



Legislation Text

File #: 06-0795, **Version:** 1

Recommendation to refer discussion and recommendation relative to City voting system replacement alternatives to the Elections Oversight Committee for report back to City Council by November 21, 2006, with scheduled meetings on September 5, September 12, and September 19, 2006, along with possible scheduling of an election system demonstration day with vendors of certified California voting systems; and request that the City Auditor work in conjunction with the Elections Oversight Committee to provide input and recommendations concerning the cost, the current elections structure, and contract, as well as alternatives voting systems being reviewed by the Committee.

Background

In 2002, the Help America Vote Act (HAVA) and Proposition 41 (State Voting Modernization Fund) provided California with more than \$495 million for procurement of new voting systems in California's 58 counties. With the availability of these funding sources, came new legal requirements:

1. Under HAVA all voting systems in which federal candidates appear on the ballot must be capable of allowing blind and disabled voters the opportunity to cast their ballots without assistance. Systems must also provide protection to prevent over votes. This requirement became effective January 1, 2006,
2. Under State law, the Legislature mandated that all direct record electronic (DRE) voting equipment be augmented with a printer to produce a contemporaneous voter-verified paper trail audit (WPAT). This requirement became effective January 1, 2006.

In 2003, the City requested \$2.8 million from the Secretary of State for the Municipal Elections Pilot Project (attached), which would have provided a funding source to improve the City's voting system. Citing scarcity of funds, the request was denied and the City was encouraged to seek assistance from the Los Angeles County Registrar Recorder/County Clerk (RRCC). Furthermore, it has been opined that HAVA and Proposition 41 do not apply to "city" election.

In December 2004, at the request of Elections Oversight Committee Chairman Patrick O'Donnell, the City Clerk Department released a request for information on pricing of an enhanced City election system. Responses were received from four election system vendors with system costs ranging from \$650,000 to \$6.4 million.

To comply with the requirements of the Help America Vote Act (HAVA), the RRCC plans to implement Ink-A-Vote Plus at a cost of \$25 million. The RRCC has indicated that there would be no cost for the City's leasing this equipment, but cost of supporting the system during a City election would be chargeable. These support costs have not yet been determined.

In the face of an uncertain future regarding the certification of compliant voting systems, the RRCC has chosen as best alternative strategy -- to enhance InkAVote to meet federal and state

requirements. However, this strategy is of no benefit to the City unless election cycles change. To use the new RRCC equipment, City elections must move to odd-calendar year elections, or the Primary Election moved to February. Use of the RRCC InkAVote Plus system could reduce capital investment costs of approximately \$1.9 million (this does not include operation, maintenance and replacement).

Current Status

With completion of the 2006 election cycle, the archaic condition of the City's voting system was fully exposed in two ways: lack of precinct level over/under-vote protection and lack of modern tally system'. If we are to maintain and improve the integrity of the voting process, these shortcomings should no longer be accepted.

A recent ruling in supports the timing of our decision to review our voting system *Stewart v. Blackwell*. In this case the U.S. 6th Circuit Court of Appeals ruled that the use of punch card and central count systems violates the 14th Amendment of the U.S. Constitution. The analysis distinguishes between precinct-count optical scan equipment that prevent over votes and "non-notice" equipment such as central-count scan equipment that does not provide notice of and opportunity for a voter to correct residual votes. The decision prohibited the State of Ohio from continuing to allow the use of these voting systems in the sited counties while more reliable voting equipment is used in other counties. Though the City does not use a punch card voting system, our ballots are tabulated on a central count basis.

The selection of a replacement voting system is made difficult mainly due to the lack of financial resources to procure a new system and the continuing flux of viable and certified voting systems. Furthermore, the question of replacement is compounded by variations in voting system use and functionality. Nevertheless, such conditions should not prevent the City from considering the system replacement alternatives for implementation in advance of a Spring 2007 or April 2008 election cycle.

At this time, we anticipate that there are five alternatives:

1. Continued use of Martin & Chapman's "Opto-Mark", if the vendor can offer system enhancements, e.g., ballot bar codes and Internet reporting.
2. Purchase of a Modern Central Count System;
3. Lease Use of the RRCC InkAVote Plus;
4. Purchase of a City Owned Precinct Level Ballot Counting System;
5. Conduct of Citywide mail ballot elections.

Discussion of these alternatives by the Elections Oversight Committee (EOC) will provide a more in-depth demonstration and assessment of a system alternative most potentially beneficial to the City and its voters.

During their deliberations, the EOC will hear vendor presentations on each system alternative and visit at least one voting jurisdiction where the newer technologies are being used.

As the City Auditor, at the request of the City Clerk Department, will be conducting an audit of Martin and Chapman billed expenses for the April-June 2006 election, the EOC audit findings will help us establish a firm election costs baseline, as well as any potential costs savings that could be implemented in parallel with the final recommendations of the EOC.

In order to render a decision on whether to replace the City's current voting system, for use in an election in either April 2007 or April 2008, Council deliberations on system replacement must be completed by November 21, 2006.

None.

Approve recommendation.

LARRY HERRERA
CITY CLERK