

This bill:

- 1) Enacts the Voting Modernization Bond Act of 2018, which allows the sale of up to \$450 million in general obligation bonds to fund improvements to voting systems, contingent on the approval of voters at the June, 2018, statewide direct primary election.
- 2) Provides that counties may apply for funds if it has agreed to pay expenses for any of the voting equipment listed below, and continues to pay on the date the voters approve the bond. Counties that choose to conduct elections under the CVCA may receive \$3 from the Fund for every \$1 they pay, while counties that do not only receive \$2 for every \$1 they spend. Counties may use funds for any of the following:
 - a) Voting systems certified or conditionally approved by the SOS that do not use pre-scored punch card ballots,
 - b) Electronic poll books certified by the SOS,
 - c) Ballot on demand systems certified by the SOS,
 - d) Remote accessible VBM systems certified or conditionally approved by the SOS,
 - e) Vote by mail drop boxes that comply with regulations promulgated by the SOS,
 - f) Technology to facilitate electronic connection between polling places, vote centers, and the office of the county elections official or the SOS's office, and
 - g) Vote by mail ballot sorting and processing equipment.
- 3) Provides that counties may also use funds to contract and pay for:
 - a) Research and development of new voting systems not certified by the SOS, if it uses nonproprietary software and firmware with disclosed source code, except for off-the-shelf unmodified commercial software and firmware.
 - b) Manufacture of the minimum number of voting system units reasonably necessary to test and seek certification or conditional approval, or testing and demonstrating the capabilities of the system or part of the system in a pilot program.
- 4) Requires that any voting system paid for with bond funds must produce a paper version or representation of the voted ballot or of all the ballots cast on a unit of that system at the time the voter votes or when the polls close, if it does not require the voter to directly mark on the ballot. The paper copy shall not be given to the voter but is instead retained by the elections official.
- 5) Provides that the Legislature may alter county eligibility requirements, amounts of matching funds, or allowable uses of bond funds by 2/3 vote, if the change is consistent with the purposes of the act.

- 6) Makes other technical and conforming changes to existing law in order to carry out the provisions of this bill.

BACKGROUND

State of Voting Equipment in California: In the aftermath of the 2000 Presidential election, California and the federal government enacted legislation designed to modernize elections, including providing significant new funding to replace voting systems. In California, AB 56 (Shelley, Ch. 902, Statutes of 2001), established the VMBA, which authorized the sale of \$200 million in bonds for counties to use for the purchase of updated voting systems. At the federal level, the Help America Vote Act (HAVA) established new standards for federal elections and provided funding to states to help implement its provisions. Of the nearly \$400 million in federal funds that California received as a result of HAVA, \$195 million was allocated to counties to help cover the costs of voting system upgrades.

In addition to providing funding for voting system upgrades, policy changes made at the state and federal level meant that many counties had to purchase new voting equipment, or to make modifications to their existing voting systems. At the state level, the SOS decertified two punch card voting systems due to concerns that such systems resulted in high levels of invalid votes. At the time they were decertified, those two systems were being used in nine California counties, with more than half of California voters residing in those counties. Additionally, the state and federal government both enacted new accessibility requirements for voting systems.

In order to comply with these new requirements, many counties purchased new electronic voting systems using the state and federal funding available for voting system upgrades. In 2007, however, then-Secretary of State Debra Bowen conducted a "top-to-bottom" review of many of the voting systems certified for use in California. According to Secretary Bowen, the review was "designed to restore the public's confidence in the integrity of the electoral process and to ensure that California voters cast their ballots on machines that are secure, accurate, reliable, and accessible." Secretary Bowen reported that the review uncovered a "number of security vulnerabilities in all the voting systems...tested."

Following the review, the SOS decertified and conditionally recertified electronic voting systems that were being used in numerous California counties. As a result, many of the affected counties were unable to use their electronic voting systems for general polling place voting, and replaced them with paper-based optical scan voting systems. A "Frequently Asked Questions" document that was released by the SOS shortly after the completion of the top-to-bottom review noted that the conditional recertification of voting systems had significantly restricted the use of polling place voting systems used by 21 counties. As a result, the document noted that "[e]xcept for the single [voting unit] allowed per polling place [in order to comply with state and federal accessibility requirements], these counties will have to adopt a new Election Day voting system."

Notwithstanding the fact that many counties were forced to acquire new voting systems after the 2007 top-to-bottom review, according to information compiled by the office of the SOS, the majority of California counties are using at least some voting equipment purchased in 2006 or earlier, with a few counties using equipment that is even older

(according to this information, Los Angeles County still uses some voting equipment that was purchased in 1968). Most of the VMBA and HAVA funding for voting system replacement has been spent, though about \$96 million in funding remains between those two sources. Of the remaining funding available, however, nearly three-quarters is funding that remains in allocations set aside for Los Angeles County (approximately \$56 million remaining) and San Diego County (approximately \$15 million remaining). By contrast, 21 counties have exhausted all of the funding allocated to them under the VMBA and HAVA, while another 13 counties have less than 10% of their total allocated funding remaining.

The Legislative Analyst's Office (LAO) recently released a report in connection with the 2017-2018 budget process titled *Considering the State's Role in Elections*. In that report, the LAO noted that county governments are responsible for administering most local, state, and federal elections in California. While counties can bill other local governments for their share of the costs of administering elections (with some exceptions), the state and federal governments generally do not pay the proportional share of costs for administering state and federal elections. The report noted that while the state and federal government have occasionally provided one-time funding for elections costs (including funding for voting equipment through the VMBA and HAVA), the state has not provided regular ongoing funding for election administration. One of the recommendations in the LAO report was that the Legislature should consider one-time support to replace counties' voting systems.

Slow Development of New Voting Technology: The use of aging voting equipment is not unique to California. In 2014, the bipartisan Presidential Commission on Election Administration (Commission), which was established by President Obama after the 2012 Presidential election, warned of an "impending crisis in voting technology." The Commission, which was co-chaired by the former General Counsel to President Obama's 2012 re-election campaign and by the former National Counsel to Mitt Romney's 2012 campaign for President, noted that a large portion of the voting systems that were purchased using HAVA funds are reaching the end of their usable lives. The Commission's report further noted that for a number of reasons, including a federal voting system standard-setting and certification process that the Commission described as "unworkable," the voting system options available did not meet the needs of election administrators and did not "employ the sorts of advances that have become commonplace in consumer products and other industries."

In fact, concerns about the federal voting system review process prompted California to change its process for reviewing and approving voting systems for use in the state. Until 2014, California's voting system review process was designed to augment the federal voting system review and approval process. Prior to undergoing state review, electronic voting systems were required to be approved at the federal level. In 2013, however, due in part to frustration with the federal voting system certification process, the Legislature approved and the Governor signed SB 360 (Padilla, Ch. 602, Statutes of 2013), which removed the requirement that electronic voting systems had to be approved at the federal level before undergoing state review, and instead required voting systems to undergo more extensive and thorough testing and review by the SOS prior to being used in the state.

SB 360 also was designed to facilitate a project that was then underway in Los Angeles County —the Voting Systems Assessment Project (VSAP). Because of Los Angeles County's size, diversity, and complexity, the County found that the commercial off-the-shelf voting systems available for purchase did not meet the county's needs. As a result, the county established VSAP to identify and implement a new voting system by first defining the kind of voting system it wanted, and then being directly involved in the system's development. Accordingly, SB 360 established a voting system review and approval process that envisioned a situation where a local jurisdiction might be involved in the research and development of a new voting system, rather than having a review and approval process designed around the assumption that all voting systems would be developed by private vendors that would then sell or lease their products to local jurisdictions. In addition to the VSAP in Los Angeles County, the City and County of San Francisco currently is considering developing its own voting system.

California Voter's Choice Act and Voting Equipment: In addition to the fact that many counties are using voting equipment that is reaching the end of its useful life, recent changes to state law are likely to change the types of voting equipment that California counties will use to conduct elections in the future. SB 450 (Allen, Ch. 832, Statutes of 2016), enacted the CVCA, which permits counties to conduct elections in which all voters are mailed ballots, and voters have the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Fourteen specified counties are permitted to conduct elections under this system in 2018, while the remaining counties may use this system beginning in 2020.

Because the CVCA generally requires counties that conduct elections pursuant to its provisions to mail ballots to all registered voters, the CVCA will increase the use of VBM ballots. That, in turn, may increase counties' needs for VBM ballot processing equipment. The CVCA also requires counties to establish VBM ballot drop-off locations; many counties are likely to comply with this requirement by using VBM ballot drop boxes, which those counties may need to purchase. Additionally, counties that conduct elections under the CVCA are required to provide VBM ballots in an accessible format, which may require counties to purchase or otherwise procure remote accessible VBM systems.

Furthermore, the CVCA eliminates the requirement for counties to establish polling places for elections, but instead requires counties to establish vote centers. Vote centers are polling locations at which any registered voter in a county can cast a regular (i.e., non-provisional) ballot, regardless of the voter's precinct. Because the number of required vote centers is less than the number of polling places, the number of voting machines that a county has to purchase to accommodate in-person voting may be reduced under the CVCA. On the other hand, because voters have the option of casting a ballot at any vote center in the county, vote centers need to have a system that can provide any eligible voter in the county with the appropriate ballot. While smaller counties that have fewer ballot styles may be able to accommodate that need using pre-printed paper ballots, vote centers in larger jurisdictions likely will feature electronic voting systems that are pre-loaded with all the ballot types in the county, or ballot-on-demand printers that can produce the appropriate paper ballots as needed.

Finally, in order to verify the registration of voters, determine the correct ballot type for each voter, and ensure that a voter has not already cast a ballot, vote centers must

have a mechanism to verify voter registration information. In addition, vote centers are required to offer same day voter registration for voters in the jurisdiction. In most jurisdictions, these requirements are likely to be met through the use of electronic poll books that can communicate with county and state election systems in real-time. As a result, in addition to purchasing electronic poll books, elections officials may need to purchase or lease equipment to facilitate electronic connectivity between vote centers and elections officials' offices.

This bill includes an incentive for counties to conduct elections under the CVCA by providing \$3 in state funds for every \$1 in local funds for counties that conduct elections using the CVCA. Counties that do not use the CVCA would still be eligible for state funding for voting equipment under this bill, but the state's match of local spending would be lower: \$2 in state funds for every \$1 in local funds.

Bond Discussion. According to the Senate Committee on Governance and Finance:

When public agencies issue bonds, they borrow money from investors, who provide cash in exchange for the agencies' commitment to repay the principal amount of the bond plus interest. Bonds are usually either revenue bonds, which repay investors out of revenue generated from the project the agency buys with bond proceeds, or general obligation bonds, which the public agency pays out of general revenues and are guaranteed by its full faith and credit.

Section One of Article XVI of the California Constitution and the state's General Obligation Bond Law guide the issuance of the state's general obligation debt. The Constitution allows the Legislature to place general obligation bonds on the ballot for specific purposes with a two-thirds vote of the Assembly and Senate. Voters also can place bonds on the ballot by initiative, as they have for parks, water projects, high-speed rail, and stem cell research, among others. Either way, general obligation bonds must be ratified by majority vote of the state's electorate. Unlike local general obligation bonds, approval by the state's electorate doesn't automatically trigger an increased tax to repay the bond. The Constitution commits the state to repay investors from general revenues above all other claims, except payments to public education. California voters approved \$38.4 billion of general obligation bonds between 1974 and 1999, and approximately \$112 billion since 2000.

Should the voters approve the bond act, the Legislature usually appropriates funds to the chosen agencies to fund projects consistent with the criteria, generally as part of the Budget Act. The Department of Finance then surveys agencies to determine the need for bond funds based on a project's readiness, and then asks the State Treasurer to sell bonds in a specified amount. After the bond sale, the Department of Finance determines which bond acts and agencies receive bond proceeds.

Setting the right amount of state general obligation debt is difficult; both the State Treasurer and the LAO state that there's no correct amount. Instead, experts suggest that states should look at three criteria: affordability, comparability, and optimality.

California currently has \$74.5 billion of general obligation and \$9.4 billion of lease revenue debt outstanding, which is affordable. The Governor's 2017 Five-Year Infrastructure Plan states that the Debt Service Ratio, or the ratio between debt service

and general fund revenues, as 6.48% in 2016-17 and 6.54% in 2017-18. The State Treasurer calculates a debt service ratio of 5.24% in 2016-17 and 5.01% in 2017-18; the percentages differ because the State Treasurer accounts for offsets of federal government subsidies or transfers from special funds. Annual expenditures on debt service have grown from \$2.9 billion in 2000-01 to \$7.7 billion in 2016-17. Additionally, 95% of outstanding debt is fixed rate, and the state holds no interest rate swaps or other derivatives. While debt service percentages are reasonable, every dollar spent on debt service reduces the funding that is available for other priorities, and debt service is one of the fastest growing state costs in recent years, according to the Plan. The Plan proposes only \$338 million in new general obligation bonds. California's comparability to other states is less favorable, but improving. Determining optimality or whether government is investing in the quantity and quality of public capital desired by residents, and financing the appropriate share with debt, is more difficult. LAO recommends that the Legislature consider the Five-Year Infrastructure Plan as a starting point to developing a coordinated approach to infrastructure funding, and establish a committee to focus on statewide infrastructure.

The good news? Ratings issued from the three major credit ratings agencies often inform investors and the public regarding the state's creditworthiness, and assess any investment risk from investing in California general obligation bonds. Ratings agencies Fitch, Standard and Poor's, and Moody's praise California's deep and diverse economy, recent balanced and on-time budgets, reduced budget deficits, and improving reserves and liquidity. However, the agencies also state that California faces challenges: a highly volatile revenue system, constitutionally imposed governance restrictions, lack of significant reserves, high housing costs that threaten economic growth, minimal prefunding of retiree health care benefits, and a large backlog of maintenance and infrastructure needs, among others. Once considered an outlier, the difference between California bonds and other states as measured by the benchmark 30-year Municipal Market Data Index has tightened from a high of more than 150 basis points at the end of 2009 to around 10 basis points at the end of June 2016. On March 9th, the State Treasurer sold almost \$2.8 billion in bonds: new borrowing accounted for \$513.2 million, while refunding of existing bonds at lower interest rates totaled \$2.279 billion, creating about \$295 million in present value savings to taxpayers and \$406 million in debt service nominal savings over the remaining lives of the bonds. With interest rates climbing recently, the State Treasurer stated that the sale was a success, with an overall true interest cost was 3.56 percent, and yields ranging from 0.6 percent for the 2017 bonds to 3.9 percent for the 2046 bonds.

The bad news? California has a distinct problem: of the \$144 billion in general obligation bonds that voters have authorized, more than \$32.9 billion hasn't been issued yet. The state still hasn't issued more than \$7.5 billion to fund high speed rail, \$7.3 billion from the recent Proposition 1 water bond (AB 1471, Rendon of 2014), and \$9 billion in education facility bonds (Proposition 51, 2016), among others. While the state has made great progress reducing the amount of authorized but unissued bonds in recent years, many bond-funded projects have not yet received required approvals. As a result, even if the Legislature enacts and the voters approve this measure, as well as some of the other bonds approved by the Senate earlier this year, many of its purposes may have to wait several years for funding as projects funded by previously authorized bonds get up and running.

COMMENTS

- 1) According to the author: California's voting machines are becoming outdated and nearing the end of their useful "lives". Many voting machines are a decade old or even more. These systems need to be modernized in order to ensure our elections continue to be reliable. As voting systems age, the risks of failures or crashes increase. It is essential that investments in upgrading technology are made now, rather than waiting for our machinery to fail and possibly jeopardize electoral outcomes.

In addition to aging equipment and software, counties looking to transition to the vote center model of elections allowed under SB 450 (Allen) of 2016 will be able to save money in the long run but may need investments now in new systems for this new model of elections.

After the 2000 presidential election's controversies over equipment malfunctions in Florida, the federal government passed the Help America Vote Act to help fund system modernization throughout the states. California counties received about \$195 million in HAVA funds and also passed a \$200 million bond to further help counties pay for new equipment.

Now, it seems unlikely that California's counties will see similar help from the federal government again. It is time for the state to step up on behalf of fair, reliable and secure elections.

Current law does not provide the financial support needed by counties to upgrade their voting infrastructure. This bill would enable every county to make sure their elections systems are up to date and compliant with regulations, and consequently provide benefits for voters across the state.

- 2) Opposition Argument. In a letter of opposition to this bill the Howard Jarvis Taxpayers Association stated the following:

AB 668 would place a \$450 million dollar General Obligation bond on the 2018 statewide ballot to fund new voting machines.

California needs to continue to be prudent about its debt obligations. Currently, the state has a debt service ratio of about six percent. That means paying off G.O. bond debt interest consumes about six percent of General Fund resources, money that cannot go to other important priorities. Prioritizing our debt obligations is especially important after voters approved a \$9 billion school bond last November.

But even beyond debt concerns, more technical issues need to be discussed. A recent Sacramento Bee article on this bill noted that the last statewide voting machine bond approved by the electorate (Proposition 41, 2002) allocated resources to be spent on voting machines that were later decertified and some were never used. Amendments should be taken in this bill to better protect taxpayer dollars.

In addition, AB 668 fails to address the issue of life cycle costs. Bonds are appropriate if they are issued to fund projects that will last at least the 30-40 year length of most bonds. This is certainly not true for voting machines which have an average useful life of 10-15 years. It would be more fiscally appropriate for these machines to be purchased using our record high General Fund revenues.

RELATED/PRIOR LEGISLATION

AB 56 (Shelley & Hertzberg of 2001) enacted the Voting Modernization Bond Act of 2002, which authorized, for purposes of assisting counties in the purchase of updated voting systems, the issuance, pursuant to the State General Obligation Bond Law, of bonds in the amount of \$200,000,000. The act was approved by the voters at the March 5, 2002, statewide election.

PRIOR ACTION

Senate Governance and Finance Committee:	5 - 2
Assembly Floor:	56 - 19
Assembly Appropriations Committee:	13 - 4
Assembly Elections and Redistricting Committee:	5 - 1

POSITIONS

Sponsor: Secretary of State, Alex Padilla

Support: African American Voter Registration, Education, and Participation
 California Association of Clerks and Election Officials
 California Association of Counties
 California Labor Federation
 California League of United Latin American Citizens
 California Nurses Association / National Nurses United
 California Professional Firefighters
 California Special Districts Association
 California State Association of Counties
 Citizens' Oversight Project
 City and County of San Francisco
 County of Del Norte Board of Supervisors
 County of Los Angeles Board of Supervisors
 County of Sacramento Board of Supervisors
 Courage Campaign
 Dean Logan, Los Angeles County Registrar-Recorder/County Clerk
 Disability Rights California
 Fresno County Board of Supervisors
 Inyo County Board of Supervisors
 League of Women Voters of California
 Madera County Board of Supervisors

Madera County Clerk-Recorder & Registrar of Voters
Marin County Board of Supervisors
Merced County Board of Supervisors
Mono County Board of Supervisors
Monterey County
Napa County Board of Supervisors
National Association of Latino Elected and Appointed Officials (NALEO)
Riverside County Board of Supervisors
Rock the Vote
Rural County Representatives of California
San Benito County Board of Supervisors
Santa Clara County Board of Supervisors
Santa Cruz County Clerk
Shasta County Clerk / Registrar of Voters
Sonoma County Board of Supervisors
Urban Counties of California
Voto Latino

Oppose: California Association of Voting Officials
Howard Jarvis Taxpayers Association

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