

ASSEMBLY THIRD READING

AB 1559 (Jackson)

As Amended April 26, 2023

Majority vote

SUMMARY

Updates and revises election record retention, preservation, and destruction procedures to provide clear guidance for electronic voting data, as specified. Clarifies that it is a felony to knowingly provide unauthorized access to, or break the chain of custody to, certified voting technology and finished or unfinished ballot cards.

Major Provisions

- 1) Authorizes the Secretary of State (SOS) to impose additional conditions of approval for electronic poll books, ballot systems, and voting systems before the use of such items in an election. Permits the SOS to set processes for the items' disposal.
- 2) Requires a county elections official to keep paper cast vote records and certain electronic data for the same minimum number of months for which other election materials must be kept.
- 3) Defines what it means to "interfere" or "attempt to interfere" with the secrecy of voting or ballot tally software program source codes, the act of which is already a felony under existing law.

COMMENTS

The Legislature has approved various bills to ensure California has the most rigorous and stringent voting system and voting equipment standards and approval procedures. Notably, SB 360 (Padilla), Chapter 602, Statutes of 2013, made significant changes to procedures and criteria for the certification and approval of a voting system, required the SOS to adopt and publish voting system standards and regulations governing the use of voting systems, and required those standards to meet or exceed federal voluntary voting system guidelines (VVSG) set forth by the United States Election Assistance Commission (EAC) or its successor agency, as specified.

Accordingly, in 2014, California established its own standards – California voting system standards (CVSS) – for electronic components of voting systems which were derived from the EAC's VVSG versions 1.1 and 2.0. The CVSS provides a set of specifications and requirements to which voting systems are required to be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems. All voting technology, including, but not limited to voting systems, electronic pollbooks, and remote accessible vote by mail systems, are required to be certified for use prior to being sold or used in any California election.

This bill updates and expands existing procedures and requirements related to election technology to keep pace with the evolution of voting technologies.

According to the Author

"California must act to ensure that voting systems and associated material is protected from those who would act irresponsibly in their privileged role that grants them access to this highly

sensitive material. We must also send a strong message that these privileged individuals will suffer substantial consequences for attempting to undermine voters and one of the most basic principles of our democracy – fair and secure elections."

Arguments in Support

The sponsor of this bill, Secretary of State Shirley N. Weber, Ph.D., writes, "AB 1559 provides that the storage, maintenance, and destruction of election material are clear in law by updating the preservation guidelines of election materials, covering the lifecycle of voting technology. Specifically, this measure defines the parameters of the chain of custody of voting technology not yet covered in existing law. Assembly Bill 1559 is necessary to ensure that our requirements in the state of California are clear and unambiguous around the chain of custody, retention, use, and security of voting infrastructure. This measure will enhance the already stringent voting system security protocols imposed by the Office of Voting System Technology and Assessment (OVSTA) within the Office of the California Secretary of State."

Arguments in Opposition

None received.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Minor and absorbable costs to the SOS to update requirements for voting systems and materials.
- 2) By requiring county elections officials to maintain voting systems and materials in a specified manner, this bill creates a state-mandated local program. If the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service for which the state must reimburse local costs, counties could claim reimbursement from the state (General Fund (GF)). The magnitude of these costs is unknown, but potentially in excess of \$150,000 across all counties, depending on an individual county's capacity to store additional records, including electronic data, for specified periods of time.
- 3) By clarifying the scope of an existing felony, this bill may make it easier to try and convict an individual for the specified felony, resulting in potential non-reimbursable costs in the tens of thousands of dollars annually for increased incarceration costs. The average annual cost to incarcerate a defendant in county jail is approximately \$29,000. California county jails are increasingly overcrowded – particularly since the enactment of the Realignment Act in 2011. Jail overcrowding since 2011 has resulted in court-mandated population caps and increased rates of inmate violence and death. Overcrowding has also resulted in significant state funding for additional jail construction. Although new crimes are not considered reimbursable state mandates pursuant to Proposition 30 (2012), overcrowding in county jails creates cost pressure on the GF because the state has historically granted new funding to counties to offset overcrowding after the 2011 Realignment Act.

VOTES

ASM ELECTIONS: 8-0-0

YES: Bryan, Lackey, Bennett, Essayli, Lee, Low, Pellerin, Blanca Rubio

ASM PUBLIC SAFETY: 8-0-0

YES: Jones-Sawyer, Alanis, Bonta, Bryan, Lackey, Ortega, Santiago, Zbur

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Weber, Ortega

ABS, ABST OR NV: Robert Rivas

UPDATED

VERSION: April 26, 2023

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FN: 0000464