



February 3, 2016

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th 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. 15-0117, 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.

Polling Places. Voters who choose to vote at a polling place are assigned to vote at a specific polling place in the county. (A voter may cast a provisional ballot at any polling place in the county. A provisional ballot looks like a regular ballot but is kept separate and not counted until after elections officials confirm that the voter is registered to vote in that county and has not already voted in that election.) The system that voters use to cast their ballot at a polling place varies and may be paper-based or digital, depending on the jurisdiction. State law establishes a number of requirements for polling places, including the number of polling places that must be open on the day of the election, training for poll workers, and the accessibility of polling places. In general, a county must have at least one polling place for every 1,000 voters in the jurisdiction subject to the election.

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

All-Mail Ballot Elections

Beginning with elections held in 2018, the measure allows counties to conduct any election as an all-mail ballot election—meaning counties would not need to operate polling places on the date of an election and *all* registered voters in the affected jurisdiction would receive a vote-by-mail ballot. The measure imposes specific requirements for counties conducting an all-mail ballot election to provide “ballot drop off locations” and “vote centers” as described below.

Ballot Drop Off Locations. The measure requires that voters be able to drop off ballots in a secure, accessible, and locked ballot box provided by election offices. The measure specifies that (1) ballot drop off locations shall be open at least during regular business hours beginning not less than 28 days before the date of the election and (2) at least two such ballot drop off locations must be provided within the jurisdiction where the election is held and there must be at least one ballot drop off location for every 15,000 registered voters in the jurisdiction.

Vote Centers. The measure requires county elections offices to maintain vote centers that would allow voters in that county to (1) cast vote-by-mail ballots; (2) register to vote; (3) receive and vote a provisional ballot; (4) receive a replacement ballot under specified circumstances; and (5) vote a regular, provisional, or replacement ballot using accessible voting equipment that provides for a private and independent voting experience. In addition, the measure specifies that at these vote centers elections officials would be able to use an “electronic mechanism” to immediately access specified voter registration data. The measure specifies the minimum number of vote centers that must be maintained in a jurisdiction such that (1) not less than ten days before the day of the election there is at least one vote center for every 30,000 registered voters and (2) on the day of the election at least one vote center is provided for every 15,000 registered voters.

Electronic Submission of Ballots

Election Data Security Commission. The measure establishes a new commission for the 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.

Ongoing Savings to County Governments. The provisions of the measure related to authorizing county elections officials to conduct mail-only elections likely—on net—would reduce the costs to county elections offices to conduct elections. Counties choosing to use an all-mail ballot election would not maintain polling places on the date of the election. Instead, elections officials would maintain vote centers and ballot drop off locations. In comparison to a polling place, a vote center could be more expensive to county governments because centers would serve more voters and be open for more days. However, far fewer vote centers would need to be established than the number of polling places required by current law. For example, a jurisdiction with 90,000 voters would have at least (1) 90 polling places on the date of the election under current law but (2) six voting centers on the date of the election and three voting

centers in the days leading up to the election under the measure. The savings to county governments resulting from these provisions would depend on future decisions made by county officials. If all county governments chose to hold an all-mail ballot election for a statewide general election, these savings to counties could possibly be in the range of tens of millions of dollars.

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.
- Ongoing savings to counties for administering elections—possibly in the range of tens of millions of dollars for a statewide general election.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance