Section 16720) of Part 3 of Division 4 of Title
9 2 of the Government Code), except as otherwise provided herein,
10 is adopted for the purpose of the issuance, sale, and repayment of,
11 and otherwise providing with respect to, the bonds authorized to
12 be issued by this article, and the provisions of that law are included
13 in this article as though set out in full.

14 *SEC. 50.* *Section 19232 of the Elections Code is amended and*
15 *renumbered to read:*

16 ~~19232.~~

17 *19252.* As used in this article, the following words have the
18 following meanings: *article:*

19 (a) “Board” means the Voting Modernization Board, established
20 pursuant to Section ~~19235.~~ *19256.*

21 (b) “Bond” means a state general obligation bond issued
22 pursuant to this article adopting the provisions of the State General
23 Obligation Bond Law.

24 (c) “Bond act” means this article authorizing the issuance of
25 state general obligation bonds and adopting the State General
26 Obligation Bond Law by reference.

27 (d) “Committee” means the Voting Modernization Finance
28 Committee, established pursuant to Section ~~19233.~~ *19253.*

29 (e) “Fund” means the Voting Modernization Fund, created
30 pursuant to subdivision (b) of Section ~~19234.~~ *19254.*

31 (f) “Voting system” means any voting machine, voting device,
32 or vote-tabulating device that does not ~~utilize~~ *use* prescored punch
33 card ballots.

34 *SEC. 51.* *Section 19233 of the Elections Code is amended and*
35 *renumbered to read:*

36 ~~19233.~~

37 *19253.* (a) The Voting Modernization Finance Committee is
38 hereby established for the purpose of authorizing the issuance and
39 sale, pursuant to the State General Obligation Bond Law, of the
40 bonds authorized by this article.

1 (b) The committee consists of the Controller, the Director of
 2 Finance, and the Treasurer, or their designated representatives, all
 3 of whom shall serve ~~thereon~~ without compensation, and a majority
 4 of whom shall constitute a quorum. The Treasurer shall serve as
 5 chairperson of the committee. A majority of the committee may
 6 act for the committee.

7 (c) For purposes of this article, the Voting Modernization
 8 Finance Committee is “the committee” as that term is used in the
 9 State General Obligation Bond Law.

10 *SEC. 52. Section 19234 of the Elections Code is amended and*
 11 *renumbered to read:*

12 ~~19234.~~

13 *19254.* (a) The committee may create a debt or debts, liability
 14 or liabilities, of the State of California, in the aggregate amount
 15 of not more than two hundred million dollars (\$200,000,000),
 16 exclusive of refunding bonds, in the manner provided herein for
 17 the purpose of creating a fund to assist counties in the purchase of
 18 updated voting systems.

19 (b) The proceeds of bonds issued and sold pursuant to this article
 20 shall be deposited in the Voting Modernization Fund, which is
 21 hereby established.

22 (c) A county is eligible to apply to the board for fund money if
 23 it meets all of the following requirements:

24 (1) The county has purchased a new voting system after January
 25 1, 1999, and is continuing to make payments on that system on
 26 the date that this article becomes effective.

27 (2) The county matches fund moneys at a ratio of one dollar
 28 (\$1) of county moneys for every three dollars (\$3) of fund moneys.

29 (3) The county has not previously requested fund money for
 30 the purchase of a new voting system. Applications for expansion
 31 of an existing system or components related to a previously
 32 *certified or conditionally* approved application shall be accepted.

33 (d) Fund moneys shall only be used to purchase systems certified
 34 by the Secretary of State, pursuant to ~~Division 19 (commencing~~
 35 ~~with Section 19001); this division, and in no event shall~~ fund
 36 moneys *shall not* be used to purchase a voting system that ~~utilizes~~
 37 *uses* prescored punch card ballots.

38 (e) Any voting system purchased using bond funds that does
 39 not require a voter to directly mark on the ballot must produce, at
 40 the time the voter votes his or her ballot or at the time the polls

1 are closed, a paper version or representation of the voted ballot or
2 of all the ballots cast on a unit of the voting system. The paper
3 version shall not be provided to the voter but shall be retained by
4 elections officials for use during the 1 percent manual recount or
5 other recount, *audit*, or contest.

6 *SEC. 53. Section 19234.5 of the Elections Code is amended*
7 *and renumbered to read:*

8 ~~19234.5.~~

9 *19255.* The Legislature may amend subdivisions (c) and (d)
10 of Section ~~19234~~ *19254* and Section ~~19235~~ *19256* by a statute,
11 passed in each house of the Legislature by rollcall vote entered in
12 the respective journals, by not less than two-thirds of the
13 membership in each house concurring, if the statute is consistent
14 with, and furthers the purposes of, this article.

15 *SEC. 54. Section 19235 of the Elections Code is amended and*
16 *renumbered to read:*

17 ~~19235.~~

18 *19256.* The Voting Modernization Board is hereby established
19 and designated the “board” for purposes of the State General
20 Obligation Bond Law, and for purposes of administering the Voting
21 Modernization Fund. The board consists of five members, three
22 selected by the ~~Governor~~, *Governor* and two selected by the
23 Secretary of State. The board shall have the authority to reject any
24 application for fund money it deems inappropriate, excessive, or
25 that does not comply with the intent of this article. A county whose
26 application is rejected shall be allowed to submit an amended
27 application.

28 *SEC. 55. Section 19236 of the Elections Code is amended and*
29 *renumbered to read:*

30 ~~19236.~~

31 *19257.* (a) All bonds authorized by this article, when duly
32 sold and delivered as provided herein, constitute valid and legally
33 binding general obligations of the State of California, and the full
34 faith and credit of the ~~State of California~~ *state* is hereby pledged
35 for the punctual payment of both principal and interest thereof.
36 The bonds issued pursuant to this article shall be repaid within 10
37 years from the date they are issued.

38 (b) There shall be collected annually, in the same manner and
39 at the same time as other state revenue is collected, a sum of
40 money, in addition to the ordinary revenues of the state, sufficient

1 to pay the principal of, and interest on, ~~these~~ *the* bonds as provided
 2 herein. All officers required by law to perform any duty in regard
 3 to the collection of state revenues shall collect this additional sum.

4 (c) On the dates on which funds are remitted pursuant to Section
 5 16676 of the Government Code for the payment of the then
 6 maturing principal of, and interest on, the bonds in each fiscal
 7 year, there shall be returned to the General Fund all of the money
 8 in the fund, not in excess of the principal of, and interest on, any
 9 bonds then due and payable. If the money so returned on the
 10 remittance dates is less than the principal and interest then due and
 11 payable, the balance remaining unpaid shall be returned to the
 12 General Fund out of the fund as soon as it shall become available,
 13 together with interest thereon from the dates of maturity until
 14 returned, at the same rate of interest as borne by the bonds,
 15 compounded semiannually. This subdivision does not grant any
 16 lien on the fund or the moneys therein to holders of any bonds
 17 issued under this article. However, this subdivision shall not apply
 18 in the case of any debt service that is payable from the proceeds
 19 of any refunding bonds. For ~~the~~ purposes of this subdivision, “debt
 20 service” means the principal (whether due at maturity, by
 21 redemption, or acceleration), premium, if any, or interest payable
 22 on any date to any series of bonds.

23 *SEC. 56. Section 19237 of the Elections Code is amended and*
 24 *renumbered to read:*

25 ~~19237.~~

26 *19258.* Notwithstanding Section 13340 of the Government
 27 Code, there is hereby continuously appropriated from the General
 28 Fund, for purposes of this article, a sum of money that will equal
 29 both of the following:

30 (a) That sum annually necessary to pay the principal of, and the
 31 interest on, the bonds issued and sold as provided herein, as that
 32 principal and interest become due and payable.

33 (b) That sum necessary to carry out Section ~~19238~~, *19259*,
 34 appropriated without regard to fiscal years.

35 *SEC. 57. Section 19238 of the Elections Code is amended and*
 36 *renumbered to read:*

37 ~~19238.~~

38 *19259.* For ~~the~~ purposes of this article, the Director of Finance
 39 may, by executive order, authorize the withdrawal from the General
 40 Fund of a sum of money not to exceed the amount of the unsold

1 bonds that have been authorized by the committee to be sold
2 pursuant to this article. Any sums withdrawn shall be deposited
3 in the fund. All moneys made available under this section to the
4 board shall be returned by the board to the General Fund, plus the
5 interest that the amounts would have earned in the Pooled Money
6 Investment Account, from the sale of bonds for the purpose of
7 carrying out this article.

8 *SEC. 58. Section 19239 of the Elections Code is amended and*
9 *renumbered to read:*

10 ~~19239.~~

11 *19260.* The board may request the Pooled Money Investment
12 Board to make a loan from the Pooled Money Investment Account,
13 in accordance with Section 16312 of the Government Code, for
14 the ~~purposes~~ *purpose* of carrying out this article. The amount of
15 the request shall not exceed the amount of unsold bonds which the
16 committee has, by resolution, authorized to be sold for the purpose
17 of carrying out this article. The board shall execute whatever
18 documents are required by the Pooled Money Investment Board
19 to obtain and repay the loan. Any amounts loaned shall be
20 deposited in the fund to be allocated by the board in accordance
21 with this article.

22 *SEC. 59. Section 19240 of the Elections Code is amended and*
23 *renumbered to read:*

24 ~~19240.~~

25 *19261.* Upon request of the board, supported by a statement
26 of its plans and projects approved by the Governor, the committee
27 shall determine whether to issue any bonds authorized under this
28 article in order to carry out the board's plans and projects, and, if
29 so, the amount of bonds to be issued and sold. Successive issues
30 of bonds may be authorized and sold to carry out these plans and
31 projects progressively, and it is not necessary that all of the bonds
32 be issued or sold at any one time.

33 *SEC. 60. Section 19241 of the Elections Code is amended and*
34 *renumbered to read:*

35 ~~19241.~~

36 *19262.* (a) The committee may authorize the Treasurer to sell
37 all or any part of the bonds authorized by this article at the time
38 or times established by the Treasurer.

39 (b) Whenever the committee deems it necessary for an effective
40 sale of the bonds, the committee may authorize the Treasurer to

1 sell any issue of bonds at less than their par value, notwithstanding
2 Section 16754 of the Government Code. However, the discount
3 on the bonds shall not exceed 3 percent of the par value thereof.

4 *SEC. 61. Section 19242 of the Elections Code is amended and*
5 *renumbered to read:*

6 ~~19242.~~

7 *19263.* Out of the first money realized from the sale of bonds
8 as provided ~~herein~~, *by this article*, there shall be redeposited in the
9 General Obligation Bond Expense Revolving Fund, established
10 by Section 16724.5 of the Government Code, the amount of all
11 expenditures made for the purposes specified in that section, and
12 this money may be used for the same purpose and repaid in the
13 same manner whenever additional bond sales are made.

14 *SEC. 62. Section 19243 of the Elections Code is amended and*
15 *renumbered to read:*

16 ~~19243.~~

17 *19264.* Any bonds issued and sold pursuant to this article may
18 be refunded in accordance with Article 6 (commencing with
19 Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of
20 the Government Code. The approval of the voters for the issuance
21 of bonds under this article includes approval for the issuance of
22 bonds issued to refund bonds originally issued or any previously
23 issued refunding bonds.

24 *SEC. 63. Section 19244 of the Elections Code is amended and*
25 *renumbered to read:*

26 ~~19244.~~

27 *19265.* Notwithstanding any provision of the bond act, if the
28 Treasurer sells bonds under this article for which bond counsel
29 has issued an opinion to the effect that the interest on the bonds is
30 excludable from gross income for purposes of federal income tax,
31 subject to any conditions which may be designated, the Treasurer
32 may establish separate accounts for the investment of bond
33 proceeds and for the earnings on those proceeds, and may use those
34 proceeds or earnings to pay any rebate, penalty, or other payment
35 required by federal law or take any other action with respect to the
36 investment and use of bond proceeds required or permitted under
37 federal law necessary to maintain the tax-exempt status of the
38 bonds or to obtain any other advantage under federal law on behalf
39 of the funds of this state.

1 SEC. 64. Section 19245 of the Elections Code is amended and
2 renumbered to read:

3 ~~19245.~~

4 19266. The Legislature hereby finds and declares that,
5 inasmuch as the proceeds from the sale of bonds authorized by
6 this article are not “proceeds of taxes” as that term is used in Article
7 XIII B of the California Constitution, the disbursement of these
8 proceeds is not subject to the limitations imposed by Article XIII B.

9 SEC. 65. The heading of Article 4 (commencing with Section
10 19250) of Chapter 3 of Division 19 of the Elections Code is
11 amended and renumbered to read:

12

13 Article ~~4~~. 6. Direct Recording Electronic Voting Systems

14

15 SEC. 66. Section 19250 of the Elections Code is amended and
16 renumbered to read:

17 ~~19250.~~

18 19270. ~~(a) On and after January 1, 2005, the~~

19 The Secretary of State shall not approve a direct recording
20 electronic voting system unless the system has received federal
21 qualification and includes an accessible voter verified paper audit
22 trail. ~~does all of the following:~~

23 ~~(b)~~

24 ~~(a) On and after January 1, 2006, a city or county shall not~~
25 ~~contract for or purchase a direct recording electronic voting system~~
26 ~~unless the system has received federal qualification and includes~~
27 ~~Includes an accessible voter verified paper audit trail.~~

28 ~~(e) As of January 1, 2006, all direct recording electronic voting~~
29 ~~systems in use on that date, regardless of when contracted for or~~
30 ~~purchased, shall have received federal qualification and include~~
31 ~~an accessible voter verified paper audit trail. If the direct recording~~
32 ~~electronic voting system does not already include an accessible~~
33 ~~voter verified paper audit trail, the system shall be replaced or~~
34 ~~modified to include an accessible voter verified paper audit trail.~~

35 ~~(d)~~

36 ~~(b) All direct recording electronic voting systems shall include~~
37 ~~Includes a method by which a voter may electronically verify,~~
38 ~~through a nonvisual method, the information that is contained on~~
39 ~~the paper record copy of that voter’s ballot.~~

40 ~~(e)~~

1 (c) ~~Allows for a paper record copy that is shall be printed by~~
 2 a voter verified paper audit trail component ~~shall be printed~~ in the
 3 same language that the voter used when casting his or her ballot
 4 on the direct recording electronic voting system. For languages
 5 that lack a written form, the paper record copy shall be printed in
 6 English.

7 SEC. 67. Section 19251 of the Elections Code is amended and
 8 renumbered to read:

9 ~~19251.~~

10 19271. ~~For purposes of As used in this article, the following~~
 11 ~~terms shall have the following meanings: article:~~

12 (a) “Accessible” means that the information provided on the
 13 paper record copy from the voter verified paper audit trail
 14 mechanism is provided or conveyed to voters via both a visual and
 15 a nonvisual method, such as through an audio component.

16 (b) “Direct recording electronic voting system” means a voting
 17 system that records a vote electronically and does not require or
 18 permit the voter to record his or her vote directly onto a tangible
 19 ballot.

20 (c) “Voter verified paper audit trail” means a component of a
 21 direct recording electronic voting system that prints a
 22 contemporaneous paper record copy of each electronic ballot and
 23 allows each voter to confirm his or her selections before the voter
 24 casts his or her ballot.

25 (d) “Federal qualification” means the system has been certified,
 26 if applicable, by means of qualification testing by a Nationally
 27 Recognized Test Laboratory and has met or exceeded the minimum
 28 requirements set forth in the Performance and Text Standards for
 29 Punch Card, Mark Sense, and Direct Recording Electronic Voting
 30 Systems, or in any successor voluntary standard document,
 31 developed and promulgated by the Federal Election Commission,
 32 the Election Assistance Commission, or the National Institute of
 33 Standards and Technology.

34 (e) “Paper record copy” means an auditable document printed
 35 by a voter verified paper audit trail component that corresponds
 36 to the voter’s electronic vote and lists the contests on the ballot
 37 and the voter’s selections for those contests. A paper record copy
 38 is not a ballot.

39 (f) “Parallel monitoring” means the testing of a randomly
 40 selected sampling of voting equipment on election day designed

1 to simulate actual election conditions to confirm that the system
2 is registering votes accurately.

3 *SEC. 68. Section 19252 of the Elections Code is repealed.*

4 ~~19252. To the extent that they are available for expenditure
5 for the purposes of this article, federal funds or moneys from the
6 Voting Modernization Fund, created pursuant to subdivision (b)
7 of Section 19234, shall be used. No moneys from the General Fund
8 shall be expended for the purposes of this article.~~

9 *SEC. 69. Section 19253 of the Elections Code is amended and
10 renumbered to read:*

11 ~~19253.~~

12 *19272.* (a) On a direct recording electronic voting system, the
13 electronic record of each vote shall be considered the official record
14 of the vote, except as provided in subdivision (b).

15 (b) (1) The voter verified paper audit trail shall be considered
16 the official paper audit record and shall be used for the required
17 1-percent manual tally described in Section 15360 and any full
18 recount *or post-election audit.*

19 (2) The voter verified paper audit trail shall govern if there is
20 any difference between it and the electronic record during a
21 1-percent manual tally ~~or tally~~, full recount, *or post-election audit.*

22 *SEC. 70. Section 19254 of the Elections Code is amended and
23 renumbered to read:*

24 ~~19254.~~

25 *19273.* The Secretary of State shall not ~~approve~~ *certify* a direct
26 recording electronic voting system unless the paper used for its
27 voter verified paper audit trail is of sufficient quality that it
28 maintains its integrity and readability throughout the retention
29 period specified in Chapter 4 (commencing with Section 17300)
30 of Division 17.

31 *SEC. 71. Section 19255 of the Elections Code is amended and
32 renumbered to read:*

33 ~~19255.~~

34 *19274.* (a) For each statewide election, the Secretary of State
35 shall conduct parallel monitoring of each direct recording electronic
36 voting system on which ballots will be cast. This section shall only
37 apply to precincts that have more than one direct recording
38 electronic voting system.

39 (b) The results of the parallel monitoring shall be made available
40 prior to the certification of the election.

1 SEC. 72. *The heading of Chapter 3.5 (commencing with Section*
2 *19260) of Division 19 of the Elections Code is amended to read:*

3
4 CHAPTER 3.5. ~~APPROVAL~~ CERTIFICATION OF BALLOT MARKING
5 SYSTEMS
6

7 SEC. 73. *Section 19260 of the Elections Code is amended and*
8 *renumbered to read:*

9 ~~19260.~~
10 19280. The Secretary of State shall not *certify or conditionally*
11 *approve any* a ballot marking system, or part of a ballot marking
12 system, unless it fulfills the requirements of this code and the
13 regulations of the Secretary of State.

14 SEC. 74. *Section 19261 of the Elections Code is amended and*
15 *renumbered to read:*

16 ~~19261.~~
17 19281. (a) ~~A~~
18 A ballot marking system, in whole or in part, shall not be used
19 unless it has ~~received the approval of the~~ *been certified or*
20 *conditionally approved by the* Secretary of State prior to the
21 election at which it is to be first used.

22 (b) ~~A jurisdiction shall not purchase or contract for a ballot~~
23 ~~marking system, in whole or in part, unless it has received the~~
24 ~~approval of the Secretary of State.~~

25 SEC. 75. *Section 19262 of the Elections Code is amended and*
26 *renumbered to read:*

27 ~~19262.~~
28 19284. (a) ~~A person~~ *person, corporation, or corporation* public
29 *agency* owning or having an interest in *the sale or acquisition of*
30 a ballot marking system or a part of a ballot marking system may
31 apply to the Secretary of State ~~to examine it for certification that~~
32 *includes testing and report on its accuracy and efficiency to fulfill*
33 ~~its purpose.~~ *examination of the applicant’s system and a report on*
34 *the findings, which shall include the accuracy and efficiency of*
35 *the ballot marking system.* As part of its application, the ~~vendor~~
36 *applicant* of a ballot marking system or a part of a ballot marking
37 system shall notify the Secretary of State in writing of any known
38 defect, fault, or failure of the version of the hardware, software,
39 or firmware of the ballot marking system or a part of the ballot
40 marking system submitted. The Secretary of State shall not begin

1 his or her ~~examination~~ *certification process* until he or she receives
2 a completed application from the ~~vendor~~ *applicant* of the ballot
3 marking system or a part of the ballot marking system. The ~~vendor~~
4 *applicant* shall also notify the Secretary of State in writing of any
5 defect, fault, or failure of the version of the hardware, software,
6 or firmware of the ballot marking system or a part of the ballot
7 marking system submitted that is discovered after the application
8 is submitted and before the Secretary of State submits the report
9 required by Section ~~19267~~. *19288*. The Secretary of State shall
10 complete his or her examination without undue delay.

11 (b) After receiving a ~~vendor's~~ *an applicant's* written notification
12 of a defect, fault, or failure, the Secretary of State shall notify the
13 United States Election Assistance Commission or its successor
14 entity of the problem as soon as practicable so as to present a
15 reasonably complete description of the problem. The Secretary of
16 State shall subsequently submit a report regarding the problem to
17 the United States Election Assistance Commission or its successor
18 entity. The report shall include any report regarding the problem
19 submitted to the Secretary of State by the ~~vendor~~. *applicant*.

20 (c) ~~The following definitions apply for purposes of~~ *As used in*
21 *this chapter:*

22 (1) “Defect” means any flaw in the hardware or documentation
23 ~~of an approved~~ *a certified* or conditionally approved ballot marking
24 system that could result in a state of unfitness for use or
25 nonconformance to the manufacturer’s ~~specifications~~. *specifications*
26 *or applicable law*.

27 (2) “Failure” means a discrepancy between the external results
28 of the operation of any software or firmware in ~~an approved~~ *a*
29 *certified* or conditionally approved ballot marking system and the
30 manufacturer’s product requirements for that software or firmware
31 *or applicable law*.

32 (3) “Fault” means a step, process, or data definition in any
33 software or firmware in ~~an approved~~ *a certified* or conditionally
34 approved ballot marking system that is incorrect under the
35 manufacturer’s program specification *or applicable law*.

36 *SEC. 76. Section 19263 of the Elections Code is amended and*
37 *renumbered to read:*

38 ~~19263:~~

39 *19285. The Secretary of State may make all arrangements for*
40 *the time and place shall use a state-approved testing agency to*

1 examine ballot marking systems proposed ~~to be sold~~ *for use or*
 2 *sale* in this state. He or she shall furnish a complete report of the
 3 findings of the ~~examining engineers~~ *examination and testing* to
 4 the Governor and the Attorney General.

5 *SEC. 77. Section 19264 of the Elections Code is amended and*
 6 *renumbered to read:*

7 ~~19264.~~

8 *19287. (a) Prior to ~~giving~~ publishing his or her decision*
 9 ~~*approving to certify, conditionally approve, or withholding*~~
 10 ~~*approval withhold certification of any a*~~ ballot marking system,
 11 the Secretary of State shall ~~hold~~ *provide for a 30-day public review*
 12 *period and conduct a public hearing to give interested persons an*
 13 *opportunity to review testing and examination reports and express*
 14 *their views for or against certification or conditional approval of*
 15 *the ballot marking system.*

16 (b) The Secretary of State shall give notice of the *public review*
 17 *period and hearing* in the manner prescribed in Section 6064 of
 18 the Government Code in a newspaper of general circulation
 19 published in Sacramento County. The Secretary of State shall also
 20 *provide notice of the public review period and hearing on his or*
 21 *her Internet Web site. The Secretary of State shall transmit written*
 22 *notice of the public review period and hearing, at least 30 days*
 23 *prior to the public review period and hearing, to each county*
 24 *elections official, to any person that the Secretary of State believes*
 25 *will be interested in the public review period and hearing, and to*
 26 *any person who requests, in writing, notice of the public review*
 27 *period and hearing.*

28 (c) The decision of the Secretary of State, ~~either approving~~ *State*
 29 ~~*to certify, conditionally approve, or withholding*~~ *withhold* approval
 30 of a ballot marking ~~system, system~~ shall be in writing and shall
 31 state the findings of the Secretary of State. The decision shall be
 32 open to public inspection.

33 *SEC. 78. Section 19265 of the Elections Code is repealed.*

34 ~~19265. The Secretary of State shall establish the specifications~~
 35 ~~for and the regulations governing ballot marking systems, and the~~
 36 ~~related software. The criteria for establishing the specifications~~
 37 ~~and regulations shall include, but not be limited to, the following:~~

38 (a) ~~The system and its software shall be suitable for the purpose~~
 39 ~~for which it is intended.~~

40 (b) ~~The system shall preserve the secrecy of the ballot.~~

1 ~~(e) The system shall be safe from fraud or manipulation.~~

2 *SEC. 79. Section 19266 of the Elections Code is repealed.*

3 ~~19266. For the purpose of assistance in examining a ballot~~
4 ~~marking system, the Secretary of State may employ not more than~~
5 ~~three expert electronic technicians at a cost to be set by the~~
6 ~~Secretary of State. The compensation of the electronic technicians~~
7 ~~shall be paid by the person or corporation submitting the ballot~~
8 ~~marking system.~~

9 ~~The Secretary of State may require the person or corporation~~
10 ~~submitting the ballot marking system to deposit sufficient funds~~
11 ~~to guarantee the payment of the examination charges. The Secretary~~
12 ~~of State may deposit the funds in an appropriate treasury trust~~
13 ~~account and, within 30 days after his or her report of examination,~~
14 ~~draw a refund check to the credit of the person or corporation for~~
15 ~~any amount in excess of costs.~~

16 *SEC. 80. Section 19267 of the Elections Code is amended and*
17 *renumbered to read:*

18 ~~19267.~~

19 *19288. Within 60 days after completing the completion of*
20 *the examination of any a ballot marking system, the Secretary of*
21 *State shall place on file make publicly available a report stating*
22 *whether, in his or her opinion, whether the kind of ballot marking*
23 *system examined can safely be used. The report shall also contain*
24 *a written has been certified or printed description and drawings*
25 *and photographs clearly identifying the system and its operation.*
26 *conditionally approved, or whether certification has been withheld.*

27 *SEC. 81. Section 19268 of the Elections Code is repealed.*

28 ~~19268. If the report states that the ballot marking system can~~
29 ~~be used, it shall be deemed approved by the Secretary of State and~~
30 ~~systems of its kind may be adopted for use at elections.~~

31 *SEC. 82. Section 19269 of the Elections Code is amended and*
32 *renumbered to read:*

33 ~~19269.~~

34 *19289. Within 10 days after issuing and filing the report, a*
35 *certification decision and associated testing reports, the Secretary*
36 *of State shall send a copy to the board of supervisors of each*
37 *county.*

38 *SEC. 83. Section 19270 of the Elections Code is amended and*
39 *renumbered to read:*

1 ~~19270.~~

2 19290. (a) ~~When~~*If* a ballot marking system has been *certified*
 3 *or conditionally* approved by the Secretary of State, the vendor *or*
 4 *proprietor county, in cases where the system is publicly owned,*
 5 shall notify the Secretary of State and all local elections officials
 6 who use the system in writing of any defect, fault, or failure of the
 7 hardware, software, or firmware of the system or a part of the
 8 system within 30 calendar days after the vendor learns of the defect,
 9 fault, or failure.

10 (b) After receiving a vendor's written notification of a defect,
 11 fault, or failure pursuant to subdivision (a), the Secretary of State
 12 shall notify the United States Election Assistance Commission or
 13 its successor entity of the problem as soon as practicable so as to
 14 present a reasonably complete description of the problem. The
 15 Secretary of State shall subsequently submit a report regarding the
 16 problem to the United States Election Assistance Commission or
 17 its successor entity. The report shall include any report regarding
 18 the problem submitted to the Secretary of ~~State by the vendor.~~
 19 *State.*

20 *SEC. 84. Section 19271 of the Elections Code is amended and*
 21 *renumbered to read:*

22 ~~19271.~~

23 19291. ~~When~~*If* a ballot marking system has been *certified or*
 24 *conditionally* approved by the Secretary of State, it shall not be
 25 changed or modified until the Secretary of State has been notified
 26 in writing and has determined that the change or modification does
 27 not impair its accuracy and efficiency sufficient to require a
 28 reexamination and *recertification or* reapproval pursuant to this
 29 chapter. The Secretary of State may adopt rules and regulations
 30 governing the procedures to be followed in making his or her
 31 determination as to whether the change or modification impairs
 32 accuracy or efficiency.

33 *SEC. 85. Section 19272 of the Elections Code is amended and*
 34 *renumbered to read:*

35 ~~19272.~~

36 19292. The Secretary of State may seek injunctive and
 37 administrative relief ~~when~~ *if* a ballot marking system has been
 38 compromised by the addition or deletion of hardware, software,
 39 or firmware without prior approval or is defective due to a known

1 hardware, software, or firmware defect, fault, or failure that has
2 not been disclosed pursuant to Section ~~19270~~ 19284 or 19290.

3 SEC. 86. Section 19273 of the Elections Code is amended and
4 renumbered to read:

5 ~~19273~~:

6 19293. (a) The Secretary of State may seek all of the following
7 relief for an unauthorized change in hardware, software, or
8 firmware in a ballot marking system—~~approved~~ *certified* or
9 conditionally approved in California:

10 (1) A civil penalty from the offending party or parties, not to
11 exceed ten thousand dollars (\$10,000) per violation. For purposes
12 of this subdivision, each ballot marking system component found
13 to contain the unauthorized hardware, software, or firmware shall
14 be considered a separate violation. A penalty imposed pursuant to
15 this subdivision shall be apportioned 50 percent to the county in
16 which the violation occurred, if applicable, and 50 percent to the
17 Office of the Secretary of State for purposes of bolstering ballot
18 marking system security efforts.

19 (2) Immediate commencement of proceedings to withdraw
20 *certification or conditional* approval for the ballot marking system
21 in question.

22 (3) Prohibiting the manufacturer or vendor of a ballot marking
23 system from doing elections-related business in the state for one,
24 two, or three years.

25 (4) Refund of all moneys paid by a local agency for a ballot
26 marking system or a part of a ballot marking system that is
27 compromised by an unauthorized change or modification, whether
28 or not the ballot marking system has been used in an election.

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

31 (b) (1) The Secretary of State may seek all of the following
32 relief for a known but undisclosed defect, fault, or failure in a
33 ballot marking system or part of a ballot marking system—~~approved~~
34 *certified* or conditionally approved in California:

35 (A) Refund of all moneys paid by a local agency for a ballot
36 marking system or part of a ballot marking system that is defective
37 due to a known but undisclosed defect, fault, or failure, whether
38 or not the ballot marking system has been used in an election.

39 (B) A civil penalty from the offending party or parties, not to
40 exceed fifty thousand dollars (\$50,000) per violation. For purposes

1 of this subdivision, each defect, fault, or failure shall be considered
2 a separate violation. A defect, fault, or failure constitutes a single
3 violation regardless of the number of ballot marking system units
4 in which the defect, fault, or failure is found.

5 (C) In addition to any other penalties or remedies established
6 by this section, the offending party or parties shall be liable in the
7 amount of one thousand dollars (\$1,000) per day after the
8 applicable deadline established in Section ~~19270~~ 19290 until the
9 required disclosure is filed with the Secretary of State.

10 (2) A penalty imposed pursuant to subparagraph (B) or (C) of
11 paragraph (1) shall be deposited in the General Fund.

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

22 (d) The decision of the Secretary of ~~State~~, State to seek relief
23 under this ~~section~~, section shall be in writing and state his or her
24 findings. The decision shall be open to public inspection.

25 *SEC. 87. Section 19274 of the Elections Code is amended and*
26 *renumbered to read:*

27 ~~19274.~~

28 19294. (a) The Secretary of State may seek injunctive relief
29 requiring an elections official, or any vendor or manufacturer of
30 a ballot marking system, to comply with the requirements of this
31 code, the regulations of the Secretary of State, and the
32 specifications for the ballot marking system, and its software,
33 including the programs and procedures for vote marking and
34 testing.

35 (b) Venue for a proceeding under this section shall be
36 exclusively in Sacramento County.

37 *SEC. 88. Section 19275 of the Elections Code is amended and*
38 *renumbered to read:*

1 ~~19275.~~

2 19295. A ballot marking system or part of a ballot marking
3 system shall not do any of the following:

4 (a) Have the capability, including an optional capability, to use
5 a remote server to mark a voter's selections transmitted to the
6 server from the voter's computer via the Internet.

7 (b) Have the capability, including an optional capability, to store
8 any voter identifiable selections on any remote server.

9 (c) Have the capability, including the optional capability, to
10 tabulate votes.

11 *SEC. 89. Section 19282 is added to the Elections Code, to read:*

12 *19282. The Secretary of State shall not certify or conditionally*
13 *approve any ballot marking system that includes features that*
14 *permit a voter to produce a copy or facsimile of the ballot cast by*
15 *the voter at that polling place.*

16 *SEC. 90. Section 19283 is added to the Elections Code, to read:*

17 *19283. The Secretary of State shall adopt and publish standards*
18 *and regulations governing the use of ballot marking systems. The*
19 *Secretary of State may also adopt voluntary federal voting system*
20 *standards established by the United States Election Assistance*
21 *Commission or its successor agency.*

22 *SEC. 91. Section 19286 is added to the Elections Code, to read:*

23 *19286. The person, corporation, or public agency applying*
24 *for certification of a ballot marking system is responsible for all*
25 *costs associated with the testing and examination of the ballot*
26 *marking system.*

27 **SECTION 1.** ~~Section 19202 of the Elections Code is amended~~
28 ~~to read:~~

29 ~~19202. (a) To request the Secretary of State to approve a voting~~
30 ~~system, in whole or in part, the person, corporation, or county~~
31 ~~owning or being interested in the voting system or a part of the~~
32 ~~voting system shall apply to the Secretary of State to examine it~~
33 ~~and report on its accuracy and efficiency to fulfill its purpose. As~~
34 ~~part of its application, the vendor of a voting system or the part of~~
35 ~~a voting system shall notify the Secretary of State in writing of~~
36 ~~any known defect, fault, or failure of the version of the hardware,~~
37 ~~software, or firmware of the voting system or a part of the voting~~
38 ~~system submitted. The Secretary of State shall not begin his or her~~
39 ~~examination until he or she receives a completed application from~~
40 ~~the vendor of the voting system or a part of the voting system. The~~

1 vendor shall also notify the Secretary of State in writing of any
2 defect, fault, or failure of the version of the hardware, software,
3 or firmware of the voting system or a part of the voting system
4 submitted that is discovered after the application is submitted and
5 before the Secretary of State submits the report required by Section
6 19207. The Secretary of State shall complete his or her examination
7 without undue delay.

8 (b) After receiving a vendor’s written notification of a defect,
9 fault, or failure, the Secretary of State shall notify the United States
10 Election Assistance Commission or its successor entity of the
11 problem as soon as practicable so as to present a reasonably
12 complete description of the problem. The Secretary of State shall
13 subsequently submit a report regarding the problem to the United
14 States Election Assistance Commission or its successor entity. The
15 report shall include any report regarding the problem submitted
16 to the Secretary of State by the vendor.

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

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

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

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

30 SEC. 2. Section 19206 of the Elections Code is amended to
31 read:

32 19206. For the purpose of assistance in examining a voting
33 system the Secretary of State may employ not more than three
34 expert electronic technicians at a cost to be set by the Secretary of
35 State. The compensation of the electronic technicians shall be paid
36 by the person, corporation, or county submitting the machine or
37 device.

38 The Secretary of State may require the person, corporation, or
39 county submitting the machine or device to deposit sufficient funds
40 to guarantee the payment of the examination charges. The Secretary

1 of State may deposit the funds in an appropriate treasury trust
2 account and, within 30 days after his or her report of examination,
3 draw a refund check to the credit of the person or corporation for
4 any amount in excess of costs.

5 SEC. 3. Section 19250 of the Elections Code is amended to
6 read:

7 19250. (a) On and after January 1, 2005, the Secretary of State
8 shall not approve a direct recording electronic voting system unless
9 the system has received federal qualification and includes an
10 accessible voter verified paper audit trail.

11 (b) (1) Except as provided in paragraph (2), on and after January
12 1, 2006, a city or county shall not contract for or purchase a direct
13 recording electronic voting system unless the system has received
14 federal qualification and includes an accessible voter verified paper
15 audit trail.

16 (2) A county may develop, or contract with a vendor to develop,
17 a direct recording electronic voting system before the voting system
18 has received federal qualification, provided that the voting system
19 receives federal qualification prior to any election at which it is to
20 be first used.

21 (c) As of January 1, 2006, all direct recording electronic voting
22 systems in use on that date, regardless of when contracted for or
23 purchased, shall have received federal qualification and include
24 an accessible voter verified paper audit trail. If the direct recording
25 electronic voting system does not already include an accessible
26 voter verified paper audit trail, the system shall be replaced or
27 modified to include an accessible voter verified paper audit trail.

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

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

O