

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

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**SENATE BILL**

**No. 360**

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ENROLLED SEPTEMBER 09, 2013  
PASSED IN SENATE SEPTEMBER 06, 2013  
PASSED IN ASSEMBLY SEPTEMBER 04, 2013  
AMENDED IN ASSEMBLY AUGUST 30, 2013  
AMENDED IN ASSEMBLY AUGUST 26, 2013  
AMENDED IN ASSEMBLY AUGUST 06, 2013  
AMENDED IN ASSEMBLY JUNE 17, 2013  
AMENDED IN SENATE MAY 20, 2013  
AMENDED IN SENATE APRIL 10, 2013

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**Introduced by Senator Padilla**

February 20, 2013

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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, 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, 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 a local jurisdiction be authorized to use available public funds to research and develop a nonproprietary voting system, as specified, for use in a pilot program or for submission to the Secretary of State, and 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 to audit. The bill would require the Secretary of State to adopt and publish voting system standards and regulations, 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 state-approved 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) Existing law prohibits the use of a voting system unless it has received the approval of the Secretary of State, as specified.

This bill would provide that a voting system that has been tested and approved for use in all elections by the Secretary of State before January 1, 2014, would be deemed to be certified or conditionally approved by the Secretary of State and would be authorized for use in elections, as specified. The bill would authorize a vendor or county that has submitted a voting system for federal qualification before August 1, 2013, to request approval of the voting system from the Secretary of State, as specified. The bill also would prohibit a jurisdiction from purchasing or contracting for a voting system unless the voting system has been certified or conditionally approved by the Secretary of State, except as specified. The bill would further authorize the Secretary of State to grant conditional approval to a voting system or part of a voting system under specified circumstances.

(3) Existing law provides that a person or corporation owning or being interested in a voting system or a part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. As part of its application, existing law requires the vendor of a voting system or the part of a voting system to notify the Secretary of State in writing of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted, and the Secretary of State is required to notify the United States Election Assistance Commission or its successor entity of

the problem as soon as practicable so as to present a reasonably complete description of the problem, as specified.

This bill would delete the requirement that the Secretary of State notify the United States Election Assistance Commission or its successor entity of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted by the applicant.

(4) Existing law requires the Secretary of State to provide for a 30-day public review period and conduct a public hearing prior to publishing his or her decision to certify, conditionally approve, or withhold certification of a voting system, part of a voting system, or a ballot marking system. Under existing law, the Secretary of State is required to transmit notice of the hearing at least 30 days prior to the public review period and hearing, as specified.

This bill would instead require the Secretary of State to transmit notice of the hearing at least 14 days prior to the public review period and hearing.

(5) 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.

(6) Existing law authorizes a governing board to adopt any kind of voting system, any combination of voting systems, or any combination of a voting system and paper ballots for use at elections, as specified. Provisions of existing law authorize the use of the voting systems at any or all elections held in any county, city, or any of their political subdivisions for voting, registering, and counting votes cast, and prohibit candidates for a single office from being split between voting systems or between a voting system and paper ballots.

This bill would delete those provisions.

(7) 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 voting system pilot programs. 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. The bill would require votes cast on a voting system during a pilot program, as specified, to be subject to risk-limiting audits, as defined. 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.

(8) 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.

(9) The Voting Modernization Bond Act of 2002 authorizes the issuance of bonds in the amount of \$200,000,000 pursuant to the State General Obligation Bond Law for the purpose of assisting counties in the purchase of updated voting systems.

This bill would authorize a county to use fund moneys to contract and pay for research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State, as specified, and for the manufacture of the minimum number of voting system units, as specified.

(10) Existing law prohibits the Secretary of State, on and after January 1, 2005, from approving a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.

This bill would prohibit a city or county from contracting for or purchasing a direct recording electronic voting system unless the system has been certified by the Secretary of State, and would require all direct recording electronic voting systems in use as of January 1, 2006, to have received federal qualification and include an accessible voter verified paper audit trail, as specified.

This bill would incorporate additional changes to be operative only if Assembly Bill 214 and this bill are both chaptered and become effective January 1, 2014.

## **Digest Key**

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

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## **Bill Text**

# **THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

### **SECTION 1.**

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

### **DIVISION 19. CERTIFICATION OF VOTING SYSTEMS**

#### **SEC. 2.**

Section 19006 is added to the Elections Code, to read:

**19006.**

It is the intent of the Legislature that:

(a) All voting systems be certified or conditionally approved by the Secretary of State, independent of voluntary federal qualification or certification, before they are used in future

elections to ensure that the voting systems have the ability to meet accuracy, accessibility, and security standards.

(b) The Secretary of State adopt and publish testing standards that meet or exceed federal voluntary standards set by the United States Election Assistance Commission or its successor agency.

(c) The Secretary of State study and encourage the development of voting systems that use nonproprietary source code and that are easy to audit.

(d) A local jurisdiction may use available public funds to purchase and maintain any certified or conditionally approved voting system or part of a voting system.

(e) California receive the benefits of the publicly funded development of a nonproprietary voting system in the state.

(f) A local jurisdiction may use available public funds to research and develop a nonproprietary voting system that uses disclosed source codes, including the manufacture of a limited number of voting system units, for use in a pilot program or for submission to the Secretary of State for certification.

### **SEC. 3.**

Section 19100 of the Elections Code is amended to read:

**19100.**

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

### **SEC. 4.**

Section 19101 of the Elections Code is amended and renumbered to read:

**19103.**

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

### **SEC. 5.**

Section 19101 is added to the Elections Code, to read:

**19101.**

(a) The Secretary of State shall adopt and publish voting system standards and regulations governing the use of voting systems. The Secretary of State shall adopt standards that meet or exceed federal voluntary voting system guidelines set forth by the United States Election Assistance Commission or its successor agency. Until state standards are adopted, the Voluntary Voting System Guidelines Draft Version 1.1, as submitted to the United States Election Assistance Commission on August 31, 2012, shall be used as state standards to the extent that they do not conflict with this code. The Secretary of State may require additional testing to ensure that voting systems meet the requirements of this code.

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

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

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

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

(4) The system shall be accessible to voters with disabilities pursuant to Section 19242 and applicable federal laws.

(5) The system shall be accessible to voters who require assistance in a language other than English if the language is one in which a ballot or ballot materials are required to be made available to voters pursuant to Section 14201 and applicable federal laws.

## **SEC. 6.**

Section 19102 of the Elections Code is amended and renumbered to read:

**19104.**

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

## **SEC. 6.5.**

Section 19102 of the Elections Code is amended and renumbered to read:

**19105.**

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

## **SEC. 7.**

Section 19102 is added to the Elections Code, to read:

**19102.**

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

## **SEC. 8.**

Section 19103 of the Elections Code is amended and renumbered to read:

19212.

(a) (1) No later than 10 business days after the Secretary of State certifies or conditionally approves the use of a new or updated voting system, the vendor or county seeking certification or approval of the voting system shall cause an exact copy of the approved source code for each component of the voting system, including complete build and configuration instructions and related documents for compiling the source code into object code, to be transferred directly from either the United States Election Assistance Commission or the voting system testing agency that evaluated the voting system and is approved by the Secretary of State, and deposited into an approved escrow facility.

(2) No later than 10 business days after the Secretary of State certifies or conditionally approves a new or updated ballot marking system, the vendor or county seeking certification or approval of the ballot marking system shall cause an exact copy of the approved source code for each component of the ballot marking system, including complete build and configuration instructions and related documents for compiling the source code into object code, to be deposited into an approved escrow facility.

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

(1) The definition of source code components of a voting system or ballot marking system, including source code for all firmware and software of the voting system or ballot marking system. Firmware and software shall include commercial off-the-shelf or other third-party firmware and software that is available and able to be disclosed by the vendor or county seeking certification or approval of a voting system or ballot marking system.

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

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

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

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

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

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

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

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

(4) In order to verify that the software on a voting system is identical to the certified or conditionally approved version.

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

(d) The Secretary of State may seek injunctive relief requiring the elections officials, approved escrow facility, or any vendor or manufacturer of a voting system or part of a voting system to

comply with this section and related regulations. Venue for a proceeding under this section shall be exclusively in Sacramento County.

(e) This section applies to all elections.

## **SEC. 9.**

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

### **CHAPTER 3. Certification of Voting Systems**

## **SEC. 10.**

The heading of Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 of the Elections Code is amended to read:

### **Article 1. Procedures for Certification of Voting Systems**

## **SEC. 11.**

Section 19200.5 of the Elections Code is amended and renumbered to read:

**19204.**

The Secretary of State shall not certify or conditionally approve any voting system that includes features that permit a voter to produce, and leave the polling place with, a copy or facsimile of the ballot cast by the voter at that polling place.

## **SEC. 12.**

Section 19201 of the Elections Code is amended and renumbered to read:

**19202.**

(a) Except as authorized by Section 19209, a voting system, in whole or in part, shall not be used unless it has been certified or conditionally approved by the Secretary of State prior to any election at which it is to be used.

(b) A voting system that has been tested and approved for use in all elections by the Secretary of State before January 1, 2014, shall be deemed certified or conditionally approved by the Secretary of State and may be used in an election subject to any conditions placed on the use of the voting system by the Secretary of State before January 1, 2014, including conditions imposed in the reapproval documents issued by the Secretary of State in 2007 and 2008 following the Top-to-Bottom Review, and its subsequent revisions. The voting systems described in this subdivision shall remain subject to review and decertification by the Secretary of State at any time pursuant to Section 19232.

(c) A vendor or county that has submitted a voting system for federal qualification before August 1, 2013, upon obtaining federal qualification before January 1, 2015, may request approval of the

voting system from the Secretary of State based on the examination and review requirements in place before January 1, 2014.

(d) A jurisdiction shall not purchase or contract for a voting system unless it has been certified or conditionally approved by the Secretary of State.

(e) Notwithstanding subdivision (d), a local jurisdiction may contract and pay for the following:

(1) Research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State and uses only nonproprietary software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware, as defined in paragraph (1) of subdivision (a) of Section 19209.

(2) Manufacture of the minimum number of voting system units reasonably necessary for either of the following purposes:

(A) To test and seek certification or conditional approval of the voting system pursuant to Sections 19210 to 19214, inclusive.

(B) To test and demonstrate the capabilities of the voting system in a pilot program pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 19209.

### **SEC. 13.**

Section 19201 is added to the Elections Code, to read:

**19201.**

(a) The Secretary of State may grant conditional approval to a voting system or part of a voting system under either of the following circumstances:

(1) A voting system or part of a voting system was decertified as a result of a review by the Secretary of State pursuant to Section 19232.

(2) A certified voting system or part of that voting system is modified to comply with voting system standards or changes in statute.

(b) The Secretary of State may withdraw conditional approval at any time pursuant to Section 19232.

### **SEC. 14.**

Section 19202 of the Elections Code is amended and renumbered to read:

**19210.**

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

or a part of the voting system submitted that is discovered after the application is submitted and before the Secretary of State submits the report required by Section 19213. The Secretary of State shall complete his or her certification process without undue delay.

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

(c) As used in this article:

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

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

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

## **SEC. 15.**

Section 19203 of the Elections Code is amended and renumbered to read:

19223.

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

## **SEC. 16.**

Section 19204 of the Elections Code is amended and renumbered to read:

19211.

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

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

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

## **SEC. 17.**

Section 19205 of the Elections Code is repealed.

## **SEC. 18.**

Section 19206 of the Elections Code is repealed.

## **SEC. 19.**

Section 19206 is added to the Elections Code, to read:

19206.

Except as authorized by Section 19209, both of the following apply:

(a) If more than one voting system is used to count ballots, the names of candidates shall, insofar as possible, be placed on the primary voting system.

(b) If more than one voting system or a combination of a voting system and paper ballots is used to count ballots, a single ballot measure or the candidates for a single office may not be split between voting systems or between a voting system and paper ballots.

## **SEC. 20.**

Section 19207 of the Elections Code is amended and renumbered to read:

19213.

Within 60 days after the completion of the examination of a voting system, the Secretary of State shall make publicly available a report stating whether the voting system has been certified or conditionally approved, or whether certification has been withheld. The report shall also contain a written or printed description and drawings and photographs that clearly identify the machine or device and its mechanical operation.

## **SEC. 21.**

Section 19208 of the Elections Code is repealed.

## **SEC. 22.**

Section 19209 of the Elections Code is amended and renumbered to read:

19214.

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

### **SEC. 23.**

Section 19210 of the Elections Code is amended and renumbered to read:

19207.

The governing board may adopt for use at elections any kind of voting system, any combination of voting systems, or any combination of a voting system and paper ballots, provided that the voting system or systems involved have been certified or conditionally approved by the Secretary of State or specifically authorized by law pursuant to Section 19209.

### **SEC. 24.**

Section 19211 of the Elections Code is amended and renumbered to read:

19209.

(a) For purposes of this section, the following terms have the following meanings:

(1) "Commercial off-the-shelf" means mass-produced, readily available hardware devices, including card readers, printers, or personal computers, and their firmware or software products, including operating systems, programming language compilers, or database management systems.

(2) "Incorrect in part" means a full manual tally of the votes cast on the pilot system would reveal rates of error in the pilot system tally that, if extrapolated to the entire contest, would alter the electoral outcome.

(3) "Partial risk-limiting audit" means a procedure that guarantees a large minimum chance of a full manual tally of the votes cast on the pilot system if the electoral outcome is incorrect in part.

(4) "Risk-limiting audit" means a procedure that ensures a large, predetermined minimum chance of requiring a full manual tally whenever a full manual tally would show an electoral outcome that differs from the outcome reported by the voting system for the audited contest.

(b) The governing board, without formally adopting a voting system, may provide for the experimental use of the voting system in a pilot program held in one or more precincts at a single election or, in the case of a special election, the special primary election and the special general election, if the voting system complies with either of the following:

(1) The voting system is certified or conditionally approved prior to its experimental use.

(2) The voting system meets all of the following requirements:

(A) Uses only software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware.

(B) Meets the requirements of subdivision (b) of Section 19101.

(C) Meets the requirements of the regulations adopted by the Secretary of State pursuant to subdivision (g).

(D) Implements risk-limiting audits.

(c) A voting system that meets all of the requirements of paragraph (2) of subdivision (b) need not be certified or conditionally approved prior to its experimental use in a pilot program if the number of voting system units deployed in the pilot program is limited to the number necessary to test and demonstrate the capabilities of the voting system in a limited number of precincts or locations, including a prudent number of reserve units to ensure that sufficient working units will be available to conduct the pilot program. In no event shall the number of voting system units exceed 50 percent of the estimated number of units that would be required for full deployment of the voting system at every polling place and early voting site in a statewide election throughout the jurisdiction. Capabilities that may be taken into account in determining the number of voting system units reasonably necessary to test and demonstrate the capabilities of the voting system include, but are not limited to, all of the following:

(1) The capability of the voting system to accommodate voting in all languages in which the jurisdiction is required to provide ballots under applicable state and federal laws.

(2) The capability of the voting system to accommodate voting by persons with a broad range of physical and cognitive disabilities, as required by applicable state and federal laws.

(3) The current and projected number of voting-eligible individuals in the jurisdiction.

(4) The geography and distribution of the population in the jurisdiction.

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

(e) The votes cast on a voting system during a pilot program pursuant to subdivision (b) shall be subject to risk-limiting audits.

(1) For each contest conducted entirely on the pilot voting system, the jurisdiction conducting the pilot program shall conduct a risk-limiting audit with at least a 90-percent chance of requiring a full manual tally of the contest whenever a full manual tally would show an outcome that differs from the outcome reported by the pilot voting system.

(2) For each contest conducted partially on the pilot voting system, the jurisdiction conducting the pilot program shall conduct a partial risk-limiting audit of the portion of the contest in which the voters cast their votes on the pilot voting system, with at least a 90-percent chance of requiring a full manual tally of all votes cast using the pilot voting system whenever the outcome is incorrect in part.

(3) (A) If a risk-limiting audit of a contest leads to a full manual tally of all of the ballots cast in the contest, then the contest outcome according to that manual tally shall become the official result.

(B) If a partial risk-limiting audit of a contest leads to a full manual tally of the ballots cast using the pilot voting system, the vote counts according to that manual tally shall replace the vote counts reported by the pilot voting system for the purpose of determining the official contest results.

(4) Risk-limiting audit procedures shall comply with all other requirements in regulations adopted by the Secretary of State pursuant to subdivision (g).

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

(g) A voting system pilot program shall not be conducted in a legally binding election without the prior approval of the Secretary of State. The Secretary of State shall adopt and publish regulations governing voting system pilot programs.

## **SEC. 25.**

Section 19212 of the Elections Code is amended and renumbered to read:

**19208.**

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

## **SEC. 26.**

Section 19212.5 of the Elections Code is amended and renumbered to read:

**19215.**

(a) If a voting system or a part of a voting system has been certified or conditionally approved by the Secretary of State or has been federally qualified, the vendor or, in cases where the system is publicly owned, the jurisdiction shall notify the Secretary of State and all local elections officials who use the system in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system within 30 calendar days after the vendor learns of the defect, fault, or failure.

(b) After receiving written notification of a defect, fault, or failure pursuant to subdivision (a), the Secretary of State shall notify the United States Election Assistance Commission or its successor agency of the problem as soon as practicable so as to present a reasonably complete description of the problem. The Secretary of State shall subsequently submit a report regarding the problem to the United States Election Assistance Commission or its successor agency. The report shall include any report regarding the problem submitted to the Secretary of State.

## **SEC. 27.**

Section 19213 of the Elections Code is amended and renumbered to read:

**19216.**

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

## **SEC. 28.**

Section 19214 of the Elections Code is amended and renumbered to read:

19217.

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

## **SEC. 29.**

Section 19214.5 of the Elections Code is amended and renumbered to read:

19218.

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

- (1) A civil penalty from the offending party or parties, not to exceed ten thousand dollars (\$10,000) per violation. For purposes of this subdivision, each voting system component found to contain the unauthorized hardware, software, or firmware shall be considered a separate violation. A penalty imposed pursuant to this subdivision shall be apportioned 50 percent to the county in which the violation occurred, if applicable, and 50 percent to the office of the Secretary of State for purposes of bolstering voting systems security efforts.
- (2) Immediate commencement of proceedings to withdraw certification or conditional approval for the voting system in question.
- (3) Prohibiting the manufacturer or vendor of a voting system from doing elections-related business in the state for one, two, or three years.
- (4) Refund of all moneys paid by a local agency for a voting system or a part of a voting system that is compromised by an unauthorized change or modification, whether or not the voting system has been used in an election.
- (5) Any other remedial actions authorized by law to prevent unjust enrichment of the offending party.

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

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

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

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

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

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

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

## **SEC. 30.**

Section 19215 of the Elections Code is amended and renumbered to read:

**19219.**

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

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

## **SEC. 31.**

Section 19216 of the Elections Code is amended and renumbered to read:

**19203.**

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

## **SEC. 32.**

Section 19217 of the Elections Code is amended and renumbered to read:

19205.

A voting system shall comply with all of the following:

- (a) No part of the voting system shall be connected to the Internet at any time.
- (b) No part of the voting system shall electronically receive or transmit election data through an exterior communication network, including the public telephone system, if the communication originates from or terminates at a polling place, satellite location, or counting center.
- (c) No part of the voting system shall receive or transmit wireless communications or wireless data transfers.

## **SEC. 33.**

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

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

## **SEC. 34.**

Section 19220 of the Elections Code is amended and renumbered to read:

19230.

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

## **SEC. 35.**

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

**Article 2. Voting System Testing Agencies**

19220.

For purposes of this division, “state-approved testing agency” means a person or entity that is authorized by the Secretary of State to conduct the testing and examination of a voting system in connection with certification or conditional approval of the voting system pursuant to this division.

19221.

The Secretary of State shall do all of the following:

- (a) Publish requirements for the approval of state-approved testing agencies that are authorized to conduct the testing and examination of voting systems. Until the requirements are published, federally accredited voting system laboratories shall be used to conduct testing and examination.
- (b) Approve and publish a list of authorized state-approved testing agencies.

19222.

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.

### **SEC. 36.**

Section 19221 of the Elections Code is amended and renumbered to read:

19231.

- (a) If the Secretary of State has reason to believe that a local inspection of equipment is not adequate, he or she may cause the equipment to be reexamined, at any time prior to six months before a statewide election, to ensure that the voting system or parts of the voting system perform to adopted standards and tabulate votes accurately.
- (b) For the purpose of reexamining voting equipment, the Secretary of State may use state-approved testing agencies or expert technicians at the cost of the elections official.
- (c) The Secretary of State shall furnish a complete report of the findings to the Governor, to the Attorney General, to each county elections official, to the chairpersons of the elections committees of the Assembly and Senate, and to the manufacturer of the equipment.

### **SEC. 37.**

Section 19222 of the Elections Code is amended and renumbered to read:

19232.

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

### **SEC. 38.**

Section 19223 of the Elections Code is amended and renumbered to read:

19233.

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

### **SEC. 39.**

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

#### **Article 4. Accessible Voting Systems**

### **SEC. 40.**

Section 19225 of the Elections Code is amended and renumbered to read:

19240.

It is the intent of the Legislature that California voting system standards and elections comply with the provisions of the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.) that require voting systems be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as provided to other voters who are not disabled.

### **SEC. 41.**

Section 19226 of the Elections Code is amended and renumbered to read:

19241.

As used in this article:

(a) "Access" means the ability to receive, use, select, and manipulate data and operate controls included in voting technology and systems.

(b) "Nonvisual" means synthesized speech, braille, and other output methods that do not require sight.

### **SEC. 42.**

Section 19227 of the Elections Code is amended and renumbered to read:

19242.

(a) The Secretary of State shall adopt and publish rules and regulations governing any voting technology and systems used by the state or any political subdivision that provide voters with disabilities the access required under the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.).

(b) At each polling place, at least one voting unit certified or conditionally approved by the Secretary of State shall provide voters with disabilities the access required under the federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.).

(c) A local agency is not required to comply with subdivision (b) in an election in which a candidate for federal office does not appear on the ballot unless sufficient funds are available to implement that provision. Funds received from the proceeds of the Voting Modernization Bond Act of 2002 (Article 5 (commencing with Section 19250)), from federal funds made available to purchase new voting systems, or from any other source except the General Fund, shall be used for that purpose.

### **SEC. 43.**

Section 19227.5 of the Elections Code is amended and renumbered to read:

19243.

In requiring access for voters with disabilities pursuant to this article, the Secretary of State shall obtain recommendations from representatives of blind consumer organizations, experts in accessible software and hardware design, and any other individual or organization the Secretary of State determines to be appropriate.

### **SEC. 44.**

Section 19228 of the Elections Code is amended and renumbered to read:

19244.

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

### **SEC. 45.**

Section 19229 of the Elections Code is amended and renumbered to read:

19245.

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

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

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

#### **SEC. 46.**

Section 19229.5 of the Elections Code is amended and renumbered to read:

19246.

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

#### **SEC. 47.**

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

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

#### **SEC. 48.**

Section 19230 of the Elections Code is amended and renumbered to read:

19250.

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

#### **SEC. 49.**

Section 19231 of the Elections Code is amended and renumbered to read:

19251.

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

#### **SEC. 50.**

Section 19232 of the Elections Code is amended and renumbered to read:

19252.

As used in this article:

(a) "Board" means the Voting Modernization Board, established pursuant to Section 19256.

- (b) “Bond” means a state general obligation bond issued pursuant to this article adopting the provisions of the State General Obligation Bond Law.
- (c) “Bond act” means this article authorizing the issuance of state general obligation bonds and adopting the State General Obligation Bond Law by reference.
- (d) “Committee” means the Voting Modernization Finance Committee, established pursuant to Section 19253.
- (e) “Fund” means the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19254.
- (f) “Voting system” means any voting machine, voting device, or vote tabulating device that does not use prescored punch card ballots.

## **SEC. 51.**

Section 19233 of the Elections Code is amended and renumbered to read:

19253.

- (a) The Voting Modernization Finance Committee is hereby established for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this article.
- (b) The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives, all of whom shall serve without compensation, and a majority of whom shall constitute a quorum. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.
- (c) For purposes of this article, the Voting Modernization Finance Committee is “the committee” as that term is used in the State General Obligation Bond Law.

## **SEC. 52.**

Section 19234 of the Elections Code is amended and renumbered to read:

19254.

- (a) The committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of not more than two hundred million dollars (\$200,000,000), exclusive of refunding bonds, in the manner provided herein for the purpose of creating a fund to assist counties in the purchase of updated voting systems.
- (b) The proceeds of bonds issued and sold pursuant to this article shall be deposited in the Voting Modernization Fund, which is hereby established.
- (c) A county is eligible to apply to the board for fund money if it meets all of the following requirements:
  - (1) The county has purchased a new voting system after January 1, 1999, and is continuing to make payments on that system on the date that this article becomes effective.
  - (2) The county matches fund moneys at a ratio of one dollar (\$1) of county moneys for every three dollars (\$3) of fund moneys.

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

(d) (1) Fund moneys shall only be used to purchase systems certified or conditionally approved by the Secretary of State.

(2) A county may use fund moneys to contract and pay for the following:

(A) Research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State and uses only nonproprietary software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware, as defined in paragraph (1) of subdivision (a) of Section 19209.

(B) Manufacture of the minimum number of voting system units reasonably necessary for either of the following purposes:

(i) To test and seek certification or conditional approval for the voting system pursuant to Sections 19210 to 19214, inclusive.

(ii) To test and demonstrate the capabilities of the voting system in a pilot program pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 19209.

(3) Fund moneys shall not be used to purchase a voting system that uses prescored punch card ballots.

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

## **SEC. 53.**

Section 19234.5 of the Elections Code is amended and renumbered to read:

**19255.**

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

## **SEC. 54.**

Section 19235 of the Elections Code is amended and renumbered to read:

**19256.**

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

intent of this article. A county whose application is rejected shall be allowed to submit an amended application.

## **SEC. 55.**

Section 19236 of the Elections Code is amended and renumbered to read:

19257.

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

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

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

## **SEC. 56.**

Section 19237 of the Elections Code is amended and renumbered to read:

19258.

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

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

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

## **SEC. 57.**

Section 19238 of the Elections Code is amended and renumbered to read:

19259.

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

## **SEC. 58.**

Section 19239 of the Elections Code is amended and renumbered to read:

19260.

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

## **SEC. 59.**

Section 19240 of the Elections Code is amended and renumbered to read:

19261.

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

## **SEC. 60.**

Section 19241 of the Elections Code is amended and renumbered to read:

19262.

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

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

## **SEC. 61.**

Section 19242 of the Elections Code is amended and renumbered to read:

19263.

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

## **SEC. 62.**

Section 19243 of the Elections Code is amended and renumbered to read:

19264.

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

## **SEC. 63.**

Section 19244 of the Elections Code is amended and renumbered to read:

19265.

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

## **SEC. 64.**

Section 19245 of the Elections Code is amended and renumbered to read:

19266.

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

## **SEC. 65.**

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

### **Article 6. Direct Recording Electronic Voting Systems**

## **SEC. 66.**

Section 19250 of the Elections Code is amended and renumbered to read:

19270.

- (a) The Secretary of State shall not certify or conditionally approve a direct recording electronic voting system unless the system includes an accessible voter verified paper audit trail.
- (b) On and after January 1, 2006, a city or county shall not contract for or purchase a direct recording electronic voting system unless the system has been certified or conditionally approved for use by the Secretary of State.
- (c) As of January 1, 2006, all direct recording electronic voting systems in use on that date, regardless of the date it was contracted for or purchased, shall have received federal qualification and include an accessible voter verified paper audit trail. If the direct recording electronic voting system does not include an accessible voter verified paper audit trail, the system shall be replaced or modified to include an accessible voter verified paper audit trail.
- (d) All direct recording electronic voting systems shall include a method by which a voter may electronically verify, through a nonvisual method, the information that is contained on the paper record copy of that voter’s ballot.
- (e) A paper record copy that is printed by a voter verified paper audit trail component shall be printed in the same language that the voter used when casting his or her ballot on the direct recording electronic voting system. For languages that lack a written form, the paper record copy shall be printed in English.

## **SEC. 67.**

Section 19251 of the Elections Code is amended and renumbered to read:

19271.

As used in this article:

- (a) “Accessible” means that the information provided on the paper record copy from the voter verified paper audit trail mechanism is provided or conveyed to voters via both a visual and a nonvisual method, such as through an audio component.
- (b) “Direct recording electronic voting system” means a voting system that records a vote electronically and does not require or permit the voter to record his or her vote directly onto a tangible ballot.
- (c) “Voter verified paper audit trail” means a component of a direct recording electronic voting system that prints a contemporaneous paper record copy of each electronic ballot and allows each voter to confirm his or her selections before the voter casts his or her ballot.
- (d) “Federal qualification” means the system has been certified, if applicable, by means of qualification testing by a nationally recognized test laboratory and has met or exceeded the minimum requirements set forth in the Performance and Text Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems, or in any successor voluntary standard document, developed and promulgated by the Federal Election Commission, the Election Assistance Commission, or the National Institute of Standards and Technology.
- (e) “Paper record copy” means an auditable document printed by a voter verified paper audit trail component that corresponds to the voter’s electronic vote and lists the contests on the ballot and the voter’s selections for those contests. A paper record copy is not a ballot.
- (f) “Parallel monitoring” means the testing of a randomly selected sampling of voting equipment on election day designed to simulate actual election conditions to confirm that the system is registering votes accurately.

## **SEC. 68.**

Section 19252 of the Elections Code is amended and renumbered to read:

19272.

To the extent that they are available for expenditure for the purposes of this article, federal funds or moneys from the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19254, shall be used. No moneys from the General Fund shall be expended for the purposes of this article.

## **SEC. 69.**

Section 19253 of the Elections Code is amended and renumbered to read:

19273.

- (a) On a direct recording electronic voting system, the electronic record of each vote shall be considered the official record of the vote, except as provided in subdivision (b).
- (b) (1) The voter verified paper audit trail shall be considered the official paper audit record and shall be used for the required 1-percent manual tally described in Section 15360 and any full recount or post-election audit.
- (2) The voter verified paper audit trail shall govern if there is any difference between it and the electronic record during a 1-percent manual tally, full recount, or post-election audit.

## **SEC. 70.**

Section 19254 of the Elections Code is amended and renumbered to read:

19274.

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

## **SEC. 71.**

Section 19255 of the Elections Code is amended and renumbered to read:

19275.

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

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

## **SEC. 72.**

The heading of Chapter 3.5 (commencing with Section 19260) of Division 19 of the Elections Code is amended to read:

### **CHAPTER 3.5. Certification of Ballot Marking Systems**

## **SEC. 73.**

Section 19260 of the Elections Code is amended and renumbered to read:

19280.

The Secretary of State shall not certify or conditionally approve a ballot marking system, or part of a ballot marking system, unless it fulfills the requirements of this code and the regulations of the Secretary of State.

## **SEC. 74.**

Section 19261 of the Elections Code is amended and renumbered to read:

19281.

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

(b) All other uses of a ballot marking system shall be subject to the provisions of Section 19202.

## **SEC. 75.**

Section 19262 of the Elections Code is amended and renumbered to read:

19284.

(a) A person, corporation, or public agency owning or having an interest in the sale or acquisition of a ballot marking system or a part of a ballot marking system may apply to the Secretary of State for certification or conditional approval that includes testing and examination of the applicant's system and a report on the findings, which shall include the accuracy and efficiency of the ballot marking system. As part of its application, the applicant of a ballot marking system or a part of a ballot marking system shall notify the Secretary of State in writing of any known defect, fault, or failure of the version of the hardware, software, or firmware of the ballot marking system or a part of the ballot marking system submitted. The Secretary of State shall not begin his or her certification process until he or she receives a completed application from the applicant of the ballot marking system or a part of the ballot marking system. The applicant shall also notify the Secretary of State in writing of any defect, fault, or failure of the version of the hardware, software, or firmware of the ballot marking system or a part of the ballot marking system submitted that is discovered after the application is submitted and before the Secretary of State submits the report required by Section 19288. The Secretary of State shall complete his or her examination without undue delay.

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

(c) As used in this chapter:

(1) "Defect" means any flaw in the hardware or documentation of a ballot marking system that could result in a state of unfitness for use or nonconformance to the manufacturer's specifications or applicable law.

(2) "Failure" means a discrepancy between the external results of the operation of any software or firmware in a ballot marking system and the manufacturer's product requirements for that software or firmware or applicable law.

(3) "Fault" means a step, process, or data definition in any software or firmware in a ballot marking system that is incorrect under the manufacturer's program specification or applicable law.

## **SEC. 76.**

Section 19263 of the Elections Code is amended and renumbered to read:

19285.

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

## **SEC. 77.**

Section 19264 of the Elections Code is amended and renumbered to read:

19287.

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

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

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

## **SEC. 78.**

Section 19265 of the Elections Code is repealed.

## **SEC. 79.**

Section 19266 of the Elections Code is repealed.

## **SEC. 80.**

Section 19267 of the Elections Code is amended and renumbered to read:

19288.

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

## **SEC. 81.**

Section 19268 of the Elections Code is repealed.

## **SEC. 82.**

Section 19269 of the Elections Code is amended and renumbered to read:

19289.

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

## **SEC. 83.**

Section 19270 of the Elections Code is amended and renumbered to read:

19290.

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

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

## **SEC. 84.**

Section 19271 of the Elections Code is amended and renumbered to read:

19291.

If a ballot marking system has been certified or conditionally approved by the Secretary of State, it shall not be changed or modified until the Secretary of State has been notified in writing and has determined that the change or modification does not impair its accuracy and efficiency sufficient to require a reexamination and recertification or reapproval pursuant to this chapter. The Secretary of State may adopt rules and regulations governing the procedures to be followed

in making his or her determination as to whether the change or modification impairs accuracy or efficiency.

## **SEC. 85.**

Section 19272 of the Elections Code is amended and renumbered to read:

19292.

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

## **SEC. 86.**

Section 19273 of the Elections Code is amended and renumbered to read:

19293.

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

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

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

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

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

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

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

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

(B) A civil penalty from the offending party or parties, not to exceed fifty thousand dollars (\$50,000) per violation. For purposes of this subdivision, each defect, fault, or failure shall be

considered a separate violation. A defect, fault, or failure constitutes a single violation regardless of the number of ballot marking system units in which the defect, fault, or failure is found.

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

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

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

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

## **SEC. 87.**

Section 19274 of the Elections Code is amended and renumbered to read:

19294.

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

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

## **SEC. 88.**

Section 19275 of the Elections Code is amended and renumbered to read:

19295.

A ballot marking system or part of a ballot marking system shall not do any of the following:

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

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

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

## **SEC. 89.**

Section 19282 is added to the Elections Code, to read:

19282.

The Secretary of State shall not certify or conditionally approve any ballot marking system that includes features that permit a voter to produce, and leave the polling place with, a copy or facsimile of the ballot cast by the voter at that polling place.

## **SEC. 90.**

Section 19283 is added to the Elections Code, to read:

19283.

(a) The Secretary of State shall adopt and publish standards and regulations governing the use of ballot marking systems. The Secretary of State may also adopt, in whole or in part, voluntary federal ballot marking voting system standards established by the United States Election Assistance Commission or its successor agency.

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

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

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

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

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

## **SEC. 91.**

Section 19286 is added to the Elections Code, to read:

19286.

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

## **SEC. 92.**

Section 6.5 of this bill shall only become operative if (1) this bill and Assembly Bill 214 are both enacted and become effective on or before January 1, 2014, and (2) Assembly Bill 214 adds Section 19104 to the Elections Code, in which case Section 6 of this bill shall not become operative.