
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

AB 1559 (Jackson) - Elections

Version: June 14, 2023

Urgency: No

Hearing Date: August 14, 2023

Policy Vote: E. & C.A. 7 - 0, PUB. S. 4 - 0

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: AB 1559 would (1) update existing election record retention, preservation, and destruction requirements, as specified, and (2) expand and clarify two existing felonies related to voting technology security.

Fiscal Impact:

- This bill would result in minor and absorbable costs to the Secretary of State (SOS) to update requirements for voting systems and materials.
- By requiring county elections officials to maintain voting systems and materials in a specified manner, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude is unknown, but potentially in excess of \$50,000 annually.

Background: The Legislature has approved various bills to ensure that the State has the most rigorous and stringent voting system and voting equipment standards and approval procedures. Notably, SB 360 (Padilla, 2013) made significant changes to procedures and criteria for the certification and approval of a voting system, required SOS to adopt and publish voting system standards and regulations, and required those standards to meet or exceed federal voluntary voting system guidelines. All voting technology must be certified for use prior to being sold or used in any California election.

In counties that use electronic voting systems, current law requires election officials to provide paper ballots at the polling place. State law additionally prohibits any part of a voting system from being connected to the Internet at any time, and California's voting system standards prohibit voting systems from having the capability to communicate individual votes or vote totals over public communications networks or from having wireless communications capabilities.

Proposed Law: This bill would, among other things, do the following:

- Define the term "jurisdiction" to mean any county, city and county, city, or special district that conducts elections pursuant to the Elections Code.
- Authorize SOS to impose additional conditions of approval as deemed necessary by SOS for the certification of electronic poll books, ballot manufacturers and finishers, BOD systems, voting systems, and RAVBM systems.

- Reduce, from two business days to 24 hours, the amount of time that a ballot card manufacturer, ballot card finisher, or BOD system vendor has to notify SOS and affected local elections officials after discovering any flaw or defect that could adversely affect the future casting or tallying of votes.
- Add paper cast vote records to the list of election materials required to be kept by a county elections official for 22 months for elections involving a federal office, or six months for all other elections.
- Require any copy of a magnetic or electronic storage medium, used for a ballot tabulation program or containing election results, to be kept in a secure location, as specified.
- Define the term “ballot printer” to mean any company or jurisdiction (as defined) that manufactures, finishes, or sells ballot cards, including test ballots, for use in an election conducted pursuant to the Elections Code, and recasts provisions of law that require a ballot printer, as defined, to be approved by the SOS before manufacturing or finishing ballot cards, or accepting or soliciting orders for ballot cards.
- Define the following terms for the preservation of electronic data related to voting technology:
 - “Ballot image” to mean an electronically captured or generated image of a ballot that is created on a voting device or machine, which contains a list of contests on the ballot, may contain the voter selections for those contests, and complies with the ballot layout requirements. A ballot image can be considered a cast vote record.
 - “Certified voting technology” to mean any certified voting technologies certified by the SOS, including voting systems, BOD printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.
 - “Chain of custody” to mean a process used to track the movement and control of an asset through its lifecycle by documenting each person and organization who handles an asset, the date and time it was collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of an asset is uncertain and during which actions taken on the asset are unaccounted for or unconfirmed.
 - “Electronic data” to include voting technology software, operating systems, databases, firmware, drivers, and logs.
 - “End of lifecycle” to mean the secure clearing or wiping of the certified voting technology so that no software, firmware, or data remains on the equipment and the equipment becomes a nonfunctioning piece of hardware.

- “HASH” to mean a mathematical algorithm used to create a digital fingerprint of a software program, which is used to validate software as identical to the original.
- “Lifecycle” of certified voting technology to mean the entire lifecycle of the certified voting technology from the time of certification and trusted build creation through the end of lifecycle of the certified voting technology.
- Require the following data to be kept by the elections official, on electronic media, stored and unaltered, for 22 months for those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States (US) Senator, and US Representative; and for six months for all other state and local elections: (1) all voting system electronic data, (2) all BOD system electronic data, if applicable, (3) all adjudication electronic data, (4) all RAVBM system electronic data, if applicable, (5) all electronic poll book electronic data, if applicable, (6) HASH values taken from the voting technology devices, if applicable, and (7) all ballot images, if applicable.
- Provide that if a contest is not commenced within the 22-month period or within a six-month period, or if a criminal prosecution involving fraudulent use, using the ballot tally system to mark or falsify ballots, or manipulation of the ballot tally system, is not commenced within the relevant period, the elections official shall have the backups destroyed.
- Authorize certified voting technology equipment and components that are at the end of lifecycle to be securely disposed of or destroyed with the written approval of the manufacturer and the SOS.
- Require all of the following to occur for any part or component of certified voting technology for which the chain of custody has been compromised or the security or information has been breached or attempted to be breached: (1) the chief elections official of the city, county, or special district and the SOS shall be notified within 24 hours of discovery, (2) the equipment shall be removed from service immediately and replaced if possible, and (3) the integrity and reliability of the certified voting technology system, components, and accompanying electronic data shall be evaluated to determine whether they can be restored to their original state and reinstated.
- Expand an existing crime that makes it a felony to knowingly, and without authorization, possess a key to a voting machine that has been adopted and will be used in elections in California, to additionally include possessing credentials, passwords, or access keys to such a voting machine.
- Clarify an existing crime that makes it a felony to interfere or attempt to interfere with the secrecy of voting or ballot tally software program source codes, by adding a provision that states, for the purposes of this paragraph, interferes or attempts to interfere with, includes but is not limited to, knowingly, and without authorization, providing unauthorized access to, or breaking the chain of custody to, certified voting technology during the lifecycle of that certified voting technology, or any finished or unfinished ballot cards.

- Prohibit a voting system from establishing a network connection to any device not directly used and necessary for voting system functions. Prohibit communication by or with any component of the voting system by wireless or modem transmission at any time. Prohibit a component of the voting system, or any device with network connectivity to the voting system, from being connected to the internet, directly or indirectly, at any time.

Related Legislation:

- AB 1539 (Berman) would make it a misdemeanor for any person to vote or to attempt to vote both in an election held in this state and in an election held in another state on the same date. AB 1539 is currently pending in this Committee.
- AB 777 (Harper, 2017) would have increased the maximum fine amount from \$1,000 to \$10,000 for fraudulently signing a ballot. The bill failed passage in the Assembly Committee on Elections and Redistricting.
- 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
- SB 1376 (Perata), Chapter 813, Statutes of 2004, authorized the SOS, and in some cases the AG and county elections officials, to take legal actions regarding the security of voting systems and the conduct of elections.

Staff Comments: As noted above, this bill would clarify the scope of an existing felony. Consequently, it could 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. New crimes are not considered reimbursable state mandates pursuant to Proposition 30 (2012); however, overcrowding in county jails creates a General Fund cost pressure because the State has historically granted new funding to counties to offset overcrowding after the 2011 Realignment Act.

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