

SENATE BILL NO. 221

BY SENATORS HEWITT, CATHEY, CLOUD, CORTEZ, HENRY, MCMATH,
MILLIGAN, ROBERT MILLS, MORRIS, PEACOCK, TALBOT AND
WOMACK

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

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AN ACT

To amend and reenact R.S. 18:18(A)(7), 1351, 1352, 1353(B), the introductory paragraph of (C) and (C)(2), and (D), 1361, 1362(A), 1364(A), and 1400.21(C), to enact R.S. 18:1362.1, 1362.2, and 1366 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 and standards; 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; to provide certain requirements relative to funds used to acquire voting systems; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 18:18(A)(7), 1351, 1352, 1353(B), the introductory paragraph of (C) and (C)(2), and (D), 1361, 1362(A), 1364(A), and 1400.21(C) are hereby amended and reenacted and R.S. 18:1362.1, 1362.2, and 1366 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:

* * *

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

* * *

§1351. Definitions

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

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

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

10 ~~(4)~~**(3)** "Election" means and includes all elections held in Louisiana, whether
11 primary, general, or special.

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

17 ~~(7)~~**(4)** "Official ballot" means the list of candidates, offices, amendments,
18 questions, or propositions ~~prominently displayed on the front of the voting machine.~~
19 **on the voting machine or paper ballot as certified by the secretary of state.**

20 ~~(8)~~**(5)** "Parish custodian" refers to the parish custodian of voting machines
21 and means the persons designated as such by R.S. 18:1354.

22 ~~(9)~~**(6)** "Protective counter" means a counter, tabulator, or protective device
23 that will register each time the machine is ~~operated~~ **voted** during the life of the
24 machine.

25 ~~(10)~~**(7)** "Public counter" means a counter, tabulator, or ~~other device on the~~
26 ~~outside or on the face of the machine, which shall at all times indicate the number~~
27 ~~of times votes have been cast on a machine at an election.~~ **protective device that**
28 **shall incrementally record and indicate each time votes have been cast on a**
29 **machine during an election.**

30 ~~(11)~~**(8)** "Question" means an amendment, proposition, or like matter to be

1 voted on in an election.

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

5 ~~(12)~~**(10) "Vote indicator" means the device on a voting machine with which**
 6 **votes upon a candidate or question are indicated.**

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

10 **(12) "Voter-verified paper record" means a paper document or a secure**
 11 **hand-marked paper ballot produced by a voting system that the voter can**
 12 **review and verify before officially casting his ballot. The voter-verified paper**
 13 **record shall be printed on individual sheets of paper for each voter and shall not**
 14 **be printed on a continuous paper roll. The voter-verified paper record shall be**
 15 **independent of any software or electronic device and temporarily available to**
 16 **the voter for verification prior to casting his ballot upon the vote capture device.**

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

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

1 firmware, software, materials, and documentation used to cast and count votes
 2 or to perform any of the support functions to enable the casting or counting of
 3 votes.

4 §1352. Use of voting machines throughout state; exception for failure of voting
 5 equipment, early voting, election day voting, absentee by mail and
 6 early voting provisional ballots

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

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

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

17 §1353. Secretary of state; powers and duties; voting systems and system
 18 components; voter registration

19 * * *

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

1 regulations shall be distributed by the secretary of state to the election officials
2 having responsibilities relating to elections. ~~The rules and regulations shall be~~ and
3 applied uniformly throughout the state.

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

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

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

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

13 * * *

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

19 * * *

20 D. The secretary of state ~~may~~ shall appoint or employ mechanics, experts,
21 and other assistants when necessary in order to assume the maintenance, upkeep, and
22 proper functioning and operation of the machines, or when necessary in order to
23 explain and demonstrate to the election officials or to the public the proper method
24 of operation of the machines.

25 * * *

26 §1361. Approval of voting systems or system components; certificate; expenses of
27 examination

28 A. Prior to the solicitation of bids for any new voting system, the ~~The~~
29 secretary of state ~~may~~ shall examine any type or make of voting system or system
30 component upon the request of a representative of the maker or supplier thereof for

1 compliance with the certification standards promulgated pursuant to R.S.
 2 18:1353. If the secretary of state determines that the voting system or system
 3 component complies with the ~~requirements of this Chapter and that it meets~~
 4 ~~standards acceptable to him as to durability, accuracy, efficiency, and capacity~~
 5 certification standards, he shall approve that voting system or system component
 6 for use in this state and shall issue his certificate of approval thereof. ~~Any voting~~
 7 ~~system procured or used in the state shall include a sound-creating device which will~~
 8 ~~audibly indicate that a voter has left the machine after casting his vote and allow for~~
 9 ~~the challenge removal of early voting ballots and may include a voter verification~~
 10 ~~mechanism.~~

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

18 **BC.** The secretary of state ~~may employ~~ shall contract with no fewer than
 19 three but no more than five qualified independent experts to assist him in ~~making~~
 20 ~~the~~ performing the state certification examination provided for in this Section. The
 21 expenses of the services of such experts, ~~not to exceed a total of five hundred dollars,~~
 22 shall be paid prior to the examination by the person requesting examination of the
 23 voting system or system component. Experts ~~employed in~~ contracted to assist with
 24 the examination shall sign the certificate of approval made by the secretary of state.
 25 No voting system or system component shall be used at any election which has not
 26 been approved and certified by the secretary of state as provided in this Section.

27 §1362. Method of procuring voting systems or system components; parts and
 28 supplies; and of contracting for the maintenance of voting machines

29 A.(1) All voting systems or system components used in this state shall be
 30 procured by the secretary of state, taking into consideration the recommendations

1 of the Voting System Commission as provided in R.S. 18:1362.1, out of state
 2 funds appropriated for that purpose, on the basis of a competitive request for
 3 proposals process or public bids submitted to the secretary of state in accordance
 4 with ~~specifications prepared by him~~ the provisions of the Louisiana Procurement
 5 Code. The specifications may require Required specifications shall include tests
 6 and examinations of the operation of the voting systems or system components, and
 7 the secretary of state, for that purpose, ~~may~~ shall employ experts to conduct these
 8 examinations in accordance with R.S. 18:1361 and report thereon and charge the
 9 ~~expense thereof to the responders or bidders~~ the results thereof to the Voting
 10 System Commission. The expenses of the services of these experts shall be paid
 11 by the vendor that seeks to have its system certified for consideration.
 12 ~~Advertisement and letting of contracts for~~ In every respect, the procurement of
 13 voting systems or system components shall be in accordance with the Louisiana
 14 Procurement Code ~~contained in Chapter 17 of Title 39 of the Louisiana Revised~~
 15 ~~Statutes of 1950.~~

16 (2) Notwithstanding any provision of law to the contrary, particularly the
 17 provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950, the
 18 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 §1362.1. Voting System Commission; creation and organization; duties and
 24 responsibilities

25 A.(1) The Voting System Commission is created and established within
 26 the Department of State for the purpose of evaluating and recommending the
 27 type of voting system that shall be procured to replace the voting system in use
 28 as necessary.

29 (2) The purpose of this commission is to further the preservation of
 30 democracy by strengthening the state's commitment to maintaining the faith,

1 integrity, and trust in election, voting, and ballot-counting processes, to provide
2 the highest level of election security and functionality, and to provide greater
3 clarity, public transparency, and objectivity with respect to the selection of
4 voting equipment.

5 B. The Voting System Commission shall be comprised of the following
6 members:

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

8 (2) Two members of the House of Representatives, appointed by the
9 speaker of the House of Representatives, one of whom shall be a member
10 affiliated with the Republican Party and one of whom shall be a member
11 affiliated with the Democratic Party.

12 (3) Two members of the Senate, appointed by the president of the Senate,
13 one of whom shall be a member affiliated with the Republican Party and one of
14 whom shall be a member affiliated with the Democratic Party.

15 (4) Two Louisiana registered voters appointed by the governor, one of
16 whom shall represent the disabled community.

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

18 (6) Two Louisiana registered voters appointed by the attorney general.

19 (7) The executive director of the Cyber Innovation Center, or his
20 designee.

21 (8) The president of the Louisiana Clerks of Court Association, or his
22 designee.

23 (9) The president of the Louisiana Registrars of Voters Association, or
24 his designee.

25 C. The chair of the commission shall be elected by a majority vote of the
26 members and shall set the date, time, and place for all meetings. The secretary
27 of state shall convene the initial meeting of the commission not later than
28 September 1, 2021, and shall serve as the initial chair until a chairman is
29 elected.

30 D. A majority of the members serving on the commission shall constitute

1 a quorum to conduct official business. All actions of the commission shall
2 require a majority vote of the quorum. A majority of the meetings of the
3 commission shall be held at the state capitol, and all meetings held at the state
4 capitol shall be streamed live on the internet.

5 E. Members of the commission shall serve terms concurrent with the
6 governor. Members shall serve without compensation; however, legislative
7 members of the commission shall receive the per diem and expenses as provided
8 for legislators during attendance at legislative committees and from the same
9 source.

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

12 G. The commission may request from the secretary of state or any other
13 source any information it considers necessary to assist in making a
14 recommendation regarding voting systems.

15 H. The commission shall consider only a voting system that utilizes a
16 voter verified paper record to replace the state's inventory of direct recording
17 equipment. For the replacement of subsequent voting systems, the commission
18 shall conduct a preliminary analysis of available voting systems and select up
19 to three options for discussion during each public hearing held for the
20 evaluation of which voting systems are most advantageous to the state based on
21 functionality.

22 I.(1) After complying with the provisions of Subsection H of this Section,
23 the commission shall determine the type of voting system to recommend to the
24 secretary of state to submit for competitive solicitation in accordance with the
25 provisions of the Louisiana Procurement Code.

26 (2) The recommendation of the Voting System Commission pursuant to
27 this Subsection shall not be a valid basis for a protest pursuant to Part VI of the
28 Louisiana Procurement Code relative to a procurement of voting systems. Any
29 protest asserting that the recommendation of the Voting System Commission
30 was erroneous shall be null and disregarded.

1 J. The commission shall submit a report of its findings and conclusions
2 to the governor, the president of the Senate, the speaker of the House of
3 Representatives, the Senate Committee on Senate and Governmental Affairs,
4 the House Committee on House and Governmental Affairs, the secretary of
5 state, and the division of administration no later than January 31, 2022, and
6 annually thereafter.

7 K. Upon receipt of the report, the secretary of state, working in
8 conjunction with the office of state procurement, shall develop a request for
9 proposals taking into consideration the commission's recommendations. No
10 later than thirty days prior to the issuance of the request for proposals, the
11 secretary shall promulgate certification standards for the type of voting system
12 to be procured in accordance with the provisions of R.S. 18:1353.

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

26 §1362.2. Voting System Proposal Evaluation Committee; membership; duties

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

1 B.(1) The Voting System Proposal Evaluation Committee shall be
 2 comprised of the following members:

3 (a) A faculty member of a Louisiana postsecondary education institution
 4 with engineering or computer science expertise.

5 (b) A member of the Louisiana Clerks of Court Association.

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

8 (d) A member of the Louisiana Registrars of Voters Association.

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

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

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

25 D. Notwithstanding any other law to the contrary, nothing herein shall
 26 alter or negate the provisions and requirements of the Louisiana Procurement
 27 Code.

28 * * *

29 §1364. Placement and sufficiency of voting machines and counting equipment for
 30 absentee by mail and early voting

1 foreign entity either in whole or in part, including any subsidiary or affiliate.

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

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

5 * * *

6 §1400.21. Help Louisiana Vote Fund

7 * * *

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

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

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

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

22 * * *

23 O. The Voting System Commission (R.S. 18:1362.1) is placed within the
24 Department of State and shall perform its powers, duties, functions, and
25 responsibilities in the manner provided by law.

26 P. The Voting System Proposal Evaluation Committee (R.S. 18:1362.2)
27 is placed within the Department of State and shall perform its powers, duties,
28 functions, and responsibilities in the manner provided by law.

29 * * *

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____