



# Voting Modernization Board

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## Modernizing Voting Equipment in California

To: Voting Modernization Board

From: Robbie Anderson  
VMB Staff Attorney

Date: May 28, 2019

Re: Guidance on Future Reimbursement Requests

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Stephen J. Kaufman, Chair

Teri Holoman  
June Awano Lagmay  
Gabriel Sandoval

The purpose of this memorandum is to provide guidance to the Voting Modernization Board (VMB) by clarifying which county expenditures are authorized for reimbursement under California Elections Code section 19254(c)(3).<sup>1</sup> Numerous counties have inquired as to whether particular expenditures would be considered reimbursable from the funds administered by the VMB.

Specifically, this memorandum addresses three main questions:

1. Can a county that previously has been reimbursed by the VMB for a new voting system be reimbursed for the purchase of another new voting system?
2. Can a county that has been reimbursed by the VMB for a new voting system be reimbursed for the purchase of voting equipment to expand their existing system?
3. Can a county that has been reimbursed by the VMB for a specific piece of voting equipment be reimbursed for the purchase of a replacement of that same equipment?

In addition, this memorandum identifies some examples of equipment that would “expand an existing system” and/or would be deemed a “component” that would be subject to reimbursement by the VMB.

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<sup>1</sup> Current Elections Code section 19254(c) originated as Section 19234(c). The section number was changed by Senate Bill 360 (Chapter 602 of the Statutes of 2013).

## Background

Since the inception of the VMB, 34 counties have used their entire allocated VMB funds to purchase new voting systems and voting equipment. Sixteen counties have not been reimbursed by the VMB for a new voting system.<sup>2</sup> These 16 counties can come forward at any time for reimbursement for a new voting system. The remaining eight counties have been reimbursed by the VMB for a new voting system, but still have remaining VMB funds from their original formula allocation.<sup>3</sup>

Voting systems and related technologies have evolved significantly since the establishment of the VMB in 2002. The Secretary of State has received questions from counties that previously have been reimbursed by the VMB for a new voting system. Specifically, they have inquired as to whether they can request their remaining funds for new voting technology that will expand the functionality and capabilities of their existing voting system.

Beginning in 2002, with the passage of the Help America Vote Act (HAVA) and Proposition 41, the Voting Modernization Bond Act of 2002, California counties have been allocated nearly \$450,000,000 for new voting equipment. Most of these funds have already been expended. Approximately \$64 million in VMB funds have not been disbursed (most of which is allocated to Los Angeles and San Diego Counties).<sup>4</sup> Additionally, in 2018, all 58 counties received a new General Fund allocation of funds for voting systems and equipment via the state budget (AB 1824, Chapter 38 of the Statutes of 2018).<sup>5</sup>

On February 27, 2019, the Secretary of State issued CCROV # 19015 ordering the withdrawal of certification and conditional approval of certain older voting systems that do not meet California Voting System Standards.<sup>6</sup> In the effort to purchase new systems or expand the capabilities of their current systems to meet California's certification requirements, the Secretary of State anticipates that several counties will seek reimbursement from the VMB to help pay for voting technology.

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<sup>2</sup> The 16 counties who have not been reimbursed by the VMB for a new voting system are as follows: Colusa, Fresno, Lake, Los Angeles, Madera, Marin, Modoc, Mono, Placer, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Siskiyou, Sonoma, and Trinity.

<sup>3</sup> The 8 counties that have been reimbursed by the VMB for a new voting system, but have remaining VMB funds from their original formula allocation are as follows: Calaveras, El Dorado, Humboldt, Mendocino, Nevada, Solano, Tulare, and Ventura.

<sup>4</sup> The chart containing the remaining allocation amounts per county is provided at the end of this memorandum.

<sup>5</sup> This \$134,000,000 allocation, while providing critically needed resources, does not address all of the voting system and technology needs of counties. It is anticipated that an additional General Fund allocation will be forthcoming in the next state budget, but that is no guarantee. Receiving reimbursement from the VMB to assist the counties in the purchase of new voting equipment is critical.

<sup>6</sup> CCROV # 19015 may be found on the Secretary of State's website at:

<https://elections.cdn.sos.ca.gov/ccrov/pdf/2019/february/19015sl.pdf>. California Voting System Standards may be found on the Secretary of State's website at:

<https://admin.cdn.sos.ca.gov/regulations/elections/california-voting-system-standards.pdf>.

Due to these factors, the intent of this memorandum is to provide a recommendation to the VMB on how the remaining funds can be used to reimburse counties for purchases of voting equipment that will expand their existing voting system.

## **Legal Authority**

The VMB was created by Proposition 41 when the voters approved it at the March 5, 2002, primary election. In the 2002 State Voter Information Guide, the Legislative Analyst provided the following statement: “The money raised from the bond sales would assist any county in the purchase of new voting equipment that is certified by the Secretary of State.” In addition, the Official Title and Summary of the measure provided “Authorizes the issuance of state bonds allowing counties to purchase modern voting equipment and replace outdated punch card (chad) systems.” The clear purpose of Proposition 41 was to assist counties in updating their voting equipment.

AB 56 (Chapter 902 of the Statutes of 2001) provided the implementing statutes for the VMB, and became effective when the voters passed Proposition 41. The current provisions of Elections Code section 19254(c)(3) were added in the September 7, 2001 version of AB 56.

The requirements relating to reimbursement under Proposition 41 and its implementing statutes relating to a voting system are: 1) VMB funds may not be used to purchase a voting system that has not been certified by the Secretary of State; 2) VMB funds may not be used to purchase a voting system that utilizes prescored punch card ballots; and, 3) a voting system that does not require a voter to directly mark on the ballot must produce, at the time the voter votes his or her ballot or at the time the polls are closed, a paper version or representation of the voted ballot or of all the ballots cast on a unit of the voting system. (Elections Code § 19254(d)(3), (e).)

In addition, Section 19254(c)(3) provides the following as one of the elements the VMB must contemplate prior to authorizing reimbursement to a county:

- (3) The county has not previously requested fund money for the purchase of a new voting system. Applications for expansion of an existing system or components related to a previously certified or conditionally approved application shall be accepted.

Section 19254(c)(3) does not expressly define the reference to “expansion of an existing system or components.” Further, review of the legislative history of AB 56 has not identified any effort to define or explain what expansion or components consist of, or how it would be determined by the VMB if reimbursement would be proper. In addition, there are no reported cases that would inform the determination.

Absent both case law and legislative history, the intent of the statutes and the bond measure that was placed before the voters for guidance must be reviewed. While determining the intent of the statute and the measure, we must be mindful of any decision that would go beyond the intent and the scope of the bond measure that was approved by the voters.

In California, courts have established criteria for reviewing the meaning of statutory language. (*Carson Citizens for Reform v. Kawagoe*, 178 Cal.App.4th 357 (2009).) In short, courts have followed a three step process, which can be summarized as follows:

1. Examine the statutory language, giving it a plain and common sense meaning.
2. If the plain language does not result in a resolution, then turn to the maxims of construction, the statute's purpose, legislative history, and public policy.
3. If the meaning remains unclear, then reason, practicality, and common sense must be applied to the language needing interpretation.

In 2009, the Court of Appeal, Second District, Division 5, in *Carson Citizens for Reform v. Kawagoe*, 178 Cal.App.4th 357 (2009), provided a standard of review for statutory interpretation. In *Carson*, the court was tasked with interpreting Elections Code sections 103, 104, and 11303. Proponents of a petition to recall a local mayor disputed the validity of signature withdrawal requests that were filed with the city clerk and honored by the county registrar. The withdrawal requests in question did not contain an affidavit of circulator and some were signed before the requestor signed the recall petition. The court reviewed the statutory language and concluded that the language was clear. Sections 103, 104, and 11303 do not specify when the withdrawal cards are to be signed, and do not require an affidavit of circulator, therefore the withdrawals were deemed valid.

*Carson* set forth the appropriate standard of review:

“Our fundamental task in interpreting a statute is to determine the Legislature's intent so as to effectuate the law's purpose.” (*Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737, 21 Cal.Rptr.3d 676, 101 P.3d 563 (*Coalition*).) Our first step is to “examine the statutory language, giving it a plain and commonsense meaning. We do not examine that language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.” (*Id.* at p. 737, 21 Cal.Rptr.3d 676, 101 P.3d 563.)

“When the plain language of the statute does not resolve the interpretive question, we proceed to the second step of our inquiry. At this stage, we ‘may turn to rules or maxims of construction “which serve as aids in the sense that they express familiar insights about conventional language usage.” ’ [Citations.] In addition, ‘[i]f the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy. [Citations.]’ [Citation.]” (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582–583, 48 Cal.Rptr.3d 340.)

“If the meaning of the statute remains unclear after examination of both the statute's plain language and its legislative history, then we proceed cautiously to the third and final step of the interpretive process. [Citation.] At this final stage of the process, we

apply ‘reason, practicality, and common sense to the language at hand.’ [Citation.] The words of the statute should be interpreted ‘to make them workable and reasonable.’ [Citation.] We will also consider the consequences that will flow from a particular statutory interpretation. [Citation.] ‘In determining what the Legislature intended we are bound to consider not only the words used, but also other matters, “such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy and contemporaneous construction. [Citation.]” [Citation.]’ [Citation.]” (*Ailanto Properties, Inc. v. City of Half Moon Bay*, supra, 142 Cal.App.4th at p. 583, 48 Cal.Rptr.3d 340.)

### Step 1 – Examining the Language

The language “expansion of an existing system” provided in Section 19254(c)(3) is clear in that it relates to an existing voting system. Section 19254(a) broadly refers to issuing bonds “for the purpose of updating voting systems.”

“Expand” means to increase something in size, number, or importance, or to increase in size, number, or importance, or to make something increase in this way. (In *Cambridge Dictionary Online*. Retrieved May 28, 2019, from [dictionary.cambridge.org/us/dictionary/english/expand](http://dictionary.cambridge.org/us/dictionary/english/expand).) Here, the use of “expansion” means that the extent or the scope of the existing voting system is being expanded.

For the purposes of this section, if a county has a voting system in place and additional equipment is available to enhance the efficiency of the system or to provide additional services to voters through that equipment, Section 19254(c)(3) provides the VMB with the authority to reimburse a county who purchases said equipment.

### Step 2 – The Maxims of Construction, Purpose, Legislative History, and Public Policy

While we believe that the inquiry ends here, we nonetheless analyze the next steps, and conclude that even if such analysis were necessary, it supports the conclusion that the use of “expansion” in Section 19254(c)(3) is clear in that it provides the VMB with the authority to reimburse counties for purchases of voting equipment that expands their existing voting system.

Under the Step 2, we can look to what the voters were asked to approve at the March 5, 2002, primary election. As discussed above, the purpose of Proposition 41 was to assist counties in the purchase of “modern voting equipment.” By approving Proposition 41, the voters agreed to establish the VMB, which would be tasked with the responsibility of providing reimbursement to counties who needed to purchase new voting equipment. The language of Section 19254(c)(3) was provided in the “Text of Proposed Laws” section of the State Voter Information Guide, so presumably, the voters were aware of the authority that would be given to the VMB.

It is likely that the Legislature chose to include the terms “expansion of an existing system” knowing that some counties had recently purchased a voting system, but may need financial assistance for the purchasing of additional equipment that would enhance efficiency and voter services. The included language provides the VMB with the authority to determine which expenses could be properly reimbursed.

If the Legislature had intended to restrict the VMB's authority to determine what types of voting equipment would constitute an "expansion," it could have done so.

The analysis provided by the Legislative Analyst, the Attorney General's Title and Summary, and committee analysis for AB 56 all support an interpretation that the ultimate purpose of Proposition 41 was to provide support to counties to update their voting equipment with certified systems that met minimum requirements provided in Section 19254(c).

### Step 3 – Common Sense Application

Although unnecessary here, as the bond/statutory language is clear, we can also apply the third common sense analysis. In this instance, Section 19254(c)(3) can be reasonably read as providing the VMB with the authority to determine what an "expansion" of a voting system would consist of. Any other reading would go beyond a common sense meaning.

In 2013, certain provisions of the Elections Code relating to the VMB were amended by SB 360 (Chapter 602 of the Statutes of 2013). Among other amendments, SB 360 expanded the scope of authorized reimbursement by the VMB to include research and development for the creation of a voting system. It was later determined that some of the provisions in SB 360 related to research and development violated the California Constitution as they expanded the scope of a bond measure approved by the voters of California.<sup>7</sup> While the VMB may not reimburse a county for research and development, SB 360 did not amend or alter the VMB's authority to issue a reimbursement for the purchase of voting equipment that is considered an expansion of or components of a county's existing voting system.

### **Questions Presented**

Considering the legislative history, previous VMB litigation, and whether or not authorizing reimbursement furthers the intent of and stays within the scope of the VMB Act of 2002, the following questions have been posed to the Secretary of State's office.

The questions and responses are as follows:

1. Can a county that previously has been reimbursed by the VMB for a new voting system be reimbursed for the purchase of another new voting system?

No – Elections Code section 19254(c)(3).

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<sup>7</sup> *Holtzman v. California Voting Modernization Board*, Sacramento County Superior Court case number 34-2015-80002016. Petitioner Holtzman argued that the reimbursement allowed under newly-enacted Senate Bill 360 (Chapter 602 of the Statutes of 2013) violated Section 1 of Article XVI of the California Constitution. Senate Bill 360 authorized the VMB to reimburse counties for the research and development of a voting system. It was alleged that SB 360 expanded the scope of a bond measure approved by the voters. The funding award letter issued to Los Angeles County by the VMB was eventually rescinded.

Several counties that have been previously reimbursed for a new voting system by the VMB have inquired as to whether they may use any of their remaining VMB funds to purchase another new voting system. Elections Code section 19254(c)(3) clearly states that a county is ineligible to receive reimbursement for a new voting system if they have already been reimbursed by the VMB for a voting system.

2. Can a county that has been reimbursed by the VMB for a new voting system be reimbursed for the purchase of voting equipment to expand their existing system?

Yes – Elections Code section 19254(c)(3).

Section 19254(c)(3) does not provide any express limitation for the reimbursement for an expansion of an existing voting system to a county who has already been reimbursed for a new voting system. If a piece of voting equipment is a reasonable expansion of a county's overall voting system solution, reimbursement is proper.

If a county has been reimbursed for a new voting system by the VMB, Section 19254(c)(3) expressly provides for reimbursement for a component related to a previously certified or conditionally approved application for reimbursement.

3. Can a county that has been reimbursed by the VMB for a specific piece of voting equipment be reimbursed for the purchase of a replacement of that same equipment?

No.

The VMB may not authorize a reimbursement for a replacement piece of voting equipment which the county has already been reimbursed for. For example, County X was reimbursed for a ballot sorter in 2012, but that sorter no longer functions properly. The VMB may not authorize reimbursement for a new ballot sorter.

The intent of the VMB Bond Act was to reimburse for new voting systems and new expansion equipment or components, not to replace an item the cost of which has already been reimbursed. This scenario should be viewed in the same manner as if a county was coming back to the VMB to request reimbursement for a second new voting system.

Additionally, some examples of equipment that would “expand an existing system” and/or would be deemed a “component” that would be subject to reimbursement by the VMB are, as will be discussed below.

## Voting Systems, Expansion, and Components

The following information addresses the examples of equipment that would “expand an existing system” and/or would be deemed a “component” that would be subject to reimbursement by the VMB.

Voting systems typically consist of the following:

1. **Client (Workstation) / Server**
2. **Stand Alone (Workstation)**
3. **Precinct Scanner for tabulation**
4. **Central Scanner for tabulation**
5. **Election Management System Software (Can have many functions - Ballot Layout, Election Programming)**
6. **Tabulation Software**
7. **Ballot Marking Devices**
8. Adjudication Software
9. Ballot on Demand Workstation and Printer
10. External Supporting Peripherals (Not Subject to Certification): keyboards, mice, printers, network switch, various cables, accessibility devices (Sip & Puff, Jelly Switches, or other external controls), carrying cases for polling place equipment, ballot boxes, accessibility tables, and printer ink/cartridges.<sup>8</sup>

The items listed above in their entirety, or a combination of, make up a voting system. The bold items are typically the bare minimum components, with the external supporting peripherals. Counties may decide at some point to purchase the Adjudication Software or the Ballot on Demand system, thus expanding their “voting system.” Adjudication and Ballot on Demand systems can operate independent of the voting system. Expansion is not limited to those two items. For example, a county may decide to add additional precinct scanners or ballot marking devices.

In addition to the items listed above, an electronic poll book (e-poll book) and remote accessible vote-by-mail systems (RAVBM) are components that work with the county’s overall voting solution. An e-poll book is required for counties who conduct elections using vote centers, and counties are required to offer RAVBM voting for voters with disabilities and military or overseas voters. Both of these pieces of voting technology should be considered by the VMB as an expansion of an existing voting system that is reimbursable. The Secretary of State’s office has certified e-poll books and RAVBM systems for use in California.

In 2014, the VMB authorized reimbursement to a county for an automated vote-by-mail sorting/scanning system and ballot on demand printers. Although neither of these items were certified by the Secretary of State’s office, the VMB considered these items a valid expansion to the county’s overall voting system solution, and found the expansion to be in line with the spirit of the Voting Modernization Bond Act of 2002.

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<sup>8</sup> The various voting technologies currently certified for use in California can be found on the Secretary of State’s website at <https://votingsystems.cdn.sos.ca.gov/cert-and-approval/vote-sys-appr-in-ca-2.pdf>.

Using that same rationale today, VMB funds can be used to reimburse the eight counties with remaining allocated funds for voting technology such as e-poll books and RAVBM systems. E-poll books and RAVBM systems are valid expansions of a county's overall voting system solution, do not go beyond the scope and intent of Proposition 41, and are in line with the spirit of the Voting Modernization Bond Act of 2002. The reimbursement to the counties for these pieces of voting equipment differs from the issue surrounding the *Holtzman* case, which was focused on reimbursement for research and development. Here, as stated above, both the e-poll books and RAVBM systems are existing systems, certified by the Secretary of State, that can be purchased at any time by a county.

It should be noted that while reimbursement to counties by the VMB is limited, the voting system replacement funds provided in last year's state budget is very broad. Newly-enacted Elections Code sections 19400 and 19402 allow counties to use their allocated funds for a variety of items and services that cannot be reimbursed by the VMB. Examples of the allowable reimbursement include research and development costs for a new voting system (even if the county was previously reimbursed for a new voting system by the VMB) and vote-by-mail drop boxes.

## **Conclusion**

It is our recommendation that the VMB consider approving any future expansion request for reimbursements for voting technology and/or equipment as a part of the county's overall voting system solution, because such reimbursement does not go beyond the scope and intent of the bond measure approved by the voters of California and is in line with the spirit of the Voting Modernization Bond Act of 2002.

## **Remaining Allocation of VMB Funds**

The chart on the following page specifies the remaining VMB allocation amounts as of May 2019.

**Voting Modernization Board (VMB)  
Remaining Allocation Amounts as of May 2019**

**Counties who have been paid for an entire voting system**

County	Initial VMB Formula Allocation	Total Remaining Allocation
Calaveras	\$ 319,548.93	\$ 125,110.68
El Dorado	\$ 1,095,674.94	\$ 621,206.40
Humboldt	\$ 986,044.95	\$ 199,813.35
Mendocino	\$ 620,444.80	\$ 198,748.40
Nevada	\$ 866,431.28	\$ 105,816.96
Solano	\$ 2,297,314.00	\$ 150,577.09
Tulare	\$ 1,749,911.00	\$ 342,320.11
Ventura	\$ 4,576,270.14	\$ 717,613.31
<b>Total</b>	<b>\$ 12,511,640.04</b>	<b>\$ 2,461,206.30</b>

**Counties who have not submitted all phases to replace voting system**

County	Initial VMB Formula Allocation	Total Remaining Allocation
Colusa	\$ 121,292.74	\$ 28,667.74
Fresno	\$ 4,266,077.65	\$ 2,018,770.78
Lake	\$ 417,320.58	\$ 95,930.56
Los Angeles	\$ 49,636,590.28	\$ 49,026,236.33
Madera	\$ 642,094.85	\$ 183,179.65
Marin	\$ 1,879,587.19	\$ 658,116.98
Modoc	\$ 76,314.42	\$ 76,314.42
Mono	\$ 91,998.83	\$ 16,998.83
Placer	\$ 2,015,870.78	\$ 205,135.00
San Bernardino	\$ 7,995,027.76	\$ 112,379.00**
San Diego	\$ 16,726,146.94	\$ 7,497,479.43
San Luis Obispo	\$ 1,690,189.44	\$ 1,291,001.19
Santa Barbara	\$ 2,749,794.06	\$ 1,028,642.74***
Siskiyou	\$ 368,246.57	\$ 109,303.46
Sonoma	\$ 3,269,773.85	\$ 6,506.10
Trinity	\$ 117,000.00	\$ 117,825.36
<b>Total</b>	<b>\$ 92,063,325.94</b>	<b>\$ 61,331,465.83</b>

\*\*This amount was refunded to the VMB by the county after the sale of surplus voting equipment originally purchased with Voting Modernization Bond funds.

\*\*\*Of this amount, \$181,700 was refunded to the VMB by the county after the sale of surplus voting equipment originally purchased with Voting Modernization Bond funds.