



February 3, 2016

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed a proposed statutory initiative that would make changes to how Californians vote (A.G. File No. 15-0118, Amendment No. 1).

## **BACKGROUND**

### **Elections**

***Voting in California.*** Elections in California generally are administered by county elections officials. In order to vote in an election in California, residents must register to vote in the county in which they reside. (At the November 4, 2014 General Election, 17.8 million of the 24.3 million people in California who were eligible to register to vote were registered to vote.) Registered voters may choose to cast their ballot (1) in person at a polling place or (2) using a vote-by-mail ballot.

***Vote by Mail.*** Any voter can request a vote-by-mail ballot from his or her county elections office at least seven days before an election day to be eligible to vote by mail in that election. In addition, any registered voter may ask to permanently vote by mail. At the November 2014 General Election, nearly half of registered voters had chosen to vote by mail on a permanent basis. So long as a vote-by-mail ballot is received by the county elections office by 8:00 p.m. on election day, voters may choose to submit their ballot by mail or in person. State law specifies what materials must be sent to voters who vote by mail and the procedures elections offices must follow to process the ballots. Under limited circumstances specified by law, counties can hold elections whereby all votes are cast using vote-by-mail ballots.

***Secretary of State.*** Among other duties, the Secretary of State is the state's chief elections officer and oversees a variety of elements related to elections, campaigns, and lobbying in California. In addition to maintaining other information technology (IT) systems, the Secretary of State oversees the development of California's statewide voter registration system, known as VoteCal, discussed in greater detail below.

## IT Procurement

**Centralized State Procurement Process.** Historically, the Department of General Services (DGS) was responsible for overseeing the procurement of goods and services for the state. In an effort to improve the probability of success for large IT systems, state law shifted the responsibility for approving and overseeing the procurement of all state IT systems from DGS to the California Department of Technology (CalTech) in 2013. The intent of the shift was to consolidate procurement and IT project oversight authority within a central organization. Through its Statewide Technology Procurement Division, CalTech oversees the procurement of the state's most critical IT projects.

**VoteCal.** The 2002 federal Help America Vote Act (HAVA) requires all states to establish a centralized voter registration database. The March 2006 Feasibility Study Report for the VoteCal project indicated that the project would ensure that California complied with all HAVA requirements by December 31, 2009 and would cost about \$69 million. After encountering a number of challenges, CalTech indicates that the VoteCal project now is on track to be completed in June 2016 and cost nearly \$100 million. Once VoteCal is fully operational, it will (1) bring the state into compliance with HAVA, (2) provide a centralized voter registration database that is accessible by elections offices in all 58 counties, and (3) establish a publicly available website which will allow voters to register to vote online.

## PROPOSAL

**Election Data Security Commission.** The measure establishes a new commission for purposes of adopting regulations and policies related to online voting and to procure an IT system that would allow voters who are registered to vote by mail to submit their ballots electronically. The commission would consist of seven members: the Secretary of State would serve as the chair of the commission and the remaining six members would be appointed by the Governor. The commission members would not receive compensation; however, they would be reimbursed for travel expenses related to their duties. The commission would be able to appoint an executive director and other staff as it deems necessary to carry out its duties. Two years after successfully procuring an online voting system, the commission would cease to exist and its duties would be subsumed by the Secretary of State's Office.

**Procurement Authority.** The measure requires the commission to use a competitive bidding process to procure the online voting system; however, under the measure, the commission would be exempt from the state's existing IT procurement process overseen by CalTech. The measure authorizes the commission to contract with DGS for assistance during the procurement process.

**Funding.** The measure requires the Legislature to appropriate \$20 million from the state's General Fund to procure the new IT system. The measure further specifies that no more than 5 percent (\$1 million) of this appropriation may be used for "administrative costs" as defined by the State Controller's Office (SCO). In addition, the measure specifies that the Legislature shall appropriate up to \$1 million from the state's General Fund each calendar year for the commission's operating expenses. The measure further specifies that any costs incurred by SCO or DGS as a result of the measure would be reimbursed to those departments from the \$20 million appropriation.

***Standards for Online Voting System.*** The measure directs the commission to evaluate the integrity and security of all existing voting systems, including current vote-by-mail and electronic voting systems. The commission would be required to issue a report of its findings no later than December 31, 2018. Following this review of existing systems, the commission would be required to develop and approve standards for secure electronic submission of ballots no later than December 31, 2019. Under the measure, these standards could be updated in the future (either by the commission or by the Secretary of State after the commission has been disbanded).

***Online Voting System.*** The commission must develop software and procedures for voters to electronically submit vote-by-mail ballots. The measure requires the commission to test the system using a pilot program whereby military voters from selected counties may submit their ballots electronically. The measure requires these pilot programs to begin no later than the November 2022 statewide general election. After completing the pilot programs, the measure requires the commission to evaluate the software and procedures used to conduct the pilot programs to determine if the system meets the standards established by the commission. If the system meets the standards, the commission would certify the system to allow any voters statewide to submit vote-by-mail ballots electronically. In the event that the system used in the pilot programs does not meet the standards established by the commission, the measure requires the commission to update the software and procedures for additional pilot programs “until pilot programs satisfy the standards.” Once the commission has certified an online voting system, each county would be required to use the certified system to allow voters to submit ballots electronically. The measure requires the Legislature to appropriate funds from the state’s General Fund to reimburse counties for their costs of implementing the system.

## **FISCAL EFFECTS**

***One-Time and Ongoing State Costs.*** The state would be responsible for paying the costs to implement and maintain the new online voting system, including reimbursing county governments for any costs they incur to implement the system. Because of the uncertainties surrounding any large IT project, it is difficult to accurately predict how much money a large IT system might cost or how long it might take to get the system up and running. That being said, the new IT system would have similar requirements as VoteCal in that it would be a state system that interfaces with county elections offices and with voters. In addition, the Secretary of State would be actively involved in the procurement of the new system as is the case with VoteCal. The state’s experience with the VoteCal project suggests that the online voting system ultimately could cost many times more than the \$20 million that would be appropriated by the measure for the procurement of the new system. In addition, the new voting system would have considerable security issues to overcome that could make the project more expensive and take more time to procure than VoteCal. Accordingly, we think it is reasonable to estimate that the cost to procure the new system could be many tens of millions of dollars, possibly exceeding \$100 million. The Secretary of State would require ongoing spending to maintain the new voting system, with costs likely ranging up to a few million dollars each year.

***No Significant Fiscal Effect on County Governments.*** The measure would require the state to reimburse counties for costs associated with implementing the statewide online voting system.

Accordingly, the new IT system likely would have no significant fiscal effect on county government.

*Summary of Fiscal Effects.* The measure would have the following fiscal effects on state and local governments:

- One-time state costs—likely many tens of millions of dollars and possibly exceeding \$100 million—to implement a new information technology system. Ongoing state costs to maintain system—possibly millions of dollars each year. No significant fiscal effect on local governments.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Michael Cohen  
Director of Finance