

AMENDED IN SENATE MAY 20, 2013

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 360

Introduced by Senator Padilla

February 20, 2013

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, 19252, 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. 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.~~

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

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

1 SECTION 1. The heading of Division 19 (commencing with
2 Section 19001) of the Elections Code is amended to read:

3
4 DIVISION 19. CERTIFICATION OF VOTING SYSTEMS

5
6 SEC. 2. Section 19006 is added to the Elections Code, to read:

7 19006. (a) It is the intent of the Legislature that all voting
8 systems be certified or conditionally approved by the Secretary of
9 State, independent of voluntary federal qualification or
10 certification, before they are used in future elections to ensure that
11 the voting systems meet accuracy, accessibility, and security
12 standards.

13 (b) It is also the intent of the Legislature that the Secretary of
14 State adopt and publish testing standards that meet or exceed
15 federal voluntary standards set by the United States Election
16 Assistance Commission or its successor agency.

1 (c) It is also the intent of the Legislature that the Secretary of
2 State study and encourage the development of voting systems that
3 use nonproprietary source code or that are easy for the public to
4 audit.

5 SEC. 3. Section 19100 of the Elections Code is amended to
6 read:

7 19100. The Secretary of State shall study and adopt regulations
8 governing the use of voting machines, voting devices, vote
9 tabulating devices, and ballot marking systems, and shall be
10 responsible for certifying voting systems for use in this state.

11 SEC. 4. Section 19101 of the Elections Code is amended and
12 renumbered to read:

13 19103. The Chairperson of the Senate Standing Committee on
14 Elections and Constitutional Amendments and the Chairperson of
15 the Assembly Standing Committee on Elections and Redistricting
16 shall meet with the Secretary of State and assist the Secretary of
17 State to the extent that the participation is not incompatible with
18 their positions as Members of the Legislature. For purposes of this
19 division, the chairpersons of the committees named shall constitute
20 a joint interim legislative committee on the subject of this chapter
21 and Chapter 3 (commencing with Section 19200) and shall have
22 the powers and duties imposed upon those committees by the Joint
23 Rules of the Senate and Assembly.

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

25 19101. (a) The Secretary of State shall adopt and publish
26 voting system standards. The Secretary of State may also adopt,
27 in whole or in part, voluntary federal voting system standards
28 established by the United States Election Assistance Commission
29 or its successor agency.

30 (b) Voting system standards adopted by the Secretary of State
31 pursuant to subdivision (a) shall include, but not be limited to, all
32 of the following requirements:

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

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

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

37 (4) The system shall be accessible to voters with disabilities
38 and to voters who require assistance in a language other than
39 English if the language is one in which a ballot or ballot materials
40 are required to be made available to voters.

1 SEC. 6. Section 19102 of the Elections Code is amended and
2 renumbered to read:

3 19104. The Secretary of State may investigate any alleged
4 violation of this code or the Secretary of State’s regulations with
5 the power to subpoena all necessary persons and records.

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

7 19102. The Secretary of State shall study the performance of
8 voting systems in use in the state.

9 SEC. 8. Section 19103 of the Elections Code is amended and
10 renumbered to read:

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

22 (2) No later than 10 business days after the Secretary of State
23 certifies a new or updated ballot marking system, the applicant of
24 the ballot marking system shall cause an exact copy of the approved
25 source code for each component of the ballot marking system,
26 including complete build and configuration instructions and related
27 documents for compiling the source code into object code, to be
28 deposited into an approved escrow facility.

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

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

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

1 (3) Procedures for submitting voting system or ballot marking
2 system source codes.

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

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

10 (c) The Secretary of State shall have reasonable access to the
11 materials placed in escrow, under *any of* the following
12 circumstances:

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

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

18 (3) In order to fulfill the provisions of this chapter related to the
19 examination and certification of voting systems or ballot marking
20 systems.

21 (4) In order to verify that the software on a voting system is
22 identical to the certified version.

23 (5) For any other purpose deemed necessary to fulfill the
24 provisions of this code or Section 12172.5 of the Government
25 Code.

26 (d) The Secretary of State may seek injunctive relief requiring
27 the elections officials, approved escrow facility, or any vendor or
28 manufacturer of a voting system or part of a voting system to
29 comply with this section and related regulations. Venue for a
30 proceeding under this section shall be exclusively in Sacramento
31 County.

32 (e) This section applies to all elections.

33 SEC. 9. The heading of Chapter 3 (commencing with Section
34 19200) of Division 19 of the Elections Code is amended to read:

35

36 CHAPTER 3. CERTIFICATION OF VOTING SYSTEMS

37

38 SEC. 10. The heading of Article 1 (commencing with Section
39 19200) of Chapter 3 of Division 19 of the Elections Code is
40 amended to read:

1 Article 1. Procedures for Certification of Voting Systems

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

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

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

11 19202. A voting system, in whole or in part, shall not be used
12 unless it has been certified or conditionally approved by the
13 Secretary of State prior to any election at which it is to be first
14 used.

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

16 19201. The Secretary of State may conditionally approve a
17 voting system or part of a voting system in lieu of certification
18 under any of the following circumstances:

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

21 (b) A voting system or part of a voting system has been
22 decertified.

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

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

28 19210. (a) A person, corporation, or public agency owning or
29 having an interest in the sale or acquisition of a voting system or
30 a part of a voting system may apply to the Secretary of State for
31 certification that includes testing and examination of the applicant's
32 system by a state-approved testing agency and a report on the
33 findings, which shall include the accuracy and efficiency of the
34 voting system. As part of its application, the applicant shall notify
35 the Secretary of State in writing of any known defect, fault, or
36 failure of the version of the hardware, software, or firmware of
37 the voting system or a part of the voting system submitted. The
38 Secretary of State shall not begin his or her certification process
39 until he or she receives a completed application. The applicant
40 shall also notify the Secretary of State in writing of any defect,

1 fault, or failure of the version of the hardware, software, or
2 firmware of the voting system or a part of the voting system
3 submitted that is discovered after the application is submitted and
4 before the Secretary of State submits the report required by Section
5 19213. The Secretary of State shall complete his or her certification
6 process without undue delay.

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

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

19 (d) As used in this article:

20 (1) "Defect" means any flaw in the hardware or documentation
21 of a certified or conditionally approved voting system that could
22 result in a state of unfitness for use or nonconformance to the
23 manufacturer's specifications or applicable law.

24 (2) "Failure" means a discrepancy between the external results
25 of the operation of any software or firmware in a certified or
26 conditionally approved voting system and the manufacturer's
27 product requirements for that software or firmware or applicable
28 law.

29 (3) "Fault" means a step, process, or data definition in any
30 software or firmware in a certified or conditionally approved voting
31 system that is incorrect under the manufacturer's program
32 specification or applicable law.

33 SEC. 15. Section 19203 of the Elections Code is amended and
34 renumbered to read:

35 19223. The Secretary of State shall use a state-approved testing
36 agency to examine voting systems or parts of voting systems
37 proposed for use or sale in this state. He or she shall furnish a
38 complete report of the findings of the examination and testing to
39 the Governor and the Attorney General.

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

3 19211. (a) Prior to publishing his or her decision to certify,
4 conditionally approve, or withhold certification of a voting system
5 or part of a voting system, the Secretary of State shall provide for
6 a 30-day public review period and conduct a public hearing to give
7 persons interested an opportunity to review testing and examination
8 reports and express their views for or against certification or
9 conditional approval of the voting system.

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

22 (c) The decision of the Secretary of State to certify, conditionally
23 approve, or withhold approval of a voting system or part of a voting
24 system shall be in writing and shall state the findings of the
25 Secretary of State. The decision shall be open to public inspection.

26 SEC. 17. Section 19205 of the Elections Code is repealed.

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

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

29 19206. If more than one voting system is used to count ballots,
30 the names of candidates shall, insofar as possible, be placed on
31 the primary voting system. If more than one voting system or a
32 combination of a voting system and paper ballots is used to count
33 ballots, a single ballot measure or the candidates for a single office
34 may not be split between voting systems or between a voting
35 system and paper ballots.

36 SEC. 20. Section 19207 of the Elections Code is amended and
37 renumbered to read:

38 19213. Within 60 days after the completion of the examination
39 of a voting system, the Secretary of State shall make publicly
40 available a report stating whether the voting system has been

1 certified or conditionally approved, or whether certification has
2 been withheld. The report shall also contain a written or printed
3 description and drawings and photographs that clearly identify the
4 machine or device and its mechanical operation.

5 SEC. 21. Section 19208 of the Elections Code is repealed.

6 SEC. 22. Section 19209 of the Elections Code is amended and
7 renumbered to read:

8 19214. Within 10 days after issuing and filing a certification
9 decision and associated testing reports, the Secretary of State shall
10 make available to the public a full and complete copy of the
11 certification report and all associated documentation, except that
12 portions of the report or documentation that contain information
13 that the Secretary of State determines to be confidential or
14 proprietary shall not be made publicly available. The Secretary of
15 State shall also notify the board of supervisors and elections official
16 of each county of the availability of the report and associated
17 documentation.

18 SEC. 23. Section 19210 of the Elections Code is amended and
19 renumbered to read:

20 19207. The governing board may adopt for use at elections
21 any kind of voting system, any combination of voting systems, or
22 any combination of a voting system and paper ballots, provided
23 that the voting system or systems involved have been certified or
24 conditionally approved by the Secretary of State. The voting system
25 or systems may be used at any or all elections held in any county,
26 city, or any of their political subdivisions for voting, registering,
27 and counting votes cast. If more than one voting system or a
28 combination of a voting system and paper ballots is used at an
29 election, the candidates for a single office may not be split between
30 voting systems or between a voting system and paper ballots.

31 SEC. 24. Section 19211 of the Elections Code is amended and
32 renumbered to read:

33 19209. (a) The governing board, without formally adopting a
34 voting system, may provide for the experimental use of a voting
35 system in a pilot program held at an election in one or more
36 precincts, as follows:

37 (1) If the voting system is publicly owned, uses nonproprietary
38 software, or implements risk-limiting audits conducted pursuant
39 to Section 15560, the voting system need not be certified or
40 conditionally approved prior to its experimental use. Its use at the

1 election is valid for all purposes as if it were lawfully adopted and
2 certified.

3 (2) No later than nine months before the election at which the
4 pilot program of a voting system is proposed to be conducted, the
5 governing board shall submit to the Secretary of State a plan for
6 the pilot program. The Secretary of State shall approve or reject
7 the plan no later than three months after receipt of the plan.

8 (3) Upon completion of the pilot program, the governing board
9 shall notify the Secretary of State in writing of any defect, fault,
10 or failure of the hardware, software, or firmware of the voting
11 system or a part of the voting system.

12 (b) The Secretary of State shall adopt and publish regulations
13 governing pilot programs for the experimental use of voting
14 systems.

15 SEC. 25. Section 19212 of the Elections Code is amended and
16 renumbered to read:

17 19208. The governing board may provide for the payment of
18 the cost of the voting system equipment in any manner and by any
19 method as it deems best for local interests, and also may for that
20 purpose issue bonds, certificates of indebtedness, or other
21 obligations that shall be a charge on the county or city. The bonds,
22 certificates, or other obligations may be issued with or without
23 interest, payable at any time as the authorities may determine, but
24 shall not be issued or sold at less than par. The governing board
25 may enter into lease agreements or lease-purchase agreements for
26 the use of equipment.

27 SEC. 26. Section 19212.5 of the Elections Code is amended
28 and renumbered to read:

29 19215. (a) If a voting system or a part of a voting system has
30 been certified or conditionally approved by the Secretary of State,
31 the vendor or proprietor county, in cases where the system is
32 publicly owned, shall notify the Secretary of State and all local
33 elections officials who use the system in writing of any defect,
34 fault, or failure of the hardware, software, or firmware of the voting
35 system or a part of the voting system within 30 calendar days after
36 the vendor learns of the defect, fault, or failure.

37 (b) After receiving written notification of a defect, fault, or
38 failure pursuant to subdivision (a), the Secretary of State shall
39 notify the United States Election Assistance Commission or its
40 successor entity of the problem as soon as practicable so as to

1 present a reasonably complete description of the problem. The
2 Secretary of State shall subsequently submit a report regarding the
3 problem to the United States Election Assistance Commission or
4 its successor entity. The report shall include any report regarding
5 the problem submitted to the Secretary of State.

6 SEC. 27. Section 19213 of the Elections Code is amended and
7 renumbered to read:

8 19216. If a voting system or a part of a voting system has been
9 certified or conditionally approved by the Secretary of State, it
10 shall not be changed or modified until the Secretary of State has
11 been notified in writing and has determined that the change or
12 modification does not impair its accuracy and efficiency sufficient
13 to require a reexamination and recertification, conditional approval,
14 or reapproval pursuant to this article. The Secretary of State may
15 adopt rules and regulations governing the procedures to be followed
16 in making his or her determination as to whether the change or
17 modification impairs accuracy or efficiency.

18 SEC. 28. Section 19214 of the Elections Code is amended and
19 renumbered to read:

20 19217. The Secretary of State may seek injunctive and
21 administrative relief if a voting system or a part of a voting system
22 has been compromised by the addition or deletion of hardware,
23 software, or firmware without prior approval or is defective due
24 to a known hardware, software, or firmware defect, fault, or failure
25 that has not been disclosed pursuant to Section 19210 or 19215.

26 SEC. 29. Section 19214.5 of the Elections Code is amended
27 and renumbered to read:

28 19218. (a) The Secretary of State may seek all of the following
29 relief for an unauthorized change in hardware, software, or
30 firmware in a voting system certified or conditionally approved
31 in California:

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

1 (2) Immediate commencement of proceedings to withdraw
2 certification or conditional approval for the voting system in
3 question.

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

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

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

13 (b) (1) The Secretary of State may seek all of the following
14 relief for a known but undisclosed defect, fault, or failure in a
15 voting system or part of a voting system certified or conditionally
16 approved in California:

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

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

27 (C) In addition to any other penalties or remedies established
28 by this section, the offending party or parties shall be liable in the
29 amount of one thousand dollars (\$1,000) per day after the
30 applicable deadline established in Section 19215 until the required
31 disclosure is filed with the Secretary of State.

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

34 (c) Before seeking any measure of relief under this section, the
35 Secretary of State shall hold a public hearing. The Secretary of
36 State shall give notice of the hearing in the manner prescribed by
37 Section 6064 of the Government Code in a newspaper of general
38 circulation published in Sacramento County. The Secretary of
39 State also shall transmit written notice of the hearing, at least 30
40 days prior to the hearing, to each county elections official, the

1 offending party or parties, a person that the Secretary of State
2 believes will be interested in the hearing, and a person who
3 requests, in writing, notice of the hearing.

4 (d) The decision of the Secretary of State to seek relief under
5 this section shall be in writing and state his or her findings. The
6 decision shall be open to public inspection.

7 SEC. 30. Section 19215 of the Elections Code is amended and
8 renumbered to read:

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

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

19 SEC. 31. Section 19216 of the Elections Code is amended and
20 renumbered to read:

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

27 SEC. 32. Section 19217 of the Elections Code is amended and
28 renumbered to read:

29 19205. A voting system shall comply with all of the following:

30 (a) No part of the voting system shall be connected to the
31 Internet at any time.

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

37 (c) No part of the voting system shall receive or transmit
38 wireless communications or wireless data transfers.

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

4
5 Article 3. Inspection of Certified and Conditionally Approved
6 Voting Systems
7

8 SEC. 34. Section 19220 of the Elections Code is amended and
9 renumbered to read:

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

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

21
22 Article 2. Voting System Testing Agencies
23

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

28 19221. The Secretary of State shall do all of the following:

29 (a) Publish requirements for the approval of testing agencies
30 that are authorized to conduct the testing and examination of voting
31 systems.

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

33 19222. The person, corporation, or public agency applying for
34 certification of a voting system is responsible for all costs
35 associated with the testing of the voting system.

36 19223. The Secretary of State may contract with one or more
37 expert technicians to assist with the certification of a voting system,
38 including testing and examination of the voting system.

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

1 19231. (a) If the Secretary of State has reason to believe that
2 a local inspection of equipment is not adequate, he or she may
3 cause the equipment to be reexamined, at any time prior to six
4 months before a statewide election, to ensure that the voting system
5 or parts of the voting system perform to adopted standards and
6 tabulate votes accurately.

7 (b) For the purpose of reexamining voting equipment the
8 Secretary of State shall use state-approved testing agencies at the
9 cost of the elections official.

10 (c) The Secretary of State shall furnish a complete report of the
11 findings to the Governor, to the Attorney General, to each county
12 elections official, to the chairpersons of the elections committees
13 of the Assembly and Senate, and to the manufacturer of the
14 equipment.

15 SEC. 37. Section 19222 of the Elections Code is amended and
16 renumbered to read:

17 19232. The Secretary of State shall review voting systems
18 periodically to determine if they are defective, obsolete, or
19 otherwise unacceptable. The Secretary of State has the right to
20 withdraw his or her certification or conditional approval previously
21 granted under this chapter of any voting system or part of a voting
22 system should it be defective or prove unacceptable after such
23 review. Six months' notice shall be given before withdrawing
24 certification or conditional approval unless the Secretary of State
25 for good cause shown makes a determination that a shorter notice
26 period is necessary. Any withdrawal by the Secretary of State of
27 his or her previous certification or conditional approval of a voting
28 system or part of a voting system shall not be effective as to an
29 election conducted within six months of that withdrawal.

30 SEC. 38. Section 19223 of the Elections Code is amended and
31 renumbered to read:

32 19233. The Secretary of State shall conduct random audits of
33 the software installed on direct recording electronic voting systems,
34 as defined in Section 19271, to ensure that the installed software
35 is identical to the software that has been approved for use on that
36 voting system. The Secretary of State shall take steps to ensure
37 that the process for conducting random audits does not intentionally
38 cause a direct recording electronic voting system to become more
39 vulnerable to any unauthorized changes to the software that has
40 been approved for its use.

1 SEC. 39. The heading of Article 2.5 (commencing with Section
2 19225) of Chapter 3 of Division 19 of the Elections Code is
3 amended and renumbered to read:

4
5 Article 4. Accessible Voting Systems
6

7 SEC. 40. Section 19225 of the Elections Code is amended and
8 renumbered to read:

9 19240. The Legislature finds and declares as follows:

10 (a) Microchip and digital technologies are increasingly changing
11 the way Americans vote.

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

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

22 (d) Software and hardware adaptations have been created so
23 that voters can interact with voting technology and systems through
24 both visual and nonvisual means allowing blind and visually
25 impaired people to cast a secret ballot and independently verify
26 their vote.

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

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

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

36 19241. As used in this article:

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

1 (b) “Nonvisual” means synthesized speech, braille, and other
2 output methods that do not require sight.

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

5 19242. (a) The Secretary of State shall adopt and publish rules
6 and regulations governing any voting technology and systems used
7 by the state or any political subdivision that provide blind and
8 visually impaired individuals with access that is equivalent to that
9 provided to individuals who are not blind or visually impaired,
10 including the ability for the voter to cast and verify all selections
11 made by both visual and nonvisual means.

12 (b) State voting system standards shall require voting systems
13 to provide blind and visually impaired individuals with access that
14 is equivalent to that provided to individuals who are not blind or
15 visually impaired.

16 (c) At each polling place, at least one voting unit certified or
17 conditionally approved by the Secretary of State shall provide
18 access to individuals with disabilities, including nonvisual
19 accessibility for individuals who are blind or visually impaired
20 and accessibility for individuals who have other disabilities as set
21 forth by the federal Help America Vote Act of 2002 (42 U.S.C.
22 Sec. 15301 et seq.).

23 (d) A local agency is not required to comply with subdivision
24 (c) unless sufficient funds are available to implement that provision.
25 Funds received from the proceeds of the Voting Modernization
26 Bond Act of 2002 (Article 5 (commencing with Section 19250)),
27 from federal funds made available to purchase new voting systems,
28 or from any other source except the General Fund, shall be used
29 for that purpose.

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

32 19243. In requiring nonvisual access pursuant to this article,
33 the Secretary of State shall obtain recommendations from
34 representatives of blind consumer organizations, experts in
35 accessible software and hardware design, and any other individual
36 or organization the Secretary of State determines to be appropriate.

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

39 19244. Compliance with this article in regard to voting
40 technology and systems purchased prior to the effective date of

1 this article shall be achieved at the time of procurement of an
2 upgrade or replacement of existing voting equipment or systems.

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

5 19245. (a) A person injured by a violation of this article may
6 maintain an action for injunctive relief to enforce this article.

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

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

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

13 19246. This article does not apply to voting by vote by mail
14 ballot.

15 SEC. 47. The heading of Article 3 (commencing with Section
16 19230) of Chapter 3 of Division 19 of the Elections Code is
17 amended and renumbered to read:

18

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

21

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

24 19250. This article shall be known and may be cited as the
25 Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act).

26 SEC. 49. Section 19231 of the Elections Code is amended and
27 renumbered to read:

28 19251. The State General Obligation Bond Law (Chapter 4
29 (commencing with Section 16720) of Part 3 of Division 4 of Title
30 2 of the Government Code), except as otherwise provided herein,
31 is adopted for the purpose of the issuance, sale, and repayment of,
32 and otherwise providing with respect to, the bonds authorized to
33 be issued by this article, and the provisions of that law are included
34 in this article as though set out in full.

35 SEC. 50. Section 19232 of the Elections Code is amended and
36 renumbered to read:

37 19252. As used in this article:

38 (a) “Board” means the Voting Modernization Board, established
39 pursuant to Section 19256.

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

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

7 (d) “Committee” means the Voting Modernization Finance
8 Committee, established pursuant to Section 19253.

9 (e) “Fund” means the Voting Modernization Fund, created
10 pursuant to subdivision (b) of Section 19254.

11 (f) “Voting system” means any voting machine, voting device,
12 or vote tabulating device that does not use prescored punch card
13 ballots.

14 SEC. 51. Section 19233 of the Elections Code is amended and
15 renumbered to read:

16 19253. (a) The Voting Modernization Finance Committee is
17 hereby established for the purpose of authorizing the issuance and
18 sale, pursuant to the State General Obligation Bond Law, of the
19 bonds authorized by this article.

20 (b) The committee consists of the Controller, the Director of
21 Finance, and the Treasurer, or their designated representatives, all
22 of whom shall serve without compensation, and a majority of
23 whom shall constitute a quorum. The Treasurer shall serve as
24 chairperson of the committee. A majority of the committee may
25 act for the committee.

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

29 SEC. 52. Section 19234 of the Elections Code is amended and
30 renumbered to read:

31 19254. (a) The committee may create a debt or debts, liability
32 or liabilities, of the State of California, in the aggregate amount
33 of not more than two hundred million dollars (\$200,000,000),
34 exclusive of refunding bonds, in the manner provided herein for
35 the purpose of creating a fund to assist counties in the purchase of
36 updated voting systems.

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

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

3 (1) The county has purchased a new voting system after January
4 1, 1999, and is continuing to make payments on that system on
5 the date that this article becomes effective.

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

8 (3) The county has not previously requested fund money for
9 the purchase of a new voting system. Applications for expansion
10 of an existing system or components related to a previously
11 certified or conditionally approved application shall be accepted.

12 (d) Fund moneys shall only be used to purchase systems certified
13 by the Secretary of State, pursuant to this division, and fund
14 moneys shall not be used to purchase a voting system that uses
15 prescored punch card ballots.

16 (e) Any voting system purchased using bond funds that does
17 not require a voter to directly mark on the ballot must produce, at
18 the time the voter votes his or her ballot or at the time the polls
19 are closed, a paper version or representation of the voted ballot or
20 of all the ballots cast on a unit of the voting system. The paper
21 version shall not be provided to the voter but shall be retained by
22 elections officials for use during the 1 percent manual recount or
23 other recount, audit, or contest.

24 SEC. 53. Section 19234.5 of the Elections Code is amended
25 and renumbered to read:

26 19255. The Legislature may amend subdivisions (c) and (d)
27 of Section 19254 and Section 19256 by a statute, passed in each
28 house of the Legislature by rollcall vote entered in the respective
29 journals, by not less than two-thirds of the membership in each
30 house concurring, if the statute is consistent with, and furthers the
31 purposes of, this article.

32 SEC. 54. Section 19235 of the Elections Code is amended and
33 renumbered to read:

34 19256. The Voting Modernization Board is hereby established
35 and designated the “board” for purposes of the State General
36 Obligation Bond Law, and for purposes of administering the Voting
37 Modernization Fund. The board consists of five members, three
38 selected by the Governor and two selected by the Secretary of
39 State. The board shall have the authority to reject any application
40 for fund money it deems inappropriate, excessive, or that does not

1 comply with the intent of this article. A county whose application
2 is rejected shall be allowed to submit an amended application.

3 SEC. 55. Section 19236 of the Elections Code is amended and
4 renumbered to read:

5 19257. (a) All bonds authorized by this article, when duly sold
6 and delivered as provided herein, constitute valid and legally
7 binding general obligations of the State of California, and the full
8 faith and credit of the state is hereby pledged for the punctual
9 payment of both principal and interest thereof. The bonds issued
10 pursuant to this article shall be repaid within 10 years from the
11 date they are issued.

12 (b) There shall be collected annually, in the same manner and
13 at the same time as other state revenue is collected, a sum of
14 money, in addition to the ordinary revenues of the state, sufficient
15 to pay the principal of, and interest on, the bonds as provided
16 herein. All officers required by law to perform any duty in regard
17 to the collection of state revenues shall collect this additional sum.

18 (c) On the dates on which funds are remitted pursuant to Section
19 16676 of the Government Code for the payment of the then
20 maturing principal of, and interest on, the bonds in each fiscal
21 year, there shall be returned to the General Fund all of the money
22 in the fund, not in excess of the principal of, and interest on, any
23 bonds then due and payable. If the money so returned on the
24 remittance dates is less than the principal and interest then due and
25 payable, the balance remaining unpaid shall be returned to the
26 General Fund out of the fund as soon as it shall become available,
27 together with interest thereon from the dates of maturity until
28 returned, at the same rate of interest as borne by the bonds,
29 compounded semiannually. This subdivision does not grant any
30 lien on the fund or the moneys therein to holders of any bonds
31 issued under this article. However, this subdivision shall not apply
32 in the case of any debt service that is payable from the proceeds
33 of any refunding bonds. For purposes of this subdivision, “debt
34 service” means the principal (whether due at maturity, by
35 redemption, or acceleration), premium, if any, or interest payable
36 on any date to any series of bonds.

37 SEC. 56. Section 19237 of the Elections Code is amended and
38 renumbered to read:

39 19258. Notwithstanding Section 13340 of the Government
40 Code, there is hereby continuously appropriated from the General

1 Fund, for purposes of this article, a sum of money that will equal
2 both of the following:

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

6 (b) That sum necessary to carry out Section 19259, appropriated
7 without regard to fiscal years.

8 SEC. 57. Section 19238 of the Elections Code is amended and
9 renumbered to read:

10 19259. For purposes of this article, the Director of Finance
11 may, by executive order, authorize the withdrawal from the General
12 Fund of a sum of money not to exceed the amount of the unsold
13 bonds that have been authorized by the committee to be sold
14 pursuant to this article. Any sums withdrawn shall be deposited
15 in the fund. All moneys made available under this section to the
16 board shall be returned by the board to the General Fund, plus the
17 interest that the amounts would have earned in the Pooled Money
18 Investment Account, from the sale of bonds for the purpose of
19 carrying out this article.

20 SEC. 58. Section 19239 of the Elections Code is amended and
21 renumbered to read:

22 19260. The board may request the Pooled Money Investment
23 Board to make a loan from the Pooled Money Investment Account,
24 in accordance with Section 16312 of the Government Code, for
25 the purpose of carrying out this article. The amount of the request
26 shall not exceed the amount of unsold bonds which the committee
27 has, by resolution, authorized to be sold for the purpose of carrying
28 out this article. The board shall execute whatever documents are
29 required by the Pooled Money Investment Board to obtain and
30 repay the loan. Any amounts loaned shall be deposited in the fund
31 to be allocated by the board in accordance with this article.

32 SEC. 59. Section 19240 of the Elections Code is amended and
33 renumbered to read:

34 19261. Upon request of the board, supported by a statement
35 of its plans and projects approved by the Governor, the committee
36 shall determine whether to issue any bonds authorized under this
37 article in order to carry out the board's plans and ~~projects~~, *projects*
38 and, if so, the amount of bonds to be issued and sold. Successive
39 issues of bonds may be authorized and sold to carry out these plans

1 and projects progressively, and it is not necessary that all of the
2 bonds be issued or sold at any one time.

3 SEC. 60. Section 19241 of the Elections Code is amended and
4 renumbered to read:

5 19262. (a) The committee may authorize the Treasurer to sell
6 all or any part of the bonds authorized by this article at the time
7 or times established by the Treasurer.

8 (b) Whenever the committee deems it necessary for an effective
9 sale of the bonds, the committee may authorize the Treasurer to
10 sell any issue of bonds at less than their par value, notwithstanding
11 Section 16754 of the Government Code. However, the discount
12 on the bonds shall not exceed 3 percent of the par value thereof.

13 SEC. 61. Section 19242 of the Elections Code is amended and
14 renumbered to read:

15 19263. Out of the first money realized from the sale of bonds
16 as provided by this article, there shall be redeposited in the General
17 Obligation Bond Expense Revolving Fund, established by Section
18 16724.5 of the Government Code, the amount of all expenditures
19 made for purposes specified in that section, and this money may
20 be used for the same purpose and repaid in the same manner
21 whenever additional bond sales are made.

22 SEC. 62. Section 19243 of the Elections Code is amended and
23 renumbered to read:

24 19264. Any bonds issued and sold pursuant to this article may
25 be refunded in accordance with Article 6 (commencing with
26 Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of
27 the Government Code. The approval of the voters for the issuance
28 of bonds under this article includes approval for the issuance of
29 bonds issued to refund bonds originally issued or any previously
30 issued refunding bonds.

31 SEC. 63. Section 19244 of the Elections Code is amended and
32 renumbered to read:

33 19265. Notwithstanding any provision of the bond act, if the
34 Treasurer sells bonds under this article for which bond counsel
35 has issued an opinion to the effect that the interest on the bonds is
36 excludable from gross income for purposes of federal income tax,
37 subject to any conditions which may be designated, the Treasurer
38 may establish separate accounts for the investment of bond
39 proceeds and for the earnings on those proceeds, and may use those
40 proceeds or earnings to pay any rebate, penalty, or other payment

1 required by federal law or take any other action with respect to the
2 investment and use of bond proceeds required or permitted under
3 federal law necessary to maintain the tax-exempt status of the
4 bonds or to obtain any other advantage under federal law on behalf
5 of the funds of this state.

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

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

13 SEC. 65. The heading of Article 4 (commencing with Section
14 19250) of Chapter 3 of Division 19 of the Elections Code is
15 amended and renumbered to read:

16

17 Article 6. Direct Recording Electronic Voting Systems

18

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

21 19270. The Secretary of State shall not approve a direct
22 recording electronic voting system unless the system does all of
23 the following:

24 (a) Includes an accessible voter verified paper audit trail.

25 (b) Includes a method by which a voter may electronically
26 verify, through a nonvisual method, the information that is
27 contained on the paper record copy of that voter’s ballot.

28 (c) Allows for a paper record copy that shall be printed by a
29 voter verified paper audit trail component in the same language
30 that the voter used when casting his or her ballot on the direct
31 recording electronic voting system. For languages that lack a
32 written form, the paper record copy shall be printed in English.

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

35 19271. As used in this article:

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

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

5 (c) “Voter verified paper audit trail” means a component of a
6 direct recording electronic voting system that prints a
7 contemporaneous paper record copy of each electronic ballot and
8 allows each voter to confirm his or her selections before the voter
9 casts his or her ballot.

10 (d) “Federal qualification” means the system has been certified,
11 if applicable, by means of qualification testing by a nationally
12 recognized test laboratory and has met or exceeded the minimum
13 requirements set forth in the Performance and Text Standards for
14 Punch Card, Mark Sense, and Direct Recording Electronic Voting
15 Systems, or in any successor voluntary standard document,
16 developed and promulgated by the Federal Election Commission,
17 the Election Assistance Commission, or the National Institute of
18 Standards and Technology.

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

24 (f) “Parallel monitoring” means the testing of a randomly
25 selected sampling of voting equipment on election day designed
26 to simulate actual election conditions to confirm that the system
27 is registering votes accurately.

28 ~~SEC. 68. Section 19252 of the Elections Code is repealed.~~

29 *SEC. 68. Section 19252 of the Elections Code is amended and*
30 *renumbered to read:*

31 ~~19252.~~

32 *19272.* To the extent that they are available for expenditure
33 for the purposes of this article, federal funds or moneys from the
34 Voting Modernization Fund, created pursuant to subdivision (b)
35 of Section 19234, shall be used. No moneys from the General Fund
36 shall be expended for the purposes of this article.

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

1 ~~19272.~~

2 19273. (a) On a direct recording electronic voting system, the
3 electronic record of each vote shall be considered the official record
4 of the vote, except as provided in subdivision (b).

5 (b) (1) The voter verified paper audit trail shall be considered
6 the official paper audit record and shall be used for the required
7 1-percent manual tally described in Section 15360 and any full
8 recount or post-election audit.

9 (2) The voter verified paper audit trail shall govern if there is
10 any difference between it and the electronic record during a
11 1-percent manual tally, full recount, or post-election audit.

12 SEC. 70. Section 19254 of the Elections Code is amended and
13 renumbered to read:

14 ~~19273.~~

15 19274. The Secretary of State shall not certify a direct recording
16 electronic voting system unless the paper used for its voter verified
17 paper audit trail is of sufficient quality that it maintains its integrity
18 and readability throughout the retention period specified in Chapter
19 4 (commencing with Section 17300) of Division 17.

20 SEC. 71. Section 19255 of the Elections Code is amended and
21 renumbered to read:

22 ~~19274.~~

23 19275. (a) For each statewide election, the Secretary of State
24 shall conduct parallel monitoring of each direct recording electronic
25 voting system on which ballots will be cast. This section shall only
26 apply to precincts that have more than one direct recording
27 electronic voting system.

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

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

33

34 CHAPTER 3.5. CERTIFICATION OF BALLOT MARKING SYSTEMS

35

36 SEC. 73. Section 19260 of the Elections Code is amended and
37 renumbered to read:

38 19280. The Secretary of State shall not certify or conditionally
39 approve a ballot marking system, or part of a ballot marking

1 system, unless it fulfills the requirements of this code and the
2 regulations of the Secretary of State.

3 SEC. 74. Section 19261 of the Elections Code is amended and
4 renumbered to read:

5 19281. A ballot marking system, in whole or in part, shall not
6 be used unless it has been certified or conditionally approved by
7 the Secretary of State prior to the election at which it is to be first
8 used.

9 SEC. 75. Section 19262 of the Elections Code is amended and
10 renumbered to read:

11 19284. (a) A person, corporation, or public agency owning or
12 having an interest in the sale or acquisition of a ballot marking
13 system or a part of a ballot marking system may apply to the
14 Secretary of State for certification that includes testing and
15 examination of the applicant's system and a report on the findings,
16 which shall include the accuracy and efficiency of the ballot
17 marking system. As part of its application, the applicant of a ballot
18 marking system or a part of a ballot marking system shall notify
19 the Secretary of State in writing of any known defect, fault, or
20 failure of the version of the hardware, software, or firmware of
21 the ballot marking system or a part of the ballot marking system
22 submitted. The Secretary of State shall not begin his or her
23 certification process until he or she receives a completed
24 application from the applicant of the ballot marking system or a
25 part of the ballot marking system. The applicant shall also notify
26 the Secretary of State in writing of any defect, fault, or failure of
27 the version of the hardware, software, or firmware of the ballot
28 marking system or a part of the ballot marking system submitted
29 that is discovered after the application is submitted and before the
30 Secretary of State submits the report required by Section 19288.
31 The Secretary of State shall complete his or her examination
32 without undue delay.

33 (b) After receiving an applicant's written notification of a defect,
34 fault, or failure, the Secretary of State shall notify the United States
35 Election Assistance Commission or its successor entity of the
36 problem as soon as practicable so as to present a reasonably
37 complete description of the problem. The Secretary of State shall
38 subsequently submit a report regarding the problem to the United
39 States Election Assistance Commission or its successor entity. The

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

3 (c) As used in this chapter:

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

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

13 (3) “Fault” means a step, process, or data definition in any
14 software or firmware in a certified or conditionally approved ballot
15 marking system that is incorrect under the manufacturer’s program
16 specification or applicable law.

17 SEC. 76. Section 19263 of the Elections Code is amended and
18 renumbered to read:

19 19285. The Secretary of State shall use a state-approved testing
20 agency to examine ballot marking systems proposed for use or
21 sale in this state. He or she shall furnish a complete report of the
22 findings of the examination and testing to the Governor and the
23 Attorney General.

24 SEC. 77. Section 19264 of the Elections Code is amended and
25 renumbered to read:

26 19287. (a) Prior to publishing his or her decision to certify,
27 conditionally approve, or withhold certification of a ballot marking
28 system, the Secretary of State shall provide for a 30-day public
29 review period and conduct a public hearing to give interested
30 persons an opportunity to review testing and examination reports
31 and express their views for or against certification or conditional
32 approval of the ballot marking system.

33 (b) The Secretary of State shall give notice of the public review
34 period and hearing in the manner prescribed in Section 6064 of
35 the Government Code in a newspaper of general circulation
36 published in Sacramento County. The Secretary of State shall also
37 provide notice of the public review period and hearing on his or
38 her Internet Web site. The Secretary of State shall transmit written
39 notice of the public review period and hearing, at least 30 days
40 prior to the public review period and hearing, to each county

1 elections official, to any person that the Secretary of State believes
2 will be interested in the public review period and hearing, and to
3 any person who requests, in writing, notice of the public review
4 period and hearing.

5 (c) The decision of the Secretary of State to certify, conditionally
6 approve, or withhold approval of a ballot marking system shall be
7 in writing and shall state the findings of the Secretary of State.
8 The decision shall be open to public inspection.

9 SEC. 78. Section 19265 of the Elections Code is repealed.

10 SEC. 79. Section 19266 of the Elections Code is repealed.

11 SEC. 80. Section 19267 of the Elections Code is amended and
12 renumbered to read:

13 19288. Within 60 days after the completion of the examination
14 of a ballot marking system, the Secretary of State shall make
15 publicly available a report stating whether the ballot marking
16 system has been certified or conditionally approved, or whether
17 certification has been withheld.

18 SEC. 81. Section 19268 of the Elections Code is repealed.

19 SEC. 82. Section 19269 of the Elections Code is amended and
20 renumbered to read:

21 19289. Within 10 days after issuing and filing a certification
22 decision and associated testing reports, the Secretary of State shall
23 send a copy to the board of supervisors of each county.

24 SEC. 83. Section 19270 of the Elections Code is amended and
25 renumbered to read:

26 19290. (a) If a ballot marking system has been certified or
27 conditionally approved by the Secretary of State, the vendor or
28 proprietor county, in cases where the system is publicly owned,
29 shall notify the Secretary of State and all local elections officials
30 who use the system in writing of any defect, fault, or failure of the
31 hardware, software, or firmware of the system or a part of the
32 system within 30 calendar days after the vendor learns of the defect,
33 fault, or failure.

34 (b) After receiving written notification of a defect, fault, or
35 failure pursuant to subdivision (a), the Secretary of State shall
36 notify the United States Election Assistance Commission or its
37 successor entity of the problem as soon as practicable so as to
38 present a reasonably complete description of the problem. The
39 Secretary of State shall subsequently submit a report regarding the
40 problem to the United States Election Assistance Commission or

1 its successor entity. The report shall include any report regarding
2 the problem submitted to the Secretary of State.

3 SEC. 84. Section 19271 of the Elections Code is amended and
4 renumbered to read:

5 19291. If a ballot marking system has been certified or
6 conditionally approved by the Secretary of State, it shall not be
7 changed or modified until the Secretary of State has been notified
8 in writing and has determined that the change or modification does
9 not impair its accuracy and efficiency sufficient to require a
10 reexamination and recertification or reapproval pursuant to this
11 chapter. The Secretary of State may adopt rules and regulations
12 governing the procedures to be followed in making his or her
13 determination as to whether the change or modification impairs
14 accuracy or efficiency.

15 SEC. 85. Section 19272 of the Elections Code is amended and
16 renumbered to read:

17 19292. The Secretary of State may seek injunctive and
18 administrative relief if a ballot marking system has been
19 compromised by the addition or deletion of hardware, software,
20 or firmware without prior approval or is defective due to a known
21 hardware, software, or firmware defect, fault, or failure that has
22 not been disclosed pursuant to Section 19284 or 19290.

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

25 19293. (a) The Secretary of State may seek all of the following
26 relief for an unauthorized change in hardware, software, or
27 firmware in a ballot marking system certified or conditionally
28 approved in California:

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

38 (2) Immediate commencement of proceedings to withdraw
39 certification or conditional approval for the ballot marking system
40 in question.

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

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

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

10 (b) (1) The Secretary of State may seek all of the following
11 relief for a known but undisclosed defect, fault, or failure in a
12 ballot marking system or part of a ballot marking system certified
13 or conditionally approved in California:

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

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

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

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

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

1 (d) The decision of the Secretary of State to seek relief under
2 this section shall be in writing and state his or her findings. The
3 decision shall be open to public inspection.

4 SEC. 87. Section 19274 of the Elections Code is amended and
5 renumbered to read:

6 19294. (a) The Secretary of State may seek injunctive relief
7 requiring an elections official, or any vendor or manufacturer of
8 a ballot marking system, to comply with the requirements of this
9 code, the regulations of the Secretary of State, and the
10 specifications for the ballot marking system; and its software,
11 including the programs and procedures for vote marking and
12 testing.

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

15 SEC. 88. Section 19275 of the Elections Code is amended and
16 renumbered to read:

17 19295. A ballot marking system or part of a ballot marking
18 system shall not do any of the following:

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

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

24 (c) Have the capability, including the optional capability, to
25 tabulate votes.

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

27 19282. The Secretary of State shall not certify or conditionally
28 approve any ballot marking system that includes features that
29 permit a voter to produce a copy or facsimile of the ballot cast by
30 the voter at that polling place.

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

32 19283. The Secretary of State shall adopt and publish standards
33 and regulations governing the use of ballot marking systems. The
34 Secretary of State may also adopt voluntary federal voting system
35 standards established by the United States Election Assistance
36 Commission or its successor agency.

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

38 19286. The person, corporation, or public agency applying for
39 certification of a ballot marking system is responsible for all costs

- 1 associated with the testing and examination of the ballot marking
- 2 system.

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