

2021 Regular Session

HOUSE BILL NO. 653

BY REPRESENTATIVE IVEY

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

VOTERS/VOTING: Provides for voting and voting processes and procedures, including provisions relative to the standards, requirement, and acquisition of voting machines and systems

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AN ACT

To amend and reenact R.S. 18:18(A)(7), 21(C)(3), 1351, 1352, 1353(B), (C)(introductory paragraph) and (2), and (D), 1361, 1362(A), and 1400.21(C), to enact R.S. 18:563.1, and to repeal R.S. 18:1365, relative to the Louisiana Election Code; to revise provisions relative to voting and voting processes and procedures; to provide relative to the standards and requirements for and acquisition of voting machines and systems; to remove certain provisions relative to specified types of voting systems used in an election; to provide for requirements applicable to the acquisition of voting systems; to require compliance with the Louisiana Procurement Code relative thereto; to provide certain requirements relative to funds used to acquire voting systems; to require legislative approval relative thereto; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 18:18(A)(7), 21(C)(3), 1351, 1352, 1353(B), (C)(introductory paragraph) and (2), and (D), 1361, 1362(A), and 1400.21(C) are hereby amended and reenacted and R.S. 18:563.1 is hereby enacted to read as follows:

1 §18. Secretary of state; powers and duties

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

4 * * *

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

9 * * *

10 §21. Maps; use of voting machines, technology, and other resources; fees; Voting
11 Technology Fund

12 * * *

13 C.

14 * * *

15 (3)(a) All monies in the fund shall be used solely and exclusively for general
16 operating purposes and for the acquisition and maintenance of voting machine
17 technology, including hardware and software; voting equipment and supplies; voter
18 outreach; voter improvement; early voting; and information technology products to
19 produce, run, and support the election and voting system.

20 (b) Prior to the expenditure of any monies from the fund for the acquisition,
21 including lease, of any element or component of a voting system as defined in R.S.
22 18:1351, the secretary of state shall submit the details of any such expenditure,
23 including any related contract or proposed contract, to the Joint Legislative
24 Committee on the Budget for review and approval.

25 * * *

26 §563.1. Voting processes and procedures; approval required

27 Prior to the implementation of a voting or election process or procedure that
28 affects the manner in which a voter casts a vote or the manner in which votes are
29 tabulated which is not explicitly provided by this Title or by rule adopted in

1 accordance with the Administrative Procedure Act with notice as provided in R.S.
 2 49:953(A), the election official who intends to implement the process or procedure
 3 shall submit the proposal to the House Committee on House and Governmental
 4 Affairs and the Senate Committee on Senate and Governmental Affairs for review
 5 and approval. Upon the receipt of the submission, the House Committee on House
 6 and Governmental Affairs and the Senate Committee on Senate and Governmental
 7 Affairs shall have sixty days to determine, either jointly or separately, whether the
 8 proposed process or procedure shall be approved or disapproved. If one of the
 9 committees or if both committees disapprove the process or procedure, such process
 10 or procedure shall not be implemented or utilized for any purpose. If the time period
 11 for action by the committees has lapsed without any action, the process or procedure
 12 shall be deemed approved.

* * *

14 §1351. Definitions

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

17 (1) "Absentee by mail and early voting counting equipment" means a device
18 capable of counting and producing results of votes cast on paper absentee by mail
19 and early voting ballots.

20 ~~(4)~~(2) "Election" means and includes all elections held in Louisiana, whether
21 primary, general, or special.

22 ~~(5)~~ "Electronic voting machine" means a voting machine that displays a
23 full-face ballot, whereby votes are cast by pushing a vote indicator button on the face
24 of the machine or a voting machine that displays a paging ballot, whereby votes are
25 cast by selecting a vote indicator by touching the screen or using available tools on
26 the voting system.

27 ~~(7)~~(3) "Official ballot" means the list of candidates, offices, amendments,
28 questions, or propositions prominently displayed on the front of the voting machine.
29 on the voting machine or paper ballot as certified by the secretary of state.

1 ~~(8)~~(4) "Parish custodian" refers to the parish custodian of voting machines
2 and means the persons designated as such by R.S. 18:1354.

3 ~~(9)~~(5) "Protective counter" means a counter, tabulator, or protective device
4 that will register each time the machine is ~~operated~~ voted during the life of the
5 machine.

6 ~~(10)~~(6) "Public counter" means a counter, tabulator, or ~~other device on the~~
7 ~~outside or on the face of the machine, which shall at all times indicate the number~~
8 ~~of times votes have been cast on a machine at an election.~~ protective device which
9 shall incrementally record and indicate each time votes have been cast on a machine
10 during an election.

11 ~~(11)~~ (7) "Question" means an amendment, proposition, or like matter to be
12 voted on in an election.

13 (8) "Vote-capture device" means a component of the voting system,
14 including hardware, software, and firmware, that captures and counts voter selections
15 on ballot on a voting machine or on a paper ballot.

16 ~~(12)~~ (9) "Vote indicator" means the device on a voting machine with which
17 votes upon a candidate or question are indicated.

18 (10) "Voter-verified paper record" means a paper document that the voter
19 can review and verify before officially casting his ballot.

20 ~~(13)~~ (11) "Voting machine" means the enclosure occupied by the voter when
21 voting, as formed by the ~~machine~~ vote-capture device, its screen and privacy shield;
22 ~~which shall include electronic voting machines.~~

23 ~~(14)~~ (12) "Voting system" means the total combination of equipment,
24 materials, and documentation, including voting machines, voter-verified paper
25 records, paper ballots, hardware, software, and firmware, used to define ballots,
26 elections and ballot styles, configure voting equipment, identify and validate voting
27 equipment configurations, perform logic and accuracy tests, activate ballots for
28 voters, cast and count votes, report or display election results, and maintain and
29 produce any auditable data and the software, firmware, hardware, and documentation

1 ~~required to program, control, and support such equipment. "Voting system" also~~
2 ~~includes the vendor's practices and documentation used to identify system~~
3 ~~components and versions of such components, test the system during its development~~
4 ~~and maintenance, maintain records of system errors and defects, determine specific~~
5 ~~system changes made after initial certification, and make available any materials to~~
6 ~~the voter generate reports, export election data, including election results, archive~~
7 ~~election data, and produce records in support of audits.~~

8 §1352. Use of voting machines throughout state; exception for failure of voting
9 equipment, early voting, absentee by mail and ~~early voting~~ provisional
10 ballots

11 A. Voting machines shall be used throughout this state in all elections.

12 B. Notwithstanding the provisions of Subsection A of this Section, paper
13 ballots may be used when voting machines fail, for voting absentee by mail, for early
14 voting as provided in this Title, and for provisional ballots in the manner provided
15 by this Title.

16 ~~C. Nothing in this Chapter shall prohibit absentee by mail and early voting~~
17 ~~as otherwise provided in this Title.~~

18 §1353. Secretary of state; powers and duties; voting systems and system
19 components; voter registration

20 * * *

21 B.(1) The secretary of state ~~may prescribe~~ shall promulgate uniform rules
22 and regulations with respect to matters pertaining to the certification standards and
23 requirements, procurement, preparation, and use of voting systems in the conduct of
24 elections and the duties of each category of persons charged with responsibility for
25 any matter relating to the voting systems in accordance with the Administrative
26 Procedure Act. The Prior to final promulgation, the proposed rules and regulations
27 shall be ~~approved~~ reviewed by the attorney general ~~and thereafter~~ for uniformity and
28 compliance with the provisions of this Title. The final rules and regulations shall be
29 distributed by the secretary of state to the election officials having responsibilities

1 relating to elections. ~~The rules and regulations~~ and shall be applied uniformly
2 throughout the state.

3 (2) The rules and regulations for voting systems promulgated pursuant to
4 Paragraph (1) of this Subsection shall at minimum provide for all of the following:

5 (a) Standards and requirements for usability, accessibility, durability,
6 accuracy, efficiency, capacity, and auditability.

7 (b) Requirements that the voting machines shall not have the capability of
8 being connected to the internet.

9 (c) Requirements that the equipment used to program the ballots on the
10 voting machines shall not have the capability of being connected to the internet.

11 (d) Requirements that the equipment used to perform software updates on
12 the voting machines be different than the equipment used to program the ballot.

13 (e) Requirement that software or firmware updates shall be loaded onto
14 voting machines using a non-network connection.

15 (f) Requirement that access to physical ports on any voting machine shall be
16 restricted and sealed during an election, with the exception of ports used to activate
17 the voting machine for each voter's voting session.

18 C. In addition to any other duties and functions ~~now or hereafter~~ provided
19 by law, the secretary of state shall:

20 * * *

21 ~~Be responsible~~ Coordinate with the office of state procurement in the
22 division of administration for all procurement, sales, and transfers of voting systems
23 and system components and for all matters in connection with ~~issuing~~ the issuance
24 of competitive bids or requests for proposals ~~or the advertising for and opening of~~
25 ~~bids for or in connection therewith~~ in accordance with all applicable law.

26 * * *

27 D. The secretary of state ~~may~~ shall appoint or employ mechanics, experts,
28 and other assistants when necessary in order to assume the maintenance, upkeep, and
29 proper functioning and operation of the machines, or when necessary in order to

1 explain and demonstrate to the election officials or to the public the proper method
2 of operation of the machines.

3 * * *

4 §1361. Approval of voting systems or system components; certificate; expenses of
5 examination

6 A. The secretary of state ~~may~~ shall examine any type or make of voting
7 system or system component upon the request of a representative of the maker or
8 supplier thereof. If the secretary of state determines that the voting system or system
9 component complies with the requirements of this Chapter and ~~that it meets~~
10 ~~standards acceptable to him as to durability, accuracy, efficiency, and capacity~~ the
11 standards promulgated pursuant to R.S. 18:1353, he shall approve that voting system
12 or system component for use in this state and shall issue his certificate of approval
13 thereof. Any voting system procured or used in the state shall include a sound-
14 creating device which will audibly indicate that a voter has left the machine after
15 casting his vote and allow for the challenge removal of early voting ballots and may
16 include a voter verification mechanism. In addition, any voting system or system
17 component procured or used in the state ~~must~~ shall have been certified according to
18 the voluntary voting system guidelines developed and maintained by the United
19 States Election Assistance Commission by a voting system test laboratory accredited
20 by the United States Election Assistance Commission. This certificate, together with
21 any relevant reports, drawings, and photographs, shall be a public record.

22 B. The secretary of state ~~may~~ shall appoint or employ experts as necessary
23 to assist him in making the examination provided for in this Section. The expenses
24 of the services of such experts, not to exceed ~~a total of five hundred~~ five thousand
25 dollars, shall be paid prior to the examination by the person requesting examination
26 of the voting system or system component. Experts employed in the examination
27 shall sign the certificate of approval made by the secretary of state. No voting
28 system or system component shall be used at any election which has not been
29 approved by the secretary of state as provided in this Section.

1 §1362. Method of procuring voting systems or system components; parts and
2 supplies; and of contracting for the maintenance of voting machines

3 A.(1) All voting systems or system components used in this state shall be
4 procured by the secretary of state, out of state funds appropriated for that purpose,
5 on the basis of a competitive request for proposals process or public bids submitted
6 ~~to the secretary of state in accordance with specifications prepared by him in~~
7 accordance with the Louisiana Procurement Code. The specifications for the voting
8 systems or system components to be procured may require tests and examinations
9 of the operation of the voting systems or system components, and the secretary of
10 state, for that purpose, ~~may~~ shall appoint or employ experts to report thereon and
11 charge the expense thereof to the responders or bidders. ~~Advertisement and letting~~
12 ~~of contracts for the procurement of voting systems or system components shall be~~
13 ~~in accordance with the Louisiana Procurement Code contained in Chapter 17 of Title~~
14 ~~39 of the Louisiana Revised Statutes of 1950.~~

15 (2) Notwithstanding ~~any provision of law to the contrary, particularly the~~
16 ~~provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950~~ the
17 provisions of Paragraph (1) of this Subsection and the Louisiana Procurement Code,
18 the secretary of state is authorized to procure directly from the supplier, through the
19 Department of State, voting ~~systems or system components~~, parts, supplies, and other
20 election paraphernalia and to contract with the manufacturer through the Department
21 of State for the maintenance of the voting systems or system components.

22 * * *

23 §1400.21. Help Louisiana Vote Fund

24 * * *

25 C.(1) All unexpended and unencumbered monies in the fund at the end of
26 the fiscal year shall remain in the fund. Such monies shall be invested by the state
27 treasurer in the same manner as monies in the state general fund, and interest earned
28 on the investment of these monies shall be credited to the fund after compliance with
29 the requirements of the Bond Security and Redemption Fund. The state treasurer

1 shall annually allocate investment earnings among the five accounts proportionally
2 based on the fund balance of each account at the time of the allocation.

3 (2) Prior to the expenditure of any monies from the fund for the acquisition,
4 including lease, of any element or component of a voting system as defined in R.S.
5 18:1351, the secretary of state shall submit the details of any such expenditure,
6 including any related contract or proposed contract, to the Joint Legislative
7 Committee on the Budget for review and approval.

8 Section 2. R.S. 18:1365 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 653 Engrossed

2021 Regular Session

Ivey

Abstract: Revises the election code relative to voting and voting processes and procedures, including provisions relative to the standards, requirement, and acquisition of voting machines and systems.

Present law (La. Election Code) provides processes and requirements for voter registration and voting, including the time and manner of voting.

Present law requires the secretary of state to prescribe uniform rules, regulations, forms, and instructions as to the use of electronic voting machines in the conduct of early voting. Proposed law removes the word "electronic" in reference to the voting machines and otherwise retains present law.

Proposed law retains present law but specifies that prior to the implementation of a voting or election process or procedure that affects the manner in which a voter casts a vote or the manner in which votes are tabulated which is not explicitly provided by the La. Election Code or by rule adopted in accordance with the Administrative Procedure Act with notice as provided as required by present law (R.S. 49:953(A)—notice for regular rulemaking process), the election official who intends to implement the process or procedure shall submit the proposal to the Committee on House and Governmental Affairs and the Committee on Senate and Governmental Affairs for review and approval. Provides that upon the receipt, the committees have 60 days to determine, either jointly or separately, whether the proposed process or procedure shall be approved. Provides that if one or both committees disapprove the process or procedure, it shall not be implemented or utilized for any purpose. Provides that if the time period for action by the committees has lapsed without any action, the process or procedure shall be deemed approved.

Present law relative to voting systems, provides definitions for the following terms: "absentee by mail and early voting counting equipment", "election", "electronic voting machine", "official ballot", "parish custodian", "protective counter", "public counter", "question", "vote indicator", "voting machine", and "voting system".

Proposed law changes the definitions for "official ballot", "protective counter", "public counter", "voting machine", and "voting system". Proposed law removes the definition for

"electronic voting machine". Proposed law adds definitions for "vote-capture device" and "voter-verified paper record". Proposed law otherwise retains present law.

Present law provides that voting machines shall be used throughout the state in all elections, but allows paper ballots to be used when voting machines fail and for voting absentee by mail and early voting.

Proposed law provides instead that voting machines shall be used throughout the state in all elections, but allows paper ballots to be used when voting machines fail for voting absentee by mail, for early voting, and for provisional ballots.

Present law authorizes the secretary of state to prescribe uniform rules and regulations with respect to matters pertaining to the procurement, preparation, and use of voting systems in the conduct of elections and the duties of each category of persons charged with responsibility for any matter relating to the voting systems. Requires the rules to be approved by the attorney general and distributed by the secretary of state to election officials.

Proposed law instead requires the secretary to promulgate rules and regulations through the Administrative Procedure Act and specifies that the rules and regulation shall also contain certification standards and requirements for voting systems. Further provides that instead of approval, the attorney shall review the proposed rules and regulations for uniformity and compliance with the La. Election Code. Proposed law specifies that the rules and regulations for voting systems are required to include standards and requirements for usability, accessibility, durability, accuracy, efficiency, capacity, and auditability; requirements that voting machines not have the capability of being connected to the internet; requirements that the equipment used to program the ballots on the voting machines not have the capability of being connected to the internet; and requirements that the equipment used to perform software updates on the voting machines be different than the equipment used to program the ballot; requirement that software or firmware updates be loaded using a non-network connection; requirement that access to ports on a voting machine be restricting and sealed during an election, except those used to activate the machine for a voter and otherwise retains present law.

Present law provides that the secretary of state shall be responsible for all procurement, sales, and transfers of voting systems and system components and for all matters in connection therewith. Further authorizes the secretary of state to employ or appoint mechanics, experts, etc., as necessary relative thereto.

Proposed law provides instead that the secretary of state shall coordinate with the office of state procurement in the division of administration for all procurement, sales, and transfers of voting systems and system components and for all matters in connection with the issuance of competitive bids or requests for proposals in accordance with all applicable law.

Present law authorizes the secretary of state to examine any type or make of voting system or system component upon the request of a representative of the maker or supplier thereof and if the secretary of state determines that the voting system or system component complies with the requirements of present law he shall approve that voting system or system component for use in this state and issue his certificate of approval thereof.

Proposed law instead requires the secretary of state to examine any type or make of voting system or system component upon request and further requires such a system to comply with the requirements of present law and the standards promulgated pursuant to proposed law.

Present law authorizes the secretary of state to employ experts to assist him in making the examination and provides that the expenses of the services of such experts shall not exceed a total of \$500 to be paid prior to the examination by the person requesting examination of the voting system or system component. Requires those experts to sign the certificate of

approval made by the secretary of state. Prohibits any voting system or system component from being used at any election which has not been so approved by the secretary of state.

Proposed law instead requires the secretary of state to employ such experts as necessary to assist him and increases the amount of such services from \$500 to \$5000 and otherwise retains present law.

Present law provides that all voting systems or system components used in this state shall be procured by the secretary of state, out of state funds appropriated for that purpose, on the basis of a competitive request for proposals process or public bids submitted to the secretary in accordance with specifications prepared by him. Provides that the specifications may require tests and examinations of the operation of the voting systems or system components, and the secretary, for that purpose, may employ experts to report thereon and charge the expense thereof to the responders or bidders. Specifies that advertisement and letting of contracts for the procurement of voting systems or system components shall be in accordance with the Louisiana Procurement Code. However, present law provides an exception to authorize the secretary of state to procure directly from the supplier, through the Dept. of State, voting systems or system components, parts, supplies, and other election paraphernalia and to contract with the manufacturer through the department for the maintenance of the voting systems or system components. Present law specifies that title to all voting machines purchased by the secretary of state shall vest in the state.

Proposed law provides instead that voting systems or system components used in this state shall be procured by the secretary of state in accordance with present law (La. Procurement Code). Proposed law further provides that if the system or components require testing or examination, the secretary shall appoint or employ experts to report thereon. Proposed law limits the exception allowing procurement directly from the supplier or manufacturer by removing the ability to directly procure voting systems or system components and allows such procurement only for parts, supplies, and other election paraphernalia and maintenance of voting systems and system components directly from the supplier or manufacturer. Proposed law otherwise retains present law.

Present law authorizes the secretary of state to utilize any procedure necessary to accommodate the use of paging direct record electronic voting machines for voting where possible, requires any such procedure to be approved by the attorney general. Requires the secretary of state to immediately notify, in writing, the presiding officers of the legislature and the standing committees of each house which have oversight over elections regarding the procedure to be utilized and the circumstances which caused the need for such procedure.

Proposed law repeals present law.

Present law establishes the Voting Technology Fund as a special fund in the state treasury. Provides that the source of monies for the fund shall be the monies derived from fees imposed for maps of precincts and election jurisdictions, for elections conducted for third parties, and any other monies appropriated to the fund. Authorizes monies in the fund be used for general operating purposes and for the acquisition and maintenance of voting machine technology, including hardware and software; voting equipment and supplies; voter outreach; voter improvement; early voting; and information technology products to produce, run, and support the election and voting system. Present law establishes the Help Louisiana Vote Fund. Sources of money deposited into the fund shall be any federal monies received by the state pursuant to the Help America Vote Act and any monies appropriated to the fund. Establishes five accounts in the fund and specifies the uses of the monies in each account, some of which include the acquisition of equipment and voting system technologies and related matters.

Proposed law retains present law relative to such funds but specifies that prior to the expenditure of any monies from the fund for the acquisition of any element or component of a voting system, the secretary of state shall submit the details of any such expenditure,

including any related contract or proposed contract, to the Jt. Legislative Committee on the Budget for review and approval.

(Amends R.S. 18:18(A)(7), 21(C)(3), 1351, 1352, 1353(B), (C)(intro. paragraph) and (2), and (D), 1361, 1362(A), and 1400.21(C); Adds R.S. 18:563.1; Repeals R.S. 18:1365)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill:

1. Limit the requirement of approval by the legislative governmental affairs committees prior to the implementation of a voting or election process or procedure that is not explicitly provided in the election code or promulgated rule, to those processes and procedures that affect the manner in which a voter casts a vote or the manner in which votes are tabulated.
2. Change definitions for "official ballot", "protective counter", "public counter", "voting machine", and "voting system" and add definitions for "vote-capture device" and "voter-verified paper record".
3. Provide additional certification requirements for voting systems relative to updates and access to ports on voting machines.
4. Restore ability for the secretary of state to procure parts, supplies, and maintenance directly from the manufacturer.
5. Increase the proposed amount authorized for expenses related to experts to assist the secretary of state in examining voting systems from not to exceed a total of \$2000 to not to exceed \$5000.