



October 13, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

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. 21-0012).

BACKGROUND

Administration of Elections in California. Generally, elections are administered by county election officials. County election officials' duties include procuring voting equipment, registering voters, sending voters ballots and other election materials, and receiving and tabulating cast ballots. The Secretary of State provides statewide oversight over the administration of elections in California. Among its many duties, the Secretary of State's responsibilities include certifying the voting technology that can be used in California.

Statewide Elections. Statewide elections typically follow a two-year cycle whereby two statewide elections are held every two years: a statewide primary election held in either March—in the case of a presidential election year—or June followed by a statewide general election held in November. Statewide elections may be held at other times, for example, a special statewide election to determine whether a sitting Governor should be recalled.

Voting in California. In order to vote in an election in California, residents must register to vote in the county in which they reside. (As of August 30, 2021, of the 24.8 million people who were eligible to vote in California, 22.1 million were registered to vote.) Under recently enacted legislation, Chapter 312 of 2021 (AB 37, Berman), all voters in California receive a vote by mail (VBM) ballot. Voters can choose to vote by filling out and putting their VBM ballot in the mail, dropping the VBM ballot off at a ballot drop off location, or casting a ballot in person at a voting location. If a voter chooses to vote in person, they must sign a list of registered voters prior to voting. If the voter chooses to not cast a ballot in person and instead drops a VBM ballot in the mail or at a drop off location, they must sign the official envelope in which they send their ballot. The envelope is unique to the particular voter. After county election officials receive the VBM ballot, before the envelope is opened, election officials verify the signature of the voter on the outside of the envelope. Once the signature has been verified, election officials open the

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envelope, extract the ballot, and the voter's selections are tabulated. Regardless of how a voter casts their ballot, state law requires that there be a paper record—verified by the voter before their ballot is cast—of the voter's selections. The paper record of the voter's selections does not identify the individual voter who cast that ballot. The paper records of the votes cast are retained by county election officials for 22 months after an election. In most cases, the ballot itself is the paper record. Other than signature verification on VBM ballot envelopes, or signing the list of registered voters when voting in-person, voters in California generally are not required to show identification in order to cast a ballot.

Voting Technologies. Before any technology or equipment can be used in the voting process, the technology or equipment must first be certified by the Secretary of State. Some technology at voting locations—for example, electronic poll books—are connected to the internet; however, voting machines used by voters to cast ballots at voting locations do not have internet connectivity.

PROPOSAL

Give Voters Option to Cast Ballots Over the Internet. In addition to the existing VBM and in-person voting options, the measure would create a new option that would allow voters to cast their ballot over the internet using equipment at a voting location or remotely. Initially, under the measure, the Secretary of State would be required to develop a system that allows voters to cast a ballot over the internet using equipment at a voting location. The measure would impose a number of requirements on this system, including that voters be able to save incomplete ballots and return to finish and submit the ballot at a later date. The measure would require that this system be operational so that voters can cast ballots over the internet at voting locations in the first statewide election following the measure's approval by voters (likely March 2024). By the next statewide election—likely November 2024—the measure would require the Secretary of State to expand the system to allow voters to vote remotely over the internet using devices outside of the voting location. This means that the measure would require both phases of the internet voting system (voting over the internet at a voting location and voting over the internet outside of a voting location) to be operational within two years of voters approving the measure.

Receipt of Voting. The measure specifies that, upon casting a ballot over the internet, voters would receive an encrypted receipt via email or other applicable electronic means as designated by the voter. In addition, the measure would require that the internet voting machine prepare a paper receipt. The measure would require, among other things, that these receipts contain unique identifiers specific to the individual voter. The measure would require that hard copy receipts of each ballot cast over the internet be retained for at least 22 months by the Secretary of State, the county election official, and a third-party entity selected by the Secretary of State. The measure does not specify how a remote voting machine would print a receipt or what obligation voters have to send the resulting paper receipt to their county election official, the Secretary of State, or the third-party entity.

Requirements on Secretary of State. In addition to the requirements already discussed, the measure would impose a number of other ongoing requirements on the Secretary of State for the initial implementation at election locations and later from remote locations. These include

developing a uniform application that would be used by voters to apply to vote over the internet; certifying only one type of hardware and software to be used for internet voting machines at voting locations; registering each internet voting machine used at a voting location with a unique identifier specific to that device; establishing—in coordination with local election officials—a procedure for voters to cure their ballot if they receive an error message upon casting the ballot over the internet; and establishing procedures to ensure the secrecy of the ballot cast over the internet and the security, confidentiality, and integrity of any personal information collected, stored, or otherwise used in voting over the internet.

Requirements on Election Officials. In addition to the requirements already discussed, the measure imposes a number of requirements on county election officials. These additional requirements include processing applications from voters to vote over the internet between the 29th and the 7th day before an election, taking no more than five days to process an application, notifying voters that their application to vote over the internet has been accepted and processed or if there is a problem processing the application, and providing machines at voting places that allow for voting over the internet.

Reimbursement to County Election Officials. The measure specifies that the State Controller shall use funding appropriated by the Legislature to reimburse counties for their costs to comply with the measure.

FISCAL EFFECTS

Large Statewide IT System Would Have Significant One-Time and Ongoing Costs. The information technology (IT) system required by the measure would be large, complex, and have unique requirements to ensure information is secure in the system. Although the measure requires that the system would be operational within two years, the system could take many years to complete. Based on other complex statewide IT systems, it could cost the state and local governments hundreds of millions of dollars to develop the system. The ongoing maintenance and operations costs of the system likely also would be significant due to the system's complexity and security issues—likely millions of dollars annually, if not more.

Procurement and Maintenance of Voting Machines and Internet Equipment at Voting Sites Would Have Significant Regular Cost. To protect against evolving security issues over time, the voting machines and internet connection equipment at voting sites and elsewhere likely would need to be regularly updated. These costs likely would be incurred every two years in preparation for primary and general statewide elections. On an annualized basis, these costs could be millions of dollars, or more.

Costs Likely Borne by State. The State Constitution generally requires that the state reimburse local governments for the cost to implement state mandated activities. Generally, voter approved initiatives are exempt from this reimbursement requirement. This initiative measure, however, explicitly identifies costs imposed on local governments by the measure to be reimbursable by the State Controller, subject to legislative appropriation.

State Appropriations Limit Consideration. The State Constitution limits how much tax revenues the state can spend each year, with exceptions like spending on infrastructure. Some of

the spending under this measure could be considered infrastructure. In recent years, the limit has been an important consideration in state budgeting decisions. Revenues in excess of the limit, over a two-year period, trigger a requirement for taxpayer rebates and additional school payments.

Summary of Fiscal Impacts. We estimate that the measure would have the following fiscal effects:

- One-time costs to government, in the range of hundreds of millions of dollars or more, likely to be paid at least in part by the state to establish a new statewide online voting system.
- Ongoing costs to government, in the range of tens of millions of dollars or more, likely to be paid at least in part by the state each year to maintain the new online voting system and implement other provisions of the measure.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance