

LEGISLATIVE DIGEST

[Municipal Elections Code - Open Source Voting]

Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City’s intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

Existing Law

In general, the California Secretary of State (“SOS”) must certify any voting systems before they are used in any elections held in California. Voting systems include hardware, software and combinations thereof used to either cast a ballot or tabulate votes.

But under Elections Code Section 19209 (“Section 19209”), the Board of Supervisors, without formally adopting a voting system, may provide for the experimental use of the voting system in a pilot program held in one or more precincts at a single election. The Board of Supervisors may proceed with such a pilot, even if the voting system has not been certified, if the pilot:

- uses only software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware;
- meets the requirements set forth in the SOS’s voting system standards, adopted pursuant to Elections Code Section 19101(b);
- meets the requirements of the SOS’s regulations governing voting system pilot programs, adopted pursuant to Elections Code Section 19209(g); and
- implements risk-limiting audits.

As of December 14, 2021, the SOS had not adopted regulations governing disclosed source voting system pilot programs.

Section 19209 also requires the Board of Supervisors to submit any plan for a pilot program no later than nine months before the election at which the pilot program of a voting system is proposed to be conducted. The Secretary of State would then have up to three months to approve or reject the plan.

Amendments to Current Law

The proposed ordinance would require the Director of Elections, on behalf of the Board of Supervisors, to submit information documenting the City’s intended open source voting pilot program to the California Secretary of State by February 8, 2022. For the purposes of this

FILE NO. 211303

proposed plan, the intended open source voting pilot program would consist of at least one open source ballot marking device that the City would use at the City Hall Voting Center for the November 8, 2022 Consolidated General Election. The deployment of the open source ballot marking device(s) at the November 8, 2022 Consolidated General Election would be subject to the SOS's adoption of regulations for disclosed source voting system pilots and the SOS's approval of the City's plan.

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