

2021 Regular Session

SENATE BILL NO. 221

BY SENATOR HEWITT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

VOTERS/VOTING. Provides relative to voting systems. (gov sig)

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AN ACT

To amend and reenact R.S. 18:18(A)(7), 1351(13), 1353(B), the introductory paragraph of (C) and (C)(2), and (D), 1361, 1362(A), and 1364(A), to enact R.S. 18:1362.1 and 1362.2 and R.S. 36:744(O) and (P), and to repeal R.S. 18:553.1, 1351(5), and 1365, relative to oversight of voting systems; to provide for definitions; to provide for promulgation of rules; to provide for appointments; to provide for legislative oversight; to provide for an evaluation authority; to provide for membership; to provide for reporting requirements; to provide for evaluation criteria; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 18:18(A)(7), 1351(13), 1353(B), the introductory paragraph of (C) and (C)(2), and (D), 1361, 1362(A), and 1364(A) are hereby amended and reenacted and R.S. 18:1362.1 and 1362.2 are hereby enacted to read as follows:

§18. Secretary of state; powers and duties

A. The secretary of state shall administer the laws relating to custody of voting machines and voter registration, and for this purpose he shall:

* * *

1 (7) Prescribe uniform rules, regulations, forms, and instructions as to the use
2 of ~~electronic~~ voting machines, as defined by R.S. 18:1351, in the conduct of early
3 voting, which shall be approved by the attorney general and thereafter shall be
4 applied uniformly by each registrar of voters in the state.

5 * * *

6 §1351. Definitions

7 As used in this Chapter, unless otherwise specified, the following terms shall
8 have the meanings herein ascribed to each:

9 * * *

10 (13) "Voting machine" means the enclosure occupied by the voter when
11 voting, as formed by the machine, its screen, and privacy shield, ~~which shall include~~
12 ~~electronic voting machines.~~ **Tabulation of the vote may occur on the voting**
13 **machine or on another component of the voting system.**

14 * * *

15 §1353. Secretary of state; powers and duties; voting systems and system
16 components; voter registration

17 * * *

18 B. The secretary of state ~~may prescribe~~ **shall promulgate** uniform rules and
19 regulations with respect to ~~matters pertaining to the procurement,~~ **the** preparation;
20 and use of voting systems in the conduct of elections and the duties of each category
21 of persons charged with responsibility for any matter relating to the voting systems
22 **in accordance with the Administrative Procedure Act and subject to the**
23 **oversight of the House Committee on House and Governmental Affairs and the**
24 **Senate Committee on Senate and Governmental Affairs.** The rules and
25 regulations shall ~~be approved by the attorney general and thereafter shall~~ be
26 distributed by the secretary of state to the election officials having responsibilities
27 relating to elections. ~~The rules and regulations shall be~~ **and** applied uniformly
28 throughout the state.

29 C. In addition to any other duties and functions ~~now or hereafter~~ provided by

1 law, the secretary of state shall:

2 * * *

3 (2) Be responsible for coordinating with the office of state procurement
4 with regard to all procurement, sales, and transfers of voting systems and system
5 components and for all matters ~~in connection with issuing~~ pertaining to the
6 issuance of competitive bids or requests for proposals ~~or the advertising for and~~
7 ~~opening of bids for or in connection therewith.~~

8 * * *

9 D. The secretary of state ~~may~~ shall appoint or employ mechanics, experts,
10 and other assistants when necessary in order to assume the maintenance, upkeep, and
11 proper functioning and operation of the machines, or when necessary in order to
12 explain and demonstrate to the election officials or to the public the proper method
13 of operation of the machines.

14 * * *

15 §1361. Approval of voting systems or system components; certificate; expenses of
16 examination

17 A. Prior to the solicitation of bids for any new voting system, the
18 secretary of state shall, by rule, develop and adopt reasonable certification
19 standards solely pertaining to the durability, accuracy, efficiency, and capacity
20 of voting systems for use in the state, in accordance with the Administrative
21 Procedure Act and subject to the oversight of the House Committee on House
22 and Governmental Affairs and the Senate Committee on Senate and
23 Governmental Affairs. The secretary of state ~~may~~ shall examine any type or make
24 of voting system or system component upon the request of a representative of the
25 maker or supplier thereof for compliance with the certification standards. If the
26 secretary of state determines that the voting system or system component complies
27 with the ~~requirements of this Chapter and that it meets standards acceptable to him~~
28 ~~as to durability, accuracy, efficiency, and capacity~~ certification standards, he shall
29 approve that voting system or system component for use in this state and shall issue

1 his certificate of approval thereof. ~~Any voting system procured or used in the state~~
 2 ~~shall include a sound-creating device which will audibly indicate that a voter has left~~
 3 ~~the machine after casting his vote and allow for the challenge removal of early voting~~
 4 ~~ballots and may include a voter verification mechanism.~~

5 **B.** In addition **to meeting any applicable certification standards,** any
 6 voting system or system component procured or used in the state must have been
 7 certified according to the voluntary voting system guidelines developed and
 8 maintained by the United States Election Assistance Commission by a voting system
 9 test laboratory accredited by the United States Election Assistance Commission. This
 10 certificate, together with any relevant reports, drawings, and photographs, shall be
 11 a public record.

12 **BC.** The secretary of state ~~may employ~~ **shall appoint no fewer than three**
 13 **but no more than five qualified** experts to assist him in making the examination
 14 provided for in this Section. The expenses of the services of such experts, not to
 15 exceed ~~a total of five hundred~~ **thousand** dollars, shall be paid prior to the
 16 examination by the person requesting examination of the voting system or system
 17 component. Experts employed in the examination shall sign the certificate of
 18 approval made by the secretary of state. No voting system or system component shall
 19 be used at any election which has not been approved by the secretary of state as
 20 provided in this Section.

21 §1362. Method of procuring voting systems or system components; parts and
 22 supplies; and of contracting for the maintenance of voting machines

23 A.~~(†)~~ All voting systems or system components used in this state shall be
 24 procured by the secretary of state, **in accordance with the specifications**
 25 **established by the Voting System Technology Commission as provided in R.S.**
 26 **18:1362.1,** out of state funds appropriated for that purpose, on the basis of a
 27 competitive request for proposals process or public bids submitted to the secretary
 28 of state in accordance with ~~specifications prepared by him~~ **the provisions of the**
 29 **Louisiana Procurement Code.** ~~The specifications may require~~ **Required**

1 **specifications shall include** tests and examinations of the operation of the voting
 2 systems or system components, and the secretary of state, for that purpose, **may shall**
 3 employ experts to **conduct these examinations and** report thereon and charge the
 4 expense thereof to the responders or bidders **the results thereof to the Voting**
 5 **System Technology Commission. The expenses of the services of these experts**
 6 **shall not exceed five hundred dollars and shall be paid by the vendor that seeks**
 7 **to have its system certified for consideration.** ~~Advertisement and letting of~~
 8 ~~contracts for~~ **In every respect,** the procurement of voting systems or system
 9 components shall be in accordance with the Louisiana Procurement Code ~~contained~~
 10 ~~in Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950.~~

11 ~~(2) Notwithstanding any provision of law to the contrary, particularly the~~
 12 ~~provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950, the~~
 13 ~~secretary of state is authorized to procure directly from the supplier, through the~~
 14 ~~Department of State, voting systems or system components, parts, supplies, and other~~
 15 ~~election paraphernalia and to contract with the manufacturer through the Department~~
 16 ~~of State for the maintenance of the voting systems or system components.~~

17 * * *

18 **§1362.1. Voting System Technology Commission; creation and organization;**
 19 **duties and responsibilities**

20 **A.(1) The Voting System Technology Commission is created and**
 21 **established within the Department of State for the purpose of evaluating and**
 22 **selecting the type of voting system that shall be procured to replace the voting**
 23 **system in use as necessary.**

24 **(2) The purpose of this commission is to further the preservation of**
 25 **democracy by strengthening the state's commitment to maintaining the faith,**
 26 **integrity, and trust in election, voting, and ballot-counting processes, to provide**
 27 **the highest level of election security and functionality, and to provide greater**
 28 **clarity, public transparency, and objectivity with respect to the selection of**
 29 **voting equipment.**

1 **B. The Voting System Technology Commission shall be comprised of the**
2 **following members:**

3 **(1) The commissioner of elections, or his designee.**

4 **(2) Two members of the House of Representatives, appointed by the**
5 **speaker of the House of Representatives.**

6 **(3) Two members of the Senate, appointed by the president of the Senate.**

7 **(4) A member appointed by the governor.**

8 **(5) The secretary of state, or his designee.**

9 **(6) The commissioner of administration, or his designee.**

10 **(7) An expert on cyber security, appointed by the chairman of the**
11 **Louisiana Cybersecurity Commission.**

12 **(8) The executive director of the Governor's Advisory Council on**
13 **Disability Affairs, or his designee.**

14 **C. The chair of the commission shall be elected by a majority vote of the**
15 **members and shall set the date, time, and place for all meetings. The secretary**
16 **of state shall convene the initial meeting of the commission not later than**
17 **September 1, 2021, and shall serve as the initial chair until a chairman is**
18 **elected.**

19 **D. A majority of the members serving on the commission shall constitute**
20 **a quorum to conduct official business. All actions of the commission shall**
21 **require a majority vote of the quorum.**

22 **E. Members of the commission shall serve terms concurrent with the**
23 **governor. Members shall serve without compensation; however, legislative**
24 **members of the commission shall receive the per diem and expenses as provided**
25 **for legislators during attendance at legislative committees and from the same**
26 **source.**

27 **F. The Department of State and office of state procurement shall provide**
28 **administrative staff and resources to the commission upon request.**

29 **G. The commission may request from the secretary of state or any other**

1 source any information it deems necessary to assist in making a
2 recommendation regarding voting equipment.

3 H. The commission shall conduct a preliminary analysis of available
4 voting systems and select up to three options for discussion during a public
5 hearing or hearings to be held for the evaluation of which voting systems are
6 most advantageous to the state based on functionality.

7 I. After conducting this public hearing or hearings, the commission shall
8 determine the type of voting system to direct the secretary of state to submit for
9 competitive solicitation in accordance with the provisions of the Louisiana
10 Procurement Code.

11 J. The commission shall submit a report of its findings and conclusions
12 to the governor, the president of the Senate, the speaker of the House of
13 Representatives, the secretary of state, and the division of administration no
14 later than December 1, 2021.

15 K. Upon receipt of the report, the secretary of state, working in
16 conjunction with the office of state procurement, shall develop a request for
17 proposals based on the commission's recommendations. No later than thirty
18 days prior to the issuance of the request for proposals, the secretary shall
19 promulgate certification standards for the recommended system, in accordance
20 with the provisions of R.S. 18.1361(A).

21 §1362.2. Voting System Technology Proposal Review Committee; membership;
22 duties

23 A. The Voting System Technology Proposal Evaluation Committee is
24 created and established within the Department of State for the purpose of
25 independently reviewing any proposals received by the secretary of state in
26 accordance with the provisions of R.S. 18:1361.1.

27 B.(1) The Voting Technology Proposal Evaluation Committee shall be
28 comprised of the following members:

29 (a) A faculty member of a Louisiana postsecondary education institution

1 with engineering or computer science expertise.

2 (b) A member of the Louisiana State Bar Association.

3 (c) An individual with at least five years of experience with training or
4 education in electronic voting systems and procedures and election security.

5 (d) The president of a parish board of election supervisors.

6 (e) A representative from the office of the secretary of state who did not
7 serve as member of the Voting System Technology Commission.

8 (2) Committee members shall be appointed by the secretary of state and
9 shall serve without compensation.

10 C. The committee shall investigate and publicly test the voting systems
11 proposed by the respondents to the request for proposals and may utilize
12 experts to assist in the investigation. Upon completion of the investigation, the
13 committee shall score each proposal according to the request for proposal
14 criteria, which shall ensure that all proposals are evaluated in a fair and
15 balanced manner and provide equal consideration for all potential vendors
16 without exception. The highest-scoring proposal shall receive the
17 recommendation of the committee. The recommendation shall be
18 communicated to the secretary of state, who shall accept the proposal selected
19 by the committee and submit the proposal to the chief procurement officer for
20 subsequent review, approval, or further inquiry in accordance with the
21 Louisiana Procurement Code.

22 * * *

23 §1364. Placement and sufficiency of voting machines and counting equipment for
24 absentee by mail and early voting

25 A. The secretary of state shall consult with the Voting System Technology
26 Commission at least once annually to determine the sufficiency of the voting
27 machines and absentee by mail and early voting counting equipment necessary to
28 conduct absentee by mail and early voting in an election, taking into consideration
29 the technological capabilities of the voting system. He shall ensure that the number

1 of voting machines and the absentee by mail and early voting counting equipment
2 placed within a parish for an election is adequate and sufficient to process and count
3 the absentee by mail and early voting ballots cast in the election within a reasonable
4 period.

5 * * *

6 Section 2. R.S. 36:744(O) and (P) are hereby enacted to read as follows:

7 §744. Transfer of boards, commissions, and agencies to the Department of State

8 * * *

9 **O. The Voting System Technology Commission (R.S. 18:1362.1) is placed**
10 **within the Department of State and shall perform its powers, duties, functions,**
11 **and responsibilities in the manner provided for agencies transferred in**
12 **accordance with R.S. 36:801.1.**

13 **P. The Voting System Technology Proposal Evaluation Committee (R.S.**
14 **18:1362.2) is placed within the Department of State and shall perform its**
15 **powers, duties, functions, and responsibilities in the manner provided for**
16 **agencies transferred in accordance with R.S. 36:801.1.**

17 * * *

18 Section 3. R.S. 18:553.1, 1351(5), and 1365 are hereby repealed.

19 Section 4. This Act shall become effective upon signature by the governor or, if not
20 signed by the governor, upon expiration of the time for bills to become law without signature
21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
22 vetoed by the governor and subsequently approved by the legislature, this Act shall become
23 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Matt DeVille.

SB 221 Engrossed DIGEST 2021 Regular Session Hewitt

Present law defines both voting machines and electronic voting machines.

Proposed law consolidates this definition to "voting machine" only and removes references
to "electronic voting machines" in present law.

Present law provides that the secretary of state may prescribe rules and regulations regarding the preparation and use of voting systems that shall be approved by the attorney general.

Proposed law requires the secretary of state to promulgate these rules in accordance with the Administrative Procedure Act and subject to legislative oversight and removes the requirement for approval by the attorney general.

Present law provides that the secretary of state is responsible for all matters involving the procurement, sales, transfers of voting systems and any affiliated bids or requests for proposals to purchase new voting systems.

Proposed law retains present law and additionally requires the secretary of state to perform these duties in coordination with the office of state procurement and develop certification standards for voting systems in accordance with the Administrative Procedure Act and subject to legislative oversight.

Present law provides that the secretary of state may examine any voting system or system component upon the request of a representative of the system's maker or supplier, and certify the system for use in the state if it meets criteria established in present law.

Proposed law provides that the secretary is required to examine and certify any voting system or system component upon request and must develop and adopt appropriate certification standards prior to soliciting bids for any new voting system.

Present law provides that the secretary of state may employ experts to assist with the examination of voting systems or system components.

Proposed law requires the secretary of state to employ such experts and specifies the minimum number of experts required and maximum number of experts allowed.

Present law provides that the expenses of the services of the experts assisting the secretary of state with the examination of voting systems cannot exceed five hundred dollars.

Proposed law provides these expenses cannot exceed five thousand dollars.

Present law provides all voting systems or system components shall be procured by the secretary of state on the basis of a competitive request for proposal or solicitation of public bids in accordance with specifications in present law that may require tests and examinations of operations of the voting system or system components.

Proposed law provides that the secretary of state must procure all voting systems or system components in accordance with specifications developed by a commission established in proposed law that mandate testing and examination of the voting system or system components.

Proposed law creates the Voting System Technology Commission to analyze available voting systems and issue a report to the secretary of state directing him on which type of voting system to solicit bids or requests for proposals.

Proposed law creates the Voting System Technology Proposal Evaluation Committee to investigate and test the voting systems that meet the qualifications established by the Voting System Technology Commission and determine which voting system to direct the secretary of state to purchase in coordination with the office of state procurement.

Present law provides that the secretary of state shall determine the sufficiency of voting machines and absentee by mail and early voting counting equipment necessary to conduct an election at his discretion.

Proposed law requires the secretary of state to evaluate the sufficiency of this equipment annually in consultation with the Voting Systems Technology Commission.

Present law provides that the secretary of state may utilize any procedure necessary to accommodate the use of paging direct record electronic voting machines for voting where possible.

Proposed law repeals present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 18:18(A)(7), 1351(13), 1353(B), (C)(intro para) and (C)(2), and (D), 1361, 1362(A), and 1364(A); adds R.S. 18:1362.1 and 1362.2 and 36:744(O) and (P); repeals R.S. 18:553.1, 1351(5), and 1365)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Specifies the minimum and maximum number of experts appointed by the secretary of state to assist him with examination of voting systems and provides for their expenses.
2. Revises membership of the Voting System Technology Commission.
3. Provides that the secretary of state shall convene the initial meeting of the Voting System Technology Commission.
4. Provides that the Department of State and office of state procurement shall provide staff and resources to the Voting System Technology Commission.
5. Removes the Joint Legislative Committee on the Budget and office of technology services from the list of recipients of the Voting Systems Technology Commission's report.
6. Renames the Voting System Technology Proposal Review Committee as the Voting System Technology Proposal Evaluation Committee.
7. Revises membership of the Voting System Technology Proposal Evaluation Committee.
8. Removes requirement that no more than two members of the Voting System Technology Proposal Evaluation Committee shall be registered members of the same political party.
9. Changes the effective date of the bill from August 1, 2021, to upon signature of the governor.