


**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 15, 2013
TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee
FROM: Gerry F. Miller 
Chief Legislative Analyst Assignment No. 13-04-0315
Council File No. 13-0002-S62
SUBJECT: Resolution (Perry - Parks) on SB 360 – Publicly Developed Voting Systems

CLA RECOMMENDATION: ADOPT Resolution (Perry - Parks), which would include in the City's 2013-14 State Legislative Program SUPPORT of SB 360 (Padilla), which would allow the California Secretary of State to approve for use in elections voting systems that are publicly developed and owned.

SUMMARY


Resolution (Parks - Pery), introduced on April 16, 2013, is in support of SB 360 (Padilla) a bill that authorizes the California Secretary of State to approve for use in elections publicly developed and publicly owned voting systems. The Resolution states that existing state law does not facilitate publicly owned voting systems, and that most counties in California instead rely on proprietary voting systems that are purchased from private vendors, limiting public access to the operating system and hardware of those systems. The Resolution notes that the County of Los Angeles is currently developing its own voting system, and that use of such a publicly developed and publicly owned voting system would increase transparency in elections.

SB 360 was introduced by State Senator Padilla on February 20, 2013, and modified into its current form on April 10th. The bill would revise the State's voting certification process by allowing public agencies to develop, own, and operate their own voting systems, and eliminate the need for federal certification as a pre-condition for state approval. The bill would also permit experimental pilot programs as a way of testing voting system features.

The City Clerk has indicated support for the bill, stating that while it would not directly impact the City unless the City were to develop its own voting system, it would remove significant procedural barriers in the state certification process that the County of Los Angeles faces in its current development of its own voting system. As the City regularly uses equipment from the County's existing voting system to conduct its municipal elections, the City Clerk reports that SB 360 may allow additional flexibility and customization that could benefit the City.

BILL STATUS

2/20/13 Introduced
4/10/13 Last Amended
5/1/13 Ref. to Senate Appropriations Committee


Charles E. Modica, Jr.
Analyst

Attachments:

- (1) Resolution (Perry - Parks)
- (2) Bill Response Report from City Clerk
- (3) State Legislative Counsel's Digest of SB 360

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the right to vote is the most fundamental way that citizens engage their government, and the integrity of voting relies on the trust that each vote cast is counted fairly; and

WHEREAS, the transparency of voting systems – the devices and systems through which votes are cast – is vital to ensure that the public can verify and trust election outcomes; and

WHEREAS, nearly all California counties have purchased their voting systems from private vendors, which limit public access to the operating system and hardware of those voting systems in order to protect their own intellectual property; and

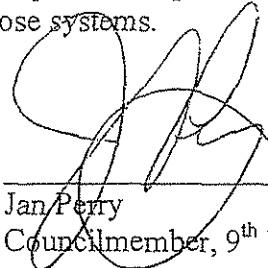
WHEREAS, the County of Los Angeles is currently developing a voting system that will be owned and operated by the public, and that will be maintained in an open, transparent, and verifiable manner, which will increase the trust and reliability that the public can feel in its voting system; and

WHEREAS, existing state law neither encourages nor facilitates alternate models like publicly owned voting systems; and

WHEREAS, State Senator Padilla has introduced SB 360, which would explicitly allow counties to develop and own public voting systems, and would allow the California Secretary of State to approve a county developed system;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 State Legislative Program SUPPORT of SB 360 (Padilla), which would increase public trust and transparency in voting systems by allowing counties to develop and own public voting systems and allowing the California Secretary of State to approve those systems.

PRESENTED BY:



Jan Perry
Councilmember, 9th District

SECONDED BY:



CITY OF LOS ANGELES
BILL RESPONSE REPORT

DEPARTMENT/BUREAU/OFFICE City Clerk/Election Division		BILL NO. S.B. 360	AUTHOR (A. Padilla - 20 th Senate District)
PREPARED BY Christopher E. Garcia	EXT. 83265	DATE April 18, 2013	AMENDED DATE April 10, 2013
<p>I. Describe the impact this bill will have on your department or the City, its program(s), and/or its constituency (state existing law or practice, a summary of the effect the bill will have on existing department operations, etc.).</p> <p>In general, Senate Bill 360 revises the State's voting system certification process by allowing public agencies to develop, own, and operate their own voting systems and eliminating the need for federal certification as pre-condition for state approval. SB 360 would also permit experimental pilot programs as a way of testing voting system features.</p> <p>This bill would only directly impact the City if the City were to purchase or develop its own voting system. However, since the City regularly uses equipment from the Los Angeles County Registrar-Recorder/County Clerk's existing voting system to conduct municipal elections, SB 360 would remove significant procedural barriers in the state certification process and improve the City's access to a new voting system. The County is currently developing its own voting system and may have one available for use by 2015.</p>			
<p>II. Give estimate of cost or savings to your department (include SB 90 reimbursements, if applicable). SB 360 will not result in any direct costs or savings to the City, unless the City were develop or purchase a voting system.</p>			
<p>III. Arguments both "For" and "Against" this bill.</p> <p>For: Removing significant procedural barriers from the State's voting system certification process would improve the City's access to new voting systems that could better meet the City's and voter's needs. Furthermore, allowing a public agency, such as L.A. County, to develop its own voting system would permit the flexibility and customization required to meet the needs of the Region's voters and election administrators that private vendors could not provide.</p> <p>Against: Permitting public agencies to develop their own voting systems might discourage private vendors from developing and improving systems that could meet a Region's needs as well or better than the public agency.</p>			
<p>FOR CLA USE ONLY</p> <p>Position Noted _____ Committee _____</p> <p>Analyst _____ Council _____</p> <p>Program No. _____ Position _____</p>			
<p>IV. Recommended position and justification:</p> <p><input type="checkbox"/> No Position <input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose <input type="checkbox"/> Amend</p> <p>Describe reasons for recommended position (include relevant existing City legislative policy, and any proposed amendments in <u>underline</u> and strike-out format). SB 360 would remove significant procedural barriers in the state certification process and improve the City's access to a new voting system.</p>			
<p>V. Interested Parties: Indicate any interest other departments or organizations may have on the bill. Also, list any contacts you made in preparing this information. Los Angeles County Registrar-Recorder/County Clerk Los Angeles Votes Committee (LA Votes)</p>			

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 360

Introduced by Senator Padilla

February 20, 2013

An act to amend Sections 19202, 19206, and 19250 of the Elections Code, relating to elections. 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, 19253, 19254, 19255, 19260, 19261, 19262, 19263, 19264, 19267, 19269, 19270, 19271, 19272, 19273, 19274, and 19275 of, to amend and renumber the headings of Article 2 (commencing with Section 19220), Article 2.5 (commencing with Section 19225), Article 3 (commencing with Section 19230), and Article 4 (commencing with Section 19250) of Chapter 3 of Division 19 of, to amend, renumber, and add Sections 19101, 19102, and 19201 of, to add Sections 19006, 19282, 19283, and 19286 to, to add Article 2 (commencing with Section 19220) to Chapter 3 of Division 19 of, to repeal Sections 19205, 19208, 19252, 19265, 19266, and 19268 of, and to repeal and add Section 19206 of, the Elections Code, relating to voting systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Padilla. ~~Approval of voting systems.~~
Certification of voting systems.

(1) Existing law establishes various procedures and criteria for the approval by the Secretary of State of voting systems, including ballot marking systems, to be used in elections.

This bill would recast and revise those provisions by changing the term "approval" to the term "certification" and would authorize the Secretary of State to certify, conditionally approve, as specified, or withhold approval of a voting system. The bill would provide that it is the intent of the Legislature that the Secretary of State certify all voting systems before they are used in future elections, adopt and publish testing standards, and encourage the development of voting systems that are easy for the public to audit. The bill would require the Secretary of State to adopt and publish voting system standards, as specified, and would require the Secretary of State to study the performance of the voting systems in use in the state.

This bill would additionally require the Secretary of State to publish requirements for the approval of testing agencies, as defined, that are authorized to conduct the testing and examination of voting systems and to approve and publish a list of authorized testing agencies. The bill also would provide that the person, corporation, or public agency applying for certification of a voting system is responsible for all costs associated with the testing of the voting system.

(2) Within 30 days after completing the examination of any voting system, existing law requires the Secretary of State to file a report stating whether the voting system can safely be used, as specified.

This bill would instead require the Secretary of State to file a report within 60 days after the completion of the examination of the voting system, as specified.

(3) Existing law authorizes a governing board to provide for the experimental use of a voting system in one or more precincts without formally adopting the system and provides that the experimental use of the system at the election is valid for all purposes as if it were lawfully adopted.

This bill would authorize a governing board to conduct a pilot program for the experimental use of voting systems, as specified, and would require the Secretary of State to adopt and publish regulations governing a pilot program. No later than 9 months before the election

at which a pilot program is proposed to be conducted, the bill would require the governing board to submit to the Secretary of State a plan for the proposed pilot program, and would require the Secretary of State to approve or reject the plan within 3 months of receipt of the plan. Upon completion of the pilot program, the bill would require the governing board to notify the Secretary of State in writing of any defect, fault, or failure in the hardware, software, or firmware of the voting system.

(4) Upon examination of a voting system or a ballot marking system, existing law provides that if a report is issued that states that the voting system or ballot marking system can be used, it is deemed approved by the Secretary of State for use at elections.

This bill would delete the above provision and would make conforming changes.

(5) Existing law authorizes the use of a direct recording electronic voting system under specified conditions and prohibits the use of moneys from the General Fund for those purposes.

This bill would remove the prohibition on the use of General Fund moneys for purposes related to a direct recording electronic voting system.

~~Existing law prohibits a voting system from being used, and prohibits a jurisdiction from purchasing or contracting for a voting system, unless the voting system has received the approval of the Secretary of State. Existing law permits a person or corporation owning or being interested in a voting system or a part of a voting system to apply to the Secretary of State to examine the voting system and report on its accuracy and efficiency to fulfill its purpose.~~

~~This bill would specify that to request the Secretary of State to approve a voting system, the person, corporation, or county owning or being interested in the voting system or a part of the voting system must apply to Secretary of State to examine the voting system and report on its accuracy and efficiency to fulfill its purpose.~~

~~Existing federal law, the Help America Vote Act of 2002, permits a state to provide for the testing, certification, decertification, and recertification of its voting system hardware and software by laboratories accredited by the Election Assistance Commission.~~

~~Existing state law prohibits the Secretary of State from approving, and prohibits a city or county from contracting for or purchasing, a direct recording electronic voting system unless the system has received federal qualification, as defined, and includes an accessible voter verified~~

