

OVERVIEW

The purpose of this oversight hearing is to explore and discuss the current state of equipment used in California to cast ballots and administer elections. This equipment is often described as rapidly aging and dependent on outdated technology. The Committee will hear from experts regarding the extent and ramifications of this challenge and explore options for mitigation.

Equipment used to cast ballots generally fall into one of three categories:

- Polling place equipment which in the vast majority of California counties consists of paper, optically scanned ballots. Orange County and San Mateo County use electronic voting devices that feature voter-verifiable paper audit trails (VVPATs) as the primary way to cast a ballot in their polling places.
- Vote by mail (VBM) ballots that also consist of paper, optically scanned ballots.
- Electronic voting devices with a VVPAT or ballot printing devices with an electronic interface that permits blind or otherwise disabled voters to independently and secretly cast a ballot as required under federal law.

According to information compiled by the Secretary of State's office (see attached table), the majority of California counties are using at least some voting equipment purchased in 2006 or earlier -- with a few counties, including Los Angeles County, using equipment that is even older.

It should also be noted that this situation is not unique to California. According to *America's Voting Machines at Risk* (see attached), a 2015 study published by the Brennan Center for Justice, 43 states are using voting machines that will be at least 10 years old in 2016. In most of these states, the majority of election districts are using machines that are at least 10 years old and in 14 states, machines will be 15 or more years old. Other key findings in the Brennan Center report included the following concerns:

- Nearly every state is using some machines that are no longer manufactured and many election officials struggle to find replacement parts.
- Older machines can also have serious security and reliability flaws that are unacceptable today.
- The biggest risk is increased failures and crashes, which can lead to long lines and lost votes.

The Secretary of State's office estimates that the price to replace the existing voting systems in all of California's 58 counties is approximately \$450 million. That estimate would not only include replacement of systems on which voters actually cast ballots, but other equipment as well that is necessary for processing, tabulation, mailing, etc., including equipment not yet commonly in use such as ballot-on-demand printing systems and electronic poll books.

Regarding this challenge, Secretary of State Alex Padilla and Orange County Registrar of Voters Neal Kelley stated the following in a jointly authored op-ed column:

A threat to California elections is on the horizon. California voting equipment is near its life expectancy. Our diligent upkeep of these aging voting systems should minimize the risk of any problems in the 2016 elections, but California must take action to modernize our voting equipment for future elections.

Most of us remember the 2000 presidential election which concluded with the Supreme Court of the United States settling the Bush v. Gore legal battle. Remember the butterfly ballots and hanging chads? Many point to the aging voting systems in Florida as responsible for the crisis that triggered the court's intervention. In response, Congress acted in a bipartisan manner when they passed the Help America Vote Act (HAVA) which provided funding to modernize voting systems in all fifty states.

That was more than 13 years ago. Today, we are back where we started with aging voting systems that may fail in future elections. A voting system isn't just what you use to mark your ballot, it includes the tallying machines and other equipment used by county registrars of voters to conduct an election. In California, we have 58 counties. Any one of them could run into problems in the coming years.

We are quickly approaching a crossroads and important investments must be made. The chances of a gridlocked Congress allocating funding are slim, and crossing our fingers isn't a plan. California counties alone cannot bear the financial burden of purchasing the new systems we will need in the coming years. They need our help. Our current voting systems were designed and engineered in the 1990s. We wouldn't settle for 20-year old technology and reliability when it comes to our cell phones and computers; our voting systems are no different.

Who Currently Pays for Elections in California?

Existing law generally requires all expenses authorized and necessarily incurred in the preparation for, and conduct of, elections to be paid from the county treasuries, except that when an election is called by the governing body of a city or other local jurisdiction, the expenses shall be paid from the treasury of that jurisdiction.

Unfunded State Mandates: Since 1979, the California Constitution has required the state to reimburse local governments for certain state-mandated programs. Historically, the state deferred many mandate reimbursements to cities, counties, and special districts. Proposition 1A, which was approved by the voters in 2004, required the state to either (1) appropriate funds in the annual budget bill to pay outstanding claims for a mandate, or (2) suspend or repeal the mandate.

Six individual elections-related mandates have gone unreimbursed since 2011 with an additional three since 2013 -- the largest of which is for costs associated with changes in the law permitting any voter to request a VBM ballot or to be designated as a permanent VBM voter. Prior to that, only voters who had specified reasons were permitted to request a VBM ballot or become a permanent VBM voter.

In March, 2015, the Department of Finance reported that the total amount of these unfunded mandates had exceeded \$118 million to date. Despite this, no local jurisdictions administering elections have failed to comply with the requirements of the statutes that resulted in the mandates.

Special Vacancy Elections: From 1993 through 2007, the state reimbursed counties for the costs of special elections held to fill vacancies in the Assembly, Senate and Congress. Depending on location and timing, the cost to administer one of these special elections can exceed \$1 million each. However, the provision of state law that required the state to reimburse counties for the costs of these elections expired January 1, 2008.

Since then, numerous bills, including, most recently, AB 971 (Chang) of 2015, sought to once again reimburse counties for the costs associated with conducting these special elections. However, none of those bills were successfully enacted. In each instance the proposals received unanimous support in both Assembly and Senate election policy committees but died on suspense in either the Assembly or Senate Appropriations Committees. According to records provided by the Secretary of State, since 2008 there have been 45 special elections conducted to fill vacancies in the State Senate, Assembly and Congress.

SB 967 (Vidak), which was introduced on February 8, 2016, would require the state to pay expenses for these special elections incurred between January 1, 2008,

and December 31, 2016. SB 967 is now pending in the Senate Committee on Elections and Constitutional Amendments.

Proposition 41, HAVA, and the Top to Bottom Review

In September 2001, AB 56 (Shelley), Chapter 902 of 2001, also known as the Voting Modernization Bond Act of 2002, provided \$200 million in state bond funds to help counties pay for new voting equipment and established a Voting Modernization Board to carry out this task. Governor Gray Davis signed the bill and AB 56 became Proposition 41 and was placed on the March, 2002 ballot (see attached portions of the June, 2002 Voter Information Guide related to Proposition 41). Voters approved Proposition 41 with a 52 percent vote in favor of the measure.

The text of Proposition 41 stated that, "Fund money shall only be used to purchase systems certified by the Secretary of State" and that counties receiving funds must match "fund moneys at a ratio of one dollar of county moneys for every three dollars of fund moneys."

At the federal level, Congress passed and President George W. Bush signed the Help America Vote Act (HAVA) in 2002. Among its provisions, HAVA provided federal matching grants to states to help pay for modernizing voting equipment. According to the State Auditor, California received \$380 million in HAVA funds, \$195 million of which went to counties to replace their voting equipment beginning in 2004. Nearly all California counties purchased new voting systems, including several that opted for direct recording electronic (DRE) voting systems for use in polling places.

In 2007 however, then-Secretary of State Debra Bowen conducted a "top-to-bottom" review of many of the voting systems certified for use in California. According to Secretary Bowen, the review was "designed to restore the public's confidence in the integrity of the electoral process and to ensure that California voters cast their ballots on machines that are secure, accurate, reliable, and accessible." Furthermore, the review uncovered a "number of security vulnerabilities in all of the voting systems they tested."

Following the review, the Secretary of State's office decertified and conditionally recertified several DRE voting systems that were being used in numerous California counties. As a result, many of the affected counties were unable to use their DRE systems for general polling place voting, and replaced them with paper-based optical scan voting systems.

In a press release dated August 15, 2007, Secretary Bowen stated, "Twenty-one counties rely on either the Sequoia Edge I, the Sequoia Edge II, or the Diebold

TSx DRE systems for their polling place system. Except for the single DRE allowed per polling place [required to accommodate disabled voters], these counties will have to adopt a new Election Day voting system. It is in these 21 counties where voters will notice the biggest change on Election Day."

What Options are Available?

As stated above, examining the extent, ramifications, and available options to mitigate this problem will be the main focus of this hearing. Many informed observers believe that further funding assistance from the federal government is unlikely in the near future. Ergo, it is incumbent upon the state and/or the counties to find a solution. Possibilities include a new bond measure, a one-time budget allocation, or a longer term state assumption of at least some election costs. Of course, each of these direct funding options has specific hurdles associated with them.

Other options also include permitting counties to conduct elections in ways that would reduce the amount or type of costly equipment needed, e.g., all mail ballot elections or using a Colorado-style vote center model for conducting elections as proposed by SB 450 (Allen & Hertzberg) which is currently pending in the Assembly Elections and Redistricting Committee. While these options may require an initial investment in new types of equipment, it is generally agreed that they will result in long term savings.