



Voting Modernization Board

Modernizing Voting Equipment in California

Stephen J. Kaufman, Chair

Teri Holoman
June Awano Lagmay
Gabriel Sandoval

To: Voting Modernization Board

From: Robbie Anderson
VMB Staff Attorney

Date: November 15, 2019

Re: Staff Report – Expansion vs. Replacement

This staff report is being provided to differentiate between the expansion of an existing voting system and the replacement of a voting system and/or voting equipment. This report was requested by the VMB at the September 25, 2019, meeting.

The question is how an expansion of a system differs from a replacement of a voting system or the replacement of a specific component of a voting system.

The second sentence of Section 19254(c)(3) of the Elections Code clearly provides for reimbursement to a county elections official for an expansion of their existing system. That provision reads as follows: “Applications for expansion of an existing system or components related to a previously certified or conditionally approved application shall be accepted.”

However, as pertinent here, that provision is limited by the plain reading of the first sentence, which reads as follows: “The county has not previously requested fund money for the purchase of a new voting system.” The intent of the VMB Bond Act of 2002 was to provide reimbursement to counties for the purchase of new voting equipment; but, this is limited by previous reimbursements made by the VMB to the particular county.

An example of a situation in which a county is expanding an existing system and may be reimbursed for expansion costs is as follows: County X was reimbursed for 13 XYZ ballot on demand printers in 2016. County X has determined that they need 12 additional XYZ ballot on demand printers to meet the needs of their voters, so they will be seeking reimbursement from the VMB for these additional printers under Section 19254(c)(3). This request for reimbursement may be approved by the VMB.

On the other hand, an example of a situation in which a county is seeking to replace voting equipment that the county was previously reimbursed for is as follows: County Y was reimbursed for 17 XYZ ballot on demand printers in 2015. The County has determined that it prefers ABC ballot on demand printers and purchases 17 of them. In this case, the County may not come before the VMB for reimbursement for the ABC ballot on demand printers because the county has already been reimbursed for the same exact equipment. This reimbursement is barred by Section 19254(c)(3), which refers to a county who has previously requested fund money for a new voting system.

This example differs from the one above, as County X in the prior example purchased more of the same ballot on demand printers, but County Y purchased a different model of ballot on demand printers to replace the prior system that was already funded by the VMB.

Items that would constitute an expansion of an existing system (expenses for which are reimbursable by the VMB) include e-poll books, ballot on demand printers, remote accessible vote-by-mail systems (RAVBM), ballot sorters, and ballot marking devices – as long as they are simply adding to a system that was previously funded.

The VMB does not have the authority, express or implied, to provide reimbursement for a new voting system to replace a system for which the county has previously requested funding.

“Voting system” is defined in Section 19252 (f) as follows: “any voting machine, voting device, or vote tabulating device that does not use prescored punch card ballots.” In addition, Section 361 – which is not part of the Voting Modernization Bond Act of 2002 -- defines “voting machine” as any electronic device, including, but not limited to, a precinct optical scanner and a direct recording voting system, into which a voter may enter his or her votes, and which, by means of electronic tabulation and generation of printouts or other tangible, human-readable records, furnishes a total of the number of votes cast for each candidate and for or against each measure.

Section 358, which similarly is not part of the Act, defines a “vote tabulating device” as any piece of equipment, other than a voting machine, that compiles a total of votes cast by means of ballot card sorting, ballot card reading, paper ballot scanning, electronic data processing, or a combination of that type of equipment.

Reviewing these definitions as a whole, it is apparent that a voting system is made up of several different components. And while Section 19254(c)(3) precludes the VMB from reimbursing a county that has already requested funding for a new voting *system*, a county that has only received reimbursement for certain components is not precluded from receiving reimbursement for other components that make up the whole system.

Thus, we read Section 19254(c)(3) as prohibiting the VMB from reimbursing a county to replace an entire voting system for which the county has “requested fund money” and for any individual components for which the county previously “requested fund money.”

The VMB staff has attempted to read the pertinent statutes in the most liberal way that would lead to reimbursement for a replacement piece of voting equipment, but that is just

not possible under the constraints provided in the Elections Code that were enacted nearly 18 years ago.

In summation, the VMB may authorize reimbursement for an expansion to a county's voting system, but not for the replacement of equipment for which reimbursement was previously made by the VMB.