

August 10, 2005

BILL ANALYSIS

BILL NUMBER: SB 370 (As Amended June 27, 2005)
AUTHOR: Bowen
SUBJECT: Voting systems
POSITION: Oppose

DESCRIPTION

This bill provides that on a direct recording electronic (DRE) voting system, the electronic record of each vote must be considered the official record of the vote, except that the paper record must be the official paper audit record and must be used in the manual tally and any recount.

This bill also provides that for purposes of DRE voting systems, "conducted manually," means that the paper record copies of the electronically recorded vote are counted.

EXISTINGLAW:

Existing law requires, in general, that the Secretary of State establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements. Existing law also prohibits the Secretary of State from approving a DRE voting system that does not include an accessible voter verified paper audit trail, and will prohibit, on and after January 1, 2006, a city or county from contracting for or purchasing a DRE voting system that does not include an accessible voter verified paper audit trail. Existing law also requires that, as of January 1, 2006, all direct recording electronic voting machines in use on that date, regardless of when contracted for or purchased, shall have received federal qualification and shall include an accessible voter verified paper audit trail.

Elections Code 15627 provides that, if in the event of a recount of an election in which the votes were recorded by a punchcard, electronic, or electromechanical system, the voter demanding the recount may select whether the recount is conducted manually, by means of the voting system used originally, or both.

THIS BILL:

Amends Elections Code section 15627 to provide that for purposes of DRE voting systems, "conducted manually" means that the paper record copies of the electronically recorded vote are counted manually.

Adds Section 19253 to the Elections Code to *provide that on a DRE voting system, the electronic record of each vote must be considered the official record of the vote, except that the paper record must be the official paper audit record and must be used in the manual tally and any recount.*

ANALYSIS

According to the author, if the purpose of the 1% manual recount is to try to verify the accuracy of the vote, it makes sense to use the paper receipts produced by DRE voting machines to verify the accuracy of the machines and the votes at the same time. That way, according to the author, elections officials will be able to verify whether the DRE was recording the same information electronically and on the paper receipt, though there is no way to determine if it was accurately recording the voter's vote.

The Secretary of State is concerned that this bill treats the paper record copy of a DRE as a ballot, while not requiring the paper record copy to meet the standards of a ballot. Current state law and regulations set numerous conditions that must be met in the printing of ballots. These conditions include the weight of the paper, required watermarking of the paper, font size to be used, etc. Neither current law nor regulations establish these same standards for the paper record copy of a DRE. The Secretary of State is concerned that without these standards, the paper record copy will not retain its integrity during the 1% manual tally and any necessary recounts.

Additionally, members of the disabled community are concerned that making the paper record copy the ballot by which the manual tally and recounts are based will result in disenfranchisement. Currently, a DRE can give a visually impaired voter an audio playback of the electronic ballot, however, most DREs are not capable of providing an audio playback of the paper record copy. Without the audio playback, the disabled community contends that some people will not be able to verify the paper record copy, and therefore will not be able to vote in a private manner.

The California Association of Clerks and Election Officials have taken an oppose position on this measure. The Association is concerned that a recount of the paper ballots would add a significant amount of time to the required one percent manual recount. They are concerned that since this tally must occur within the 28-day canvass period, they will not have time to complete the canvass. Additionally, the Association is concerned that paper jams and other malfunctions with DRE voting systems on election day, will prevent the manual tally from matching the electronic tally. Under this bill, these malfunctions would result in a voter being disenfranchised.

The Secretary of State believes that it is extremely important for voters to know that a DRE voting system is in proper working order and performing correctly. To that end, the Secretary of State has performed a parallel monitoring program in past elections, wherein random DREs are removed from precincts on Election Day and tested to verify they function properly and only contain hardware, software and firmware components that the State has certified. The Secretary of State plans to continue this program for the foreseeable future.

FISCAL ANALYSIS

Unknown.

COMMENTS

If you have any questions concerning this analysis, please contact the Legislative Affairs Unit of the Secretary of State's Office at 916/653-6774.