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**SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**  
Senator Steven Glazer, Chair  
2023 - 2024 Regular

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<b>Bill No:</b>	AB 969	<b>Hearing Date:</b>	6/20/23
<b>Author:</b>	Pellerin		
<b>Version:</b>	6/13/23		
<b>Urgency:</b>	Yes	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Scott Matsumoto		

**Subject:** Elections: voting systems

**DIGEST**

Prohibits an election official from performing a manual vote count in any contest in which there are more than 1,000 eligible registered voters unless certain conditions are met and as specified. This bill also prohibits any jurisdiction that administers elections from terminating any contract for an existing certified voting system, unless the jurisdiction has a plan to transition to a new voting system that will ensure compliance with applicable state and federal laws and is in the process of entering into a new contract for a certified voting system.

**ANALYSIS**

Existing law:

- 1) Provides, pursuant to the federal Voting Rights Act of 1965, that no voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, as specified.
- 2) Permits a United States citizen 18 years of age and a resident of California to register to vote and to vote. Provides that an elector disqualified from voting while serving a state or federal prison term shall have their right to vote restored upon the completion of their prison term, as specified. Requires the Legislature to prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or serving a state or federal prison term for the conviction of a felony.
- 3) Prohibits a voting system, in whole or in part, from being used unless it has been certified or conditionally approved by the Secretary of State (SOS) prior to any election at which it is to be used.
- 4) Prohibits a jurisdiction from purchasing or contracting for a voting system unless it has been certified or conditionally approved by the SOS.

- 5) Authorizes the governing board of a local jurisdiction to adopt a voting system for use in an election if the system has been certified or conditionally approved by the SOS, as specified.
- 6) Defines a voting system to mean a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both.
- 7) Defines a voting machine to mean any electronic device, including, but not limited to, a precinct optical scanner and a direct recording voting system, into which a voter may enter their votes, and which, by means of electronic tabulation and generation of printouts or other tangible, human-readable records, furnishes a total of the number of votes cast for each candidate and for or against each measure.
- 8) Requires, at each polling place, that at least one voting unit certified or conditionally approved by the SOS provide voters with disabilities the access required under the federal Help America Vote Act of 2002 (HAVA).

This bill:

- 1) Prohibits an election official from performing a manual vote count in any contest in which there are more than 1,000 eligible registered voters as of 154 days in advance of the election, as specified.
- 2) Prohibits an election official from conducting a manual vote count in any election unless that manual count is conducted pursuant to a plan approved by the SOS, as specified.
- 3) Requires the SOS to adopt regulations regarding manual counts.
- 4) Provides that an election official may conduct a manual tally pursuant to existing law or in the event of a natural disaster or other state of emergency where compliance is not feasible.
- 5) Requires an election official or the governing body that administers elections to use a certified voting machine or voting system to provide sufficient numbers of machines for accessibility and to tabulate votes, as specified.
- 6) Prohibits any jurisdiction that administers elections from terminating any contract for an existing certified voting system, unless the jurisdiction has a plan to transition to a new voting system that will ensure compliance with applicable state and federal laws and is in the process of entering into a new contract for a certified voting system.
- 7) Contains an urgency clause.

### **BACKGROUND**

Shasta County. According to recent news and media articles, on January 24, 2023, the Shasta County Board of Supervisors (Board) voted to cancel the county's voting system lease agreement with Dominion Voting Systems effective after Shasta County's March

7th special election. At the time that decision was approved, the Board did not provide a plan or describe how they would conduct future elections. At a subsequent Board meeting, on February 28, 2023, the Shasta County Elections Department presented an agenda item to recommend the Board select a certified voting system or vote to rescind the cancellation of the Dominion lease agreement. Instead, the Board voted to explore hand counting (a “manual tally”) of paper ballots. On March 28, 2023, the Board voted to direct staff to: (1) establish a procedure for the manual tally of ballots; (2) select either Electronic Systems & Software (ES&S) or Hart InterCivic (Hart) to provide voting equipment and associated software to satisfy all state and federal laws relating to voting access for persons with disabilities; and (3) submit the plan to the SOS for approval for use at the county’s next election. According to a recent news article, earlier this month, the Board voted unanimously to pick Hart as their new provider of voting equipment and services in the county.

Other Counties. Earlier this year, the Kern County Board of Supervisors considered canceling their contract with Dominion Voting Systems. However, according to media reports, in late February, after hours of debate, the Board voted 3-2 to renew their contract with Dominion.

Accessibility Requirements. Existing federal and state law contain requirements that some argue cannot be satisfied without voting technology that includes a voting system and other voting equipment. For instance, existing federal and state law require elections to be accessible. Specifically, HAVA requires a voting system to “be accessible for individuals with disabilities...in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.” Additionally, HAVA requires any voting system to use “at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.” To comply with these requirements, accessible voting machines, including ballot-marking devices, are used for in-person voting at polling places and vote centers. These voting machines have features that enable voters with visual or dexterity impairments to vote privately and independently. Additionally, remote accessible vote by mail (RAVBM) systems enable private and independent voting by mail for some voters with disabilities by allowing them to complete a ballot on their own computer using their own assistive technology. State law requires that all voters be permitted to use a RAVBM system, including voters with disabilities and military and overseas voters.

According to a February 27, 2023 letter sent from the California Attorney General’s (AG) office on behalf of the SOS’s office to the Board, “California counties fulfill their duty to protect the right to vote by, among other measures, using electronic voting systems. Absent an electronic voting system, a county will not be able to fulfill the accessibility requirements of federal and state law.”

Ballot Requirements. Current law prescribes how ballots are printed and how different ballot styles are created for each election. This includes how names and information for each contest and ballot measure are listed on the ballot. Voting systems enable elections officials to accurately and efficiently create the many ballot styles required to be produced so voters are able to vote on the contests for which they are eligible to vote. According to a March 23, 2023 letter sent by a coalition of nonprofit, nonpartisan California-based organizations to the Board, “[without] a computerized voting system,

county elections officials would have to figure out some other way to create all required ballot styles with the correct names and information for every contest and every ballot measure. They would also have to figure out how to manage the voluminous information that determines what appears and how it appears, as required by law, on each ballot.”

Canvassing and Reporting Requirements. Current law requires county elections officials to comply with numerous canvassing and reporting requirements. The letter from the AG’s office points out that the “official canvass—a multi-step process involving the inspection, reconciliation, and counting of votes—must begin no later than the Thursday following the election” and must be completed no later than the 30th day after the election. At that time, election officials were required to submit a certified statement of the results of the election to the SOS that includes the number of total votes cast and vote totals for each candidate or measure for every precinct, including overvotes and undervotes. The letter states that “[certified] electronic voting systems facilitate all of these Elections Code obligations” and the “Secretary questions whether a county can complete these processes—all of which have strict deadlines and are critical to establishing the accuracy and integrity of elections—without using an approved electronic voting system.”

Hand Counting Ballots. To ensure votes are accurately read and tallied by voting systems, existing law requires county elections officials to publicly conduct a manual tally (hand count) of ballots to verify the election results and check the accuracy of the vote count. There are two methods in which this may be accomplished, and counties are required to use one or both to certify the results of every election. Elections officials are required to conduct a one percent manual tally in which elections officials manually tally all the ballots in one percent of the precincts, selected at random by the elections officials. For each race that is not included in the initial group of precincts, the elections officials are required to count one additional precinct to include all races in the manual tally. Additionally, elections officials may conduct risk-limiting audits and are required to do so if they are using an experimental voting system as part of a pilot program conducted pursuant to existing law. In a risk-limiting audit, elections officials manually tally randomly selected ballots, stopping as soon as it is implausible that a full recount would show a different result than the ballots reviewed.

The required manual tallies conducted to verify election results are typically conducted on a small percentage of ballots. As mentioned above, the Board requested the election department to establish a procedure for the manual tally of all ballots. According to Shasta County Clerk/Registrar of Voter’s report entitled, “Analysis of Manual Tally Options for Shasta County,” Shasta County “has never conducted a hand count at the scale currently proposed, and the complexity, resources, and time required for a manual tally increase as the number of contests and ballots subjected to the manual tally increase.” The report states that Shasta County has 111,503 voters and the typical turnout ranges from 50,000 voters in a primary to a high of 94,084 votes in the November 2020 Presidential general election. In the November 2022 general election, there were 47 ballot types, 42 contests, and 114 candidates with over 2.8 million ovals counted across the ballots.

According to information found in the Statement of the Vote that is prepared by the SOS for each statewide election, and information in a report titled History of Voting Systems

in California that was prepared by the office of the SOS in 1999, it appears that no California county has conducted a full manual tally of all ballots cast at a statewide election since 1984. Only five counties (Alpine, Mariposa, Modoc, Sierra, and Trinity) have conducted a full manual tally of ballots at a statewide election since 1980, and each of those manual tallies involved fewer than 6,000 ballots. Nearly 70% of California counties have not conducted a full manual tally of all ballots cast at a statewide election since at least the 1960s.

The March 23, 2023 coalition letter that is referenced above notes that “[hand-counting] ballots requires sufficient multi-person teams of counters, sufficient resources to conduct the count (including facilities, tables, and funding to pay for staff, space, and supplies), and enough time to complete the count before the legal deadlines for post-election auditing and reporting the official results.” Without a computerized voting system, it is unclear whether Shasta County can timely count the ballots cast in any election other than a small special election.

Furthermore, because counties generally have not conducted full manual tallies of ballots cast in statewide elections for nearly 40 years, it is unclear whether existing state law contains appropriate processes, procedures, and safeguards for administering an election in which all ballots will be manually tallied. Recent news articles state that the SOS is currently working on draft regulations governing the hand count of ballots, which will go through the regulatory process.

Future Elections in Shasta County. While the next regularly scheduled election in Shasta County is the March 2024 statewide presidential primary election, the county may also be required to conduct one or more special elections before that time. According to a report to the Board by the County Clerk/Registrar of Voters at the Board’s April 6, 2023 meeting, the county has received inquiries from two local jurisdictions about potentially holding special elections on November 7, 2023. While the Board approved the purchasing of Hart voting equipment, as detailed above, it is unclear whether that equipment will be procured and deployed in time to be used in those upcoming elections, including the time that will be needed for preparations such as testing the equipment and training staff and poll workers on how to properly deploy and use it.

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

Accordingly, in 2014, California established its own standards – California voting system standards (CVSS) – for electronic components of voting systems which were derived from the EAC’s VVSG versions 1.1 and 2.0. The CVSS provides a set of specifications and requirements to which voting systems are required to be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems.

In counties that use electronic voting systems, state 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.

Approved Voting Systems. According to the SOS's website, as of April 4, 2023 there are four voting systems vendors whose voting equipment is certified to be sold and used in California: Hart Verity Voting, Dominion Voting System, ES&S, and Los Angeles County Voting Solution for All People (only applicable to Los Angeles County). Dominion Voting Systems provides voting systems for 40 of California's 58 counties.

### COMMENTS

- 1) According to the author: In January of 2023, the Shasta County Board of Supervisors voted to end their voting systems contract with Dominion Voting Systems. Ending this voting systems contract almost three years early is extremely expensive, and there is no doubt that this action by the Board of Supervisors has put the county elections official's ability to conduct the next election at great risk.

Every county in California has a voting systems contract with one of four approved vendors. In the event that county elections officials are not able to secure a contract with an approved replacement voting system vendor, it is unclear whether they would even be able to conduct their next election under current Election Code requirements. To ensure stability regarding counting votes, AB 969 states that county Boards of Supervisors may not terminate an existing voting systems contract without a replacement contract and transition plan in place.

The simple language of this bill ensures that county elections officials will know what voting system they will be using well in advance of their upcoming elections and will help minimize the disruptive nature of transitioning from one voting system to another.

- 2) Ability to Replace a Voting System. As previously mentioned, there are four voting systems vendors whose voting equipment is certified to be sold and used in California. If a local jurisdiction wanted to use a voting system beyond what is certified for use in California, that voting system would need to be certified by the SOS. The certification process could take months or even years before final certification. This certification process would also likely take place before a local jurisdiction begins negotiations and finalizes a contract. As a result, depending on the timeframe for the SOS to certify a voting system as well as the timeframe to negotiate and ultimately finalize a contract at the local level, it may result in a significant amount of time to replace a voting system.
- 3) Argument in Support. In a letter supporting AB 969, the American Federation of State, County, and Municipal Employees stated, in part, the following:

*Political rhetoric in recent years has been the subject of misinformation and a test of our democratic processes. Biased and factually unfounded rhetoric has permeated from our national discourse to here in California. In 2022, Shasta County voted to remove their Dominion electronic voting systems after reactionary pressure from constituents who believed misinformation. As a result, Shasta County does not have an adequate replacement for the voting system that it has used for years. There is currently no mandate for local jurisdictions to have a voting system or plan ready to replace an existing system.*

*Assembly Bill 969 would mandate that a county must have a detailed plan for voting system replacement prior to the removal of that county's voting system. AB 969 ensures that voters in each county with a State-certified voting system will continuously have a voting system in place to conduct elections, preventing the disenfranchisement of voters due to reactionary or poorly planned policy.*

- 4) Argument in Opposition. In a letter opposing AB 969, Election Integrity Project California, Inc., stated, in part, the following:

*It would be a mistake to attempt to tie the public's hands, or send a message to the residents of the districts you represent that you do not trust them with self-governance decisions.*

*The strong implication of this bill is that counties cannot be trusted to ensure a viable election plan without an invasive and intrusive State straight jacket.*

*This bill sends a secondary message as well, that there IS something to hide, just as many citizens have documented as a result of their elections observations experiences.*

*Part of that "something" resides in the electronic voting systems. AB 969 smacks of desperation. It appears the proponents of this bill believe they have something to lose unless they squash any possibility of change to increase election integrity once and for all.*

- 5) Double Referral. If approved by this committee, AB 969 will be referred to the Committee on Governance and Finance.

### **RELATED/PRIOR LEGISLATION**

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 VVSG set forth by the US EAC or its successor agency, as specified.

SB 1480 (Glazer) of 2022 would have permitted the SOS to certify this type of remote accessible vote by mail system and to develop procedures for a voter using the system to submit a signature electronically. SB 1480 would have required county elections official to permit a voter with a disability to use a certified remote accessible vote by mail system that enables the voter to return a completed ballot electronically, as specified.

SB 1480 also permitted a voter with a disability to return their ballot by fax if the previously mentioned voting system was not available to use. SB 1480 passed the Senate, but was not heard in the Assembly Committee on Elections.

**PRIOR ACTION**

Assembly Floor:	62 - 9
Assembly Elections Committee:	6 - 1

**POSITIONS**

**Sponsor:** Author

**Support:** American Federation of State, County, and Municipal Employees  
California Association of Clerks and Election Officials  
California Common Cause  
Disability Rights California  
Secretary of State Shirley N. Weber, Ph.D.

**Oppose:** Election Integrity Project California, Inc.

**-- END --**