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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 1328                      **Hearing Date:** April 16, 2024  
**Author:** Bradford  
**Version:** February 16, 2024  
**Urgency:** Yes                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Elections*

## HISTORY

**Source:** California Secretary of State

**Prior Legislation:** Not applicable

**Support:** California Association of Clerks & Election Officials

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to authorize the Secretary of State (SOS) to impose additional conditions of approval for electronic poll books, ballot manufacturers and finishers, ballot on demand (BOD) systems, voting systems, and remote accessible vote by mail (RAVBM) systems, as specified. This bill updates existing election record retention, preservation, and destruction requirements to provide clear guidance for electronic voting data, as specified. This bill expands and clarifies two existing felonies related to voting technology security.*

*Existing law* provides that the SOS is the chief elections officer of the state, and may adopt regulations to ensure the uniform application and administration of state election laws. (Elections Code Sec. 10)

*Existing law* requires, generally, electronic poll books, ballot manufacturers and finishers, BOD systems, voting systems, and RAVBM systems be approved by the SOS before their use in an election. (Elections Code Sec. 2550)

*Existing law* defines a “paper cast vote record” to mean an auditable document that corresponds to the selection made on the voter’s ballot and lists the contests on the ballot and the voter’s selections for those contests. Provides that a paper cast vote record is a ballot only if the paper cast vote record is generated on a voting device or machine that complies with ballot layout requirements and is tabulated by a separate device from the device that created the paper cast vote record. (Elections Code Sec. 305.5)

*Existing law* requires a ballot card manufacturer, ballot card finisher, or BOD system vendor to notify the SOS and affected local elections officials in writing within two business days after discovering any flaw or defect that could adversely affect the future casting or tallying of votes.

*Existing law* requires an electronic poll book vendor to notify the SOS and affected local elections officials in writing within 24 hours after discovering any flaw or defect that could adversely affect the future casting or tallying of votes. (Elections Code Sec. 13004)

*Existing law* requires any magnetic or electronic storage medium, used for a ballot tabulation program or containing election results, to be kept in a secure location, as specified. (Elections Code Sec. 15209)

*Existing law* requires specified ballots and identification envelopes to be kept by an elections official unopened and unaltered, as specified, for 22 months following a federal election, and for six months following any other state or local election. (Elections Code Sec. 17301)

*Existing law* makes it a felony for a person to knowingly, and without authorization, make or have in their possession a key to a voting machine that has been adopted and will be used in elections in California. (Elections Code Sec. 18564)

*Existing law* prohibits any part of a voting system from doing any of the following: being connected to the internet at any time; electronically receiving or transmitting 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; or receiving or transmitting wireless communications or wireless data transfers. (Elections Code Sec. 19205)

*This bill* defines the term “jurisdiction” to mean any county, city and county, city, or special district that conducts elections pursuant to the Elections Code.

*This bill* authorizes the SOS to impose additional conditions of approval as deemed necessary by the SOS for the certification of electronic poll books, ballot manufacturers and finishers, BOD systems, voting systems, and RAVBM systems.

*This bill* reduces, from two business days to 24 hours, the amount of time that a ballot card manufacturer, ballot card finisher, or BOD system vendor has to notify the SOS and affected local elections officials after discovering any flaw or defect that could adversely affect the future casting or tallying of votes.

*This bill* adds paper cast vote records to the list of election materials required to be kept by a county elections official for 22 months for elections involving a federal office, or six months for all other elections.

*This bill* requires any copy of a magnetic or electronic storage medium, used for a ballot tabulation program or containing election results, to be kept in a secure location, as specified.

*This bill* defines the term “ballot printer” to mean any company or jurisdiction that manufactures, finishes, or sells ballot cards, including test ballots, for use in an election conducted pursuant to the Elections Code, and recasts provisions of law that require a ballot printer, as defined, to be approved by the SOS before manufacturing or finishing ballot cards, or accepting or soliciting orders for ballot cards.

*This bill* defines the following terms for the preservation of electronic data related to voting technology:

- a) “Ballot image” to mean an electronically captured or generated image of a ballot that is created on a voting device or machine, which contains a list of contests on the ballot, may contain the voter selections for those contests, and complies with the ballot layout requirements. A ballot image can be considered a cast vote record.
- b) “Certified voting technology” to mean any certified voting technologies certified by the SOS, including voting systems, BOD printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.
- c) “Chain of custody” to mean a process used to track the movement and control of an asset through its lifecycle by documenting each person and organization who handles an asset, the date and time it was collected or transferred, and the purpose of the transfer. A break in the chain of custody refers to a period during which control of an asset is uncertain and during which actions taken on the asset are unaccounted for or unconfirmed.
- d) “Electronic data” to include voting technology software, operating systems, databases, firmware, drivers, and logs.
- e) “End of lifecycle” to mean the secure clearing or wiping of the certified voting technology so that no software, firmware, or data remains on the equipment and the equipment becomes a nonfunctioning piece of hardware.
- f) “HASH” to mean a mathematical algorithm used to create a digital fingerprint of a software program, which is used to validate software as identical to the original.
- g) “Lifecycle” of certified voting technology to mean the entire lifecycle of the certified voting technology from the time of certification and trusted build creation through the end of lifecycle of the certified voting technology.

*This bill* requires the following data to be kept by the elections official, on electronic media, stored and unaltered, for 22 months for those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States (US) Senator, and US Representative; and for six months for all other state and local elections:

- h) All voting system electronic data.
- i) All BOD system electronic data, if applicable.

- j) All adjudication electronic data.
- k) All RAVBM system electronic data, if applicable.
- l) All electronic poll book electronic data, if applicable.
- m) HASH values taken from the voting technology devices, if applicable.
- n) All ballot images, if applicable.

*This bill* provides that if a contest is not commenced within the 22-month period or a six-month period, or if a criminal prosecution involving fraudulent use, using the ballot tally system to mark or falsify ballots, or manipulation of the ballot tally system, is not commenced within the relevant period, the elections official shall have the backups destroyed.

*This bill* authorizes certified voting technology equipment and components that are at the end of lifecycle to be securely disposed of or destroyed with the written approval of the manufacturer and the SOS.

*This bill* requires all of the following to occur for any part or component of certified voting technology for which the chain of custody has been compromised or the security or information has been breached or attempted to be breached:

- a) The chief elections official of the city, county, or special district and the SOS be notified within 24 hours of discovery.
- b) The equipment be removed from service immediately and replaced if possible.
- c) The integrity and reliability of the certified voting technology system, components, and accompanying electronic data be evaluated to determine whether they can be restored to their original state and reinstated.

*This bill* expands an existing crime that makes it a felony to knowingly, and without authorization, possess a key to a voting machine that has been adopted and will be used in elections in California, to additionally include possessing credentials, passwords, or access keys to such a voting machine.

*This bill* clarifies an existing crime that makes it a felony to interfere or attempt to interfere with the secrecy of voting or ballot tally software program source codes, by adding a provision that states that interfering or attempting to interfere with, includes but is not limited to, knowingly, and without authorization, providing unauthorized access to, or breaking the chain of custody to, certified voting technology during the lifecycle of that certified voting technology, or any finished or unfinished ballot cards.

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

*This bill* requires a voting system to be used in a configuration of parallel central election management systems separated by an air-gap. Provides that an “air-gap” includes all of the following:

- a) A permanent central system known to be running unaltered, certified software and firmware that is used solely to define elections and program voting equipment and memory cards.
- b) A physically-isolated duplicate system, reformatted after every election to guard against the possibility of infection that is used solely to read memory cards containing vote results, accumulate and tabulate those results, and produce reports.
- c) A separate computer dedicated solely to this purpose that is used to reformat all memory devices before they are connected to the permanent system again.

*This bill* makes technical, clarifying, and conforming changes.

## COMMENTS

### 1. Need for This Bill

According to the author:

There are current election code sections regarding the retention and preservation of election materials. SB 1328 is expanding upon the already existing law to clarify procedures and practices that are already in place. Further, this proposal provides uniform application throughout the state regarding the retention of voting technology election related materials.

### 2. Expansion of Felony

Existing law makes it a felony punishable by 2, 3, or 4 years in county jail to tamper or interfere with voting machines or voting software. This bill expands that felony to provide that “interferes with or attempts to interfere with” includes knowingly, and without authorization, providing unauthorized access to, or breaking the chain of custody to, either of the following:

- (i) Certified voting technology during the lifecycle of that certified voting technology.
- (ii) Any finished or unfinished ballot cards.

This bill also expands the felony for possessing a key to a voting machine without authorization to include possession of credentials or passwords without authorization.

### 3. Other Changes Governing Elections

This bill also makes a number of changes including the expansion of authority includes the certification of electronic poll books, ballot printers, ballot on demand systems, voting systems, and RAVBM systems. These other changes are under the jurisdiction of Elections and Constitutional Amendments which passed this bill with a vote of 7-0 on April 2.

**4. Argument in Support**

The California Association of Clerks & Election Officials supports this bills stating:

Under current law, voted ballots are required to be kept by county elections officials for 22 months for elections involving a federal office or 6 months for all other elections. This bill would expand this to include paper cast vote records. The bill would also require county elections officials to keep certain electronic data for 22 months for elections for federal office or six months for all other elections.

Currently, it is a felony punishable by imprisonment for two to four years to knowingly, and without authorization, possess a key to voting equipment that has been adopted and will be used. SB 1328 would expand this crime to include knowing and unauthorized possession of credentials, passwords, or access keys to voting equipment.

**-- END --**