

CONFERENCE COMMITTEE REPORT

SB 221

2021 Regular Session

Hewitt

June 10, 2021

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 221 by Senator Hewitt, recommend the following concerning the Reengrossed bill:

1. That the House Committee Amendments proposed by the House Committee on House and Governmental Affairs and adopted by the House of Representatives on May 24, 2021, be adopted.
2. That the Legislative Bureau Amendments proposed by the Legislative Bureau and adopted by the House of Representatives on May 24, 2021, be adopted.
3. That the House Floor Amendment Nos. 2, 3, 4, 5, 6, 8, 9, 10, and 11 proposed by Representative Stefanski and adopted by the House of Representatives on June 1, 2021, be adopted.
4. That House Floor Amendment Nos. 1 and 7 proposed by Representative Stefanski and adopted by the House of Representatives on June 1, 2021, be rejected.
5. That House Floor Amendment No. 2 proposed by Representative Amedee and adopted by the House of Representatives on June 1, 2021, be adopted.
6. That House Floor Amendment No. 1 proposed by Representative Amedee and adopted by the House of Representatives on June 1, 2021, be rejected.
7. That the following amendments to the reengrossed bill be adopted:

AMENDMENT NO. 1

On page 1, line 2, after "(A)(7)," delete "1351(13)," and insert "1351, 1352,"

AMENDMENT NO. 2

On page 1, line 3, after "1362(A)," delete the remainder of the line and insert "1364(A), and 1400.21(C), to enact R.S. 18:1362.1, 1362.2, and 1366" and on line 4, delete "1362.2"

AMENDMENT NO. 3

On page 1, line 6, after "rules" and before the semicolon ";" insert "and standards"

AMENDMENT NO. 4

On page 1, line 8, after "criteria;" and before "and" insert "to provide certain requirements relative to funds used to acquire voting systems;"

AMENDMENT NO. 5

On page 1, line 11, after "(A)(7)," delete "1351(13)," and insert "1351, 1352,"

AMENDMENT NO. 6

On page 1, line 12, after "1362(A)," and before "are" delete "and 1364(A)" and insert "1364(A), and 1400.21(C)"

AMENDMENT NO. 7

On page 1, line 13, after "R.S. 18:1362.1" and before "are" delete "and 1362.2" and insert ", 1362.2, and 1366"

AMENDMENT NO. 8

On page 2, line 2, after "voting" and before "as" delete "machines," and insert "~~machines,~~ systems,"

AMENDMENT NO. 9

On page 2, delete lines 9 through 14 and insert:

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

(2) "Cast ballot" means a ballot in which the voter has taken final action after reviewing his selections and irrevocably confirmed his intent to vote, either by activating the cast vote mechanism or by scanning the voter-verified paper record into a vote capture device.

~~(4)~~**(3)** "Election" means and includes all elections held in Louisiana, whether primary, general, or special.

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

~~(7)~~**(4)** "Official ballot" means the list of candidates, offices, amendments, questions, or propositions prominently displayed on the front of the voting machine: **on the voting machine or paper ballot as certified by the secretary of state.**

~~(8)~~**(5)** "Parish custodian" refers to the parish custodian of voting machines and means the persons designated as such by R.S. 18:1354.

~~(9)~~**(6)** "Protective counter" means a counter, tabulator, or protective device that will register each time the machine is ~~operated~~ **voted** during the life of the machine.

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

~~(11)~~**(8)** "Question" means an amendment, proposition, or like matter to be voted on in an election.

(9) "Vote-capture device" means a component of the voting system, including hardware which may include a voter-facing scanner, software, and firmware, that captures and counts voter ballot selections.

~~(12)~~**(10)** "Vote indicator" means the device on a voting machine with which votes upon a candidate or question are indicated.

(11) "Voter-facing scanner" means a vote-capture device used for in-person voting that captures a voter's selections on a secure paper ballot one sheet at a time, whether hand-marked or produced by a ballot-marking device.

(12) "Voter-verified paper record" means a paper document or a secure hand-marked paper ballot produced by a voting system that the voter can review and verify before officially casting his ballot. The voter-verified paper record shall be printed on individual sheets of paper for each voter and shall not

be printed on a continuous paper roll. The voter-verified paper record shall be independent of any software or electronic device and temporarily available to the voter for verification prior to casting his ballot upon the vote capture device.

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

(14) "Voting system" means the total combination of equipment, ~~including voting machines, used to define ballots, cast and count votes, report or display election results, and maintain and produce any auditable data and the software, firmware, hardware, and documentation required to program, control, and support such equipment.~~ "Voting system" also includes the vendor's practices and documentation used to identify system components and versions of such components; test the system during its development and maintenance, maintain records of system errors and defects, determine specific system changes made after initial certification, and make available any materials to the voter **hardware, firmware, software, materials, and documentation used to cast and count votes or to perform any of the support functions to enable the casting or counting of votes.**

§1352. Use of voting machines throughout state; exception for failure of voting equipment, **early voting, election day voting**, absentee by mail and ~~early voting~~ **provisional ballots**

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

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

C. Nothing in this Chapter shall prohibit absentee by mail and early voting as otherwise provided in this Title **Notwithstanding the provisions of Subsection A of this Section, secure hand-marked paper ballots may be used for in-person early voting and election day voting after the procurement of a new voting system pursuant to R.S. 18:1362.2.**

AMENDMENT NO. 10

On page 2, line 18, after "B." and before "The" insert "**(1)**"

AMENDMENT NO. 11

On page 2, line 19, after "respect" delete the remainder of the line and insert: "to matters pertaining to the **certification standards and requirements**, the procurement, **the** preparation,"

AMENDMENT NO. 12

On page 2, line 24, after "**Affairs.**" delete the remainder of the line and delete line 25 and insert: "**Prior to final promulgation, the proposed rules and regulations shall be approved by the attorney general for uniformity and compliance with the provisions of this Title. The final rules and regulations shall be**"

AMENDMENT NO. 13

On page 2, between lines 28 and 29, insert:

"(2)The rules and regulations for voting systems promulgated pursuant to Paragraph (1) of this Subsection shall at a minimum provide for each of the voting system requirements set forth in R.S. 18:1366 and the following:

(a) Standards and procedures for usability, accessibility, durability, accuracy, efficiency, and capacity.

(b) Standards and procedures for the control and auditability of voter-verified paper records."

AMENDMENT NO. 14

On page 3, delete lines 18 through 22 and on line 23, delete "Governmental Affairs.
The"

AMENDMENT NO. 15

On page 3, line 25, after "standards" and before the period "." insert "promulgated pursuant to R.S. 18:1353"

AMENDMENT NO. 16

On page 4, line 12, after "shall" and before "no" delete "appoint" and insert "contract with"

AMENDMENT NO. 17

On page 4, line 13, after "qualified" delete the remainder of the line and insert: "independent experts to assist him in ~~making the~~ performing the state certification examination"

AMENDMENT NO. 18

On page 4, line 14, after "experts" delete the remainder of the line and on line 15, delete "exceed a total of five ~~hundred~~ thousand dollars,"

AMENDMENT NO. 19

On page 4, line 17, after "Experts" and before "the examination" change "employed in" to "employed in contracted to assist with"

AMENDMENT NO. 20

On page 4, line 19, after "approved" and before "by" insert "and certified"

AMENDMENT NO. 21

On page 4, line 24, after "state," delete the remainder of the line and on line 25, delete "established by" and insert "taking into consideration the recommendations of"

AMENDMENT NO. 22

On page 5, line 3, after "examinations" and before "and" insert "in accordance with R.S. 18:1361"

AMENDMENT NO. 23

On page 5, line 5, after "experts" delete the remainder of the line, and insert "shall"

AMENDMENT NO. 24

On page 6, line 8, after "Two" and before "appointed" delete "members" and insert "Louisiana registered voters"

AMENDMENT NO. 25

On page 6, line 11, after "Two" delete the remainder of the line and insert "Louisiana registered voters appointed by the attorney general."

AMENDMENT NO. 26

On p. 7, line 7, after "H." and before "commission" delete "The" and insert "The commission shall consider only a voting system that utilizes a voter verified paper record to replace the state's inventory of direct recording equipment. For the replacement of subsequent voting systems, the"

AMENDMENT NO. 27

On page 7, line 22, after "Representatives," and before "the" insert "the Senate Committee on Senate and Governmental Affairs, the House Committee on House and Governmental Affairs,"

AMENDMENT NO. 28

On page 7, line 23, after "than" delete the remainder of the line and insert "January 31, 2022, and annually thereafter."

AMENDMENT NO. 29

On page 7, line 29, after "of" and before the period "." delete "R.S. 18:1361(A)" and insert "R.S. 18:1353"

AMENDMENT NO. 30

On page 7, after line 29, insert:

"L. Notwithstanding any provision of law to the contrary, the secretary of state shall award no contract for voting systems unless the awarded proposer has provided a sworn affidavit attesting that the proposer is not subject to significant ownership or control by a foreign power, and that the proposer is aware that a false attestation will be subject to the provisions of R.S. 39:1678 and R.S. 39:1679. For purposes of this Subsection, "significant ownership or control by a foreign power" means ownership, equity, or control which equals or exceeds twenty-five percent of the total outstanding ownership, equity, or control of the proposer, and which is exercised directly or indirectly by, or for the express benefit of, the government of a foreign nation, state, or principality, or any instrumentality or subsidiary thereof. The sworn affidavit required pursuant to this Subsection, and all related information, shall be a public record."

AMENDMENT NO. 31

On page 8, at the beginning of line 20, insert "subject matter"

AMENDMENT NO. 32

On page 9, between lines 13 and 14, insert:

"§1366. Requirements for voting systems

Any new voting system procured by the secretary of state in accordance with the provisions of R.S. 18:1362 shall satisfy all of the following:

(1) The voting system shall produce an auditable voter-verified paper record.

(2) All voting system equipment shall have only essential functionality and shall not connect to the internet.

(3) The installation of software or firmware on the voting system shall be strictly limited to software or firmware deemed by the secretary of state to be essential to the voting system and shall be performed by employees of the secretary of state only.

(4) The secretary of state shall be responsible for all ballot programming and shall limit the use of third party vendors to support services only.

(5) Access to physical ports on any voting machine shall be restricted and sealed at all times using serialized tamper-evident seals except for ports used to activate the voting machine for each voter's voting session or as required for testing, repair, or ballot preparation or tabulation.

(6) The voting system vendor shall provide documentation to the secretary of state regarding financial disclosure, equity holdings, and management structure and must disclose any percentage of ownership by a foreign entity either in whole or in part, including any subsidiary or affiliate.

(7) The tabulation of fractional votes shall be prohibited.

(8) The voting system servers shall be located within the state of Louisiana.

* * *
§1400.21. Help Louisiana Vote Fund
* * *

C.(1) All unexpended and unencumbered monies in the fund at the end of the fiscal year shall remain in the fund. Such monies shall be invested by the state treasurer in the same manner as monies in the state general fund, and interest earned on the investment of these monies shall be credited to the fund after compliance with the requirements of the Bond Security and Redemption Fund. The state treasurer shall annually allocate investment earnings among the five accounts proportionally based on the fund balance of each account at the time of the allocation.

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

Respectfully submitted,

Senators:

Representatives:

Senator Sharon Hewitt

Representative John M. Stefanski

Senator Barry Milligan

Representative Royce Duplessis

Senator Gregory W. Tarver Sr.

Representative Polly Thomas

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

CONFERENCE COMMITTEE REPORT DIGEST

SB 221

2021 Regular Session

Hewitt

Keyword and summary of the bill as proposed by the Conference Committee

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

Report adopts House amendments to:

1. Make technical corrections.
2. Provide for compliance with the Louisiana Procurement Code.
3. Provide for membership of the Voting System Commission.
4. Provide for the purpose of the Voting System Commission.
5. Provide for the Voting System Commission to issue a recommendation to the secretary of state regarding the acquisition of new voting systems.
6. Require the secretary of state to take into consideration the recommendation of the Voting System Commission when developing a request for proposal for the acquisition of new voting systems.

Report rejects House amendments which would have:

1. Required the initial report of the Voting System Commission be completed no later than ninety days after its initial meeting.
2. Required the secretary of state to develop and adopted reasonable certification standards solely pertaining to the durability, accuracy, efficiency, and capacity of voting systems for use in the state prior to the solicitation of bids.
3. Required attorney general approval of promulgated rules and regulations promulgated by the secretary of state regarding the procurement, preparation, and use of voting systems.

Report amends the bill to:

1. Make technical changes.
2. Define the terms cast ballot, official ballot, vote-capture device, voter-facing scanner, voter-verified paper record, voting machine, and voting system.
3. Provide for the use of paper ballots for use in voting absentee by mail, early voting, provisional ballots, and election day voting after the procurement of a new voting system.
4. Require the secretary of state to promulgate uniform rules and regulations with respect to matters pertaining to the certification standards and requirements of voting systems.
5. Require attorney general approval for uniformity and compliance prior to final promulgation of proposed rules and regulations.
6. Require rules and regulations promulgated by the secretary of state with respect to matters pertaining to the certification standards and requirements, procurement, preparation, and use of voting systems to comply with statutory requirements for the acquisition of new voting systems in addition to standards and procedures for usability, accessibility, durability, accuracy,

efficiency, and capacity of voting systems and control and auditability of paper records.

7. Provide for the secretary of state to contract with qualified experts who are independent to assist him in the performance of state certification examination for voting systems.
8. Remove a limit on the expenses of experts contracted by the secretary of state for assistance with the state certification examination for voting systems.
9. Require the approval and certification by the secretary of state of any voting system or system component used at any election.
10. Require the secretary of state to take into consideration the recommendations of the Voting System Commission during the procurement of new voting systems.
11. Provide for membership of the Voting System Commission to include two Louisiana registered voters appointed by the attorney general and two Louisiana registered voters appointed by the governor, one of whom shall represent the disabled community.
12. Require the Voting System Commission to consider only a paper ballot system that utilizes a voter-verified paper record to replace the state's inventory of direct electronic voting machines.
13. Require that the report of the Voting System be sent to the Senate Committee on Senate and Governmental Affairs and the House Committee on House and Governmental Affairs.
14. Require that the first report of the Voting System Commission be submitted by January 31, 2022, and submitted annually thereafter.
15. Establish statutory requirements for the acquisition of new voting systems that they shall produce an auditable voter-verified paper record, shall not connect to the internet or tabulate fractional votes, shall have restricted access to physical ports, and that vendors shall be required to disclose any percentage of foreign ownership.
16. Require the secretary of state to submit details of any proposed expenditure of monies from the Help Louisiana Vote Fund for approval by the Joint Legislative Committee on the Budget.

Digest of the bill as proposed by the Conference Committee

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.

Proposed law further provides for definitions of cast ballot, vote-capture device, voter-facing scanner, and voter-verified paper record.

Present law provides that paper ballots may be used when voting machines fail.

Proposed law retains present law and further provides that paper ballots may be used for voting absentee by mail, early voting, provisional voting, and election day voting after the procurement of a new voting system by the state.

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 rules and regulations with respect to matters pertaining to the certification standards and requirements, procurement and preparation of voting systems in accordance with the Administrative Procedure Act and subject to legislative oversight which shall be approved by the attorney general.

Proposed law further provides for these promulgated rules and regulations to comply with proposed law establishing requirements for the acquisition of new voting systems and standards and procedures for voting system usability, accessibility, durability, accuracy, efficiency, and capacity and the control and the control and auditability of voter-verified paper records.

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 contract such experts, specifies their necessary qualifications, and provides for 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 removes the limitation on expert expenses.

Present law provides that no voting system or component shall be used at any election which has not been approved by the secretary of state as provided in present law.

Proposed law retains present law and further requires the voting system or component used to be certified by the secretary of state in accordance with proposed law.

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 taking into consideration recommendations developed by a voting system commission established in proposed law that mandate testing and examination of the voting system or system components.

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

Proposed law requires that the Voting System Commission consider only a paper ballot system that utilizes a voter-verified paper record to replace the state's current inventory of direct electronic voting machines.

Proposed law creates the Voting System Proposal Evaluation Committee to investigate and test the voting systems that meet the qualifications established by the Voting System Commission and determine which voting system to suggest the secretary of state 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 System Commission.

Proposed law establishes requirements that any new voting system procured by the secretary of state shall produce an auditable voter-verified paper records, that any voting system equipment shall have only essential functionality and shall not connect to the internet, that restrict access to physical ports on voting machines, that require disclosure of foreign ownership of any voting system vendor, that prohibit the tabulation of fractional votes, and that require voting system servers to be located within the state.

Proposed law requires the secretary of state to submit the details of any proposed expenditure of monies from the Help Louisiana Vote Fund for the acquisition of any element or component of a voting system to the Joint Legislative Committee on the Budget for review and approval prior to making the expenditure.

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), 1351,1352, 1353(B), (C)(intro para) and (C)(2), and (D), 1361, 1362(A),1364(A), and 1400.21(C); adds R.S. 18:1362.1,1362.2, and 1366 and 36:744(O) and (P); repeals R.S. 18:553.1, 1351(5), and 1365)