

**California Secretary of State**  
**Proposed Regulatory Action: Experimental Use of a Voting System in a Pilot**  
**Program Draft Regulations Initial Statement of Reasons**

**PUBLIC HEARING AND COMMENT**

**Hearing Date:** September 20, 2022

**Written Public Comment Period:** August 5, 202, through September 19, 2022

**Subject Matter of Proposed Regulations:** Voting System Pilot Program Draft Regulations

**Section(s) Affected:** Sections 20685, 20686, 20687, 20688, 20689, 20690, and 20691 of Title 2, Division 7, Chapter 6.1 of the California Code of Regulations

**PURPOSE AND NECESSITY**

The California Secretary of State seeks to add Sections 20685, 20686, 20687, 20688, 20689, 20690, and 20691 to Title 2, Division 7, Chapter 6.1 of the California Code of Regulations. The purpose of these proposed regulations is to adopt regulations related to governing the submission, review, approval, and use of voting system pilot programs, pursuant to section 19209(g) of the California Elections Code.

Voting systems in California cannot be used by a jurisdiction unless they have been certified for use by the Secretary of State. The Secretary of State has developed one of the most strenuous voting system testing and certification programs in the country. New voting systems applying for certification must undergo months of extensive testing which includes:

- Examination and testing of system software;
- Software source code review and evaluation;
- Hardware and software security penetration testing;
- Hardware testing under conditions simulating the intended storage, operation, transportation, and maintenance environments;
- Inspection and evaluation of system documentation; and
- Operational testing to validate system performance and functioning under normal and abnormal conditions.

California Elections Code section 19209 allows for the experimental adoption by a governing board of a jurisdiction to use of a voting system in a legally binding election if either the system is certified through the above Secretary of State testing and review, or if it meets specified requirements, which includes but is not limited to using disclosed software, submitting a pilot program plan to the Secretary of State, and receiving prior approval from the California Secretary of State.

The purpose of adding regulations related to governing voting system pilot programs is as follows:

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- 1) To create regulations for the purpose of governing the experimental use of a voting system in a pilot program pursuant to section 19209(g) of California Elections Code; and
- 2) To create clear and concise requirement for submission, review, approval, and use of voting system pilot programs.

The proposed adoptions provide California jurisdictions a clear, concise path when seeking the experimental use of a voting system in a pilot program. In addition, they provide clear and concise regulations for jurisdictions using an experimental voting system. All the above referenced purposes benefit local county election officials. However, there are no direct benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

## **FACTUAL BASIS / RATIONALE**

The factual basis and rationale for each section of the proposed regulations are as follows:

### **Section 20685. General Provisions.**

Paragraph (a) – The purpose of this paragraph is to identify that only voting systems which are certified, conditionally approved, or provided for in this chapter and Section 19209 of the Elections Code shall be used in a pilot program. This is necessary to make clear the specific voting systems that qualify for use in a pilot program.

Paragraph (b) – The purpose of this paragraph is to provide the timeframe in which applicants shall submit to the Secretary of State an application to conduct a pilot program. This is necessary to ensure the Secretary of State is provided sufficient time to review the application in its entirety.

Paragraph (c) – The purpose of this paragraph is to provide the timeframe in which the Secretary of State shall approve or reject the application to conduct a pilot program submitted by the applicant. This is necessary to ensure the Secretary of State is responsive to the applicant in a timely manner.

Paragraph (d)(1) – The purpose of this paragraph is to provide a definition for the term “voting system” under the chapter. This is necessary to ensure the term voting system is adequately defined within this chapter.

Paragraph (d)(2) – The purpose of this paragraph is to make clear that a voting system submitted in accordance with this chapter must use paper ballots pursuant to section 19203 of the Elections Code. This is necessary to ensure that a voting system used in a pilot program meets the paper ballot requirement outlined in statute.

Paragraph (d)(2)(i) – The purpose of this paragraph is to make clear that paper ballots used in a pilot program must contain tint and watermark pursuant to section 13002 of the Elections Code.

This is necessary to ensure that the paper ballots used in a pilot program meets the requirements outlined in statute.

Paragraph (d)(2)(ii) – The purpose of this paragraph is to make clear that paper ballots must comply with section 13004 of the Elections Code and Section 20220 of Title 2 of the California Code of Regulations. This is necessary to ensure that the paper ballots used in a pilot program meet the requirements outlined in statute and regulation.

Paragraph (d)(2)(iii) – The purpose of this paragraph is to make clear that any ballot on demand system component submitted with a voting system for use in a pilot program must be a module within the voting system itself. This is necessary to clarify that a ballot on demand system that is not part of the voting system as whole does not qualify for experimental use in a pilot program.

Paragraph (d)(3) – The purpose of this paragraph is to make clear that a voting system proposed for use in a pilot program shall not include features that permit a voter to leave the polling place with a copy of the ballot pursuant to Section 19204 of the Elections Code. This is necessary to ensure that the voting system used in a pilot program meets the regulations outlined in statute.

Paragraph (d)(4) – The purpose of this paragraph is to make clear that a voting system proposed for use in a pilot program shall comply with the connectivity regulations described in Section 19205 of the Elections Code. This is necessary to ensure that the voting system used in a pilot program meets the connectivity requirements outlined in statute.

Paragraph (d)(5) – The purpose of this paragraph is to make clear that the voting system’s software and firmware shall not be modified during the duration of the pilot program without prior written approval from the Secretary of State. This is necessary to ensure that the applicant does not make any changes or modifications to the voting system without review and approval from the Secretary of State to determine that the changes or modifications do not adversely affect the voting system’s function and/or security.

## **Section 20686. Application**

Paragraph (a) – The purpose of this paragraph is to set the requirement that an application to conduct a pilot program shall be submitted to Secretary of State by the governing board of the jurisdiction that plans to conduct the pilot program. This is necessary to ensure the application is submitted by the party with authority to make the submission and that will be accountable for all aspects of the pilot program.

Paragraph (b) – The purpose of this paragraph is to ensure that the voting system is complete and ready for use by the applicant at the time of application submittal. This is necessary to ensure that all voting system software, firmware, and hardware have been completely developed and adequately tested prior to requesting approval for use from the Secretary of State. This will allow the Secretary of State the opportunity to ensure the voting system can meet all the basic functionality, accessibility, and security capabilities required of a voting system, prior to providing the applicant approval for use of the voting system in a California election.

Paragraph (c) – The purpose of this paragraph is to ensure all the items requested in the application are provided. This is necessary to ensure that adequate information regarding the voting system, the voting system manufacturer, and the applicant is provided to the Secretary of State to establish that appropriate relationships exist between associated parties and that the voting system is in compliance with all Federal and State statutes, regulations, and procedures.

Paragraph (c)(1) – The purpose of this paragraph is to ensure adequate information regarding the request for approval is provided in the application, including voting technology type, application date, and system name and version. This is necessary to ensure adequate information is provided regarding the voting system being submitted for approval to sufficiently identify the system being submitted for approval.

Paragraph (c)(2) – The purpose of this paragraph is to ensure adequate information regarding the applicant is provided in the application. This is necessary to ensure the accountable party is adequately identified.

Paragraph (c)(3) – The purpose of this paragraph is to ensure adequate information about the voting system, including but not limited to software and firmware version numbers, is provided in the application. This is necessary to allow for proper identification of all system components by the Secretary of State, to ensure the proposed system is in compliance with all Federal and State statutes, regulations, and procedures.

Paragraph (c)(4) – The purpose of this paragraph is to ensure the Pilot Program Plan, as described in Section X, is provided with the application. This is necessary to ensure adequate information is provided to the Secretary of State regarding the intended implementation and use of the piloted voting system during the designated election in which the voting system will be piloted.

Paragraph (c)(5) – The purpose of this paragraph is to ensure adequate information about the voting systems configurations, option settings and definition parameters for all software, firmware and hardware are provided within the application. This is necessary to allow for proper identification of all system configurations, option settings and definition parameters by the Secretary of State, to provide an overview of the pilot voting system and to ensure the proposed system is in compliance with all Federal and State statutes, regulations, and procedures.

Paragraph (c)(6) – The purpose of this paragraph is to ensure adequate information about the voting system's directory listing of program, data, and support files required to install, configure, operate, and/or provide supplemental support for the voting system are provided within the application. This is necessary to allow for proper identification of all system files by the Secretary of State, to provide a wholistic overview of the pilot voting system and to ensure the proposed system is in compliance with all Federal and State statutes, regulations, and procedures.

Paragraph (c)(7) – The purpose of this paragraph is to ensure adequate information about the voting system's known defects, faults, failures, outstanding bugs, security vulnerabilities, limitations, and mitigations are provided within the application. This is necessary to allow for proper identification of all known system issues and mitigations by the Secretary of State, to

ensure the functionality and security of the proposed system is in compliance with all Federal and State statutes, regulations, and procedures.

Paragraph (c)(8) – The purpose of this paragraph is to ensure the applicant submits adequate use procedures for the piloted voting system. This is necessary to ensure specific election administration procedures recommended for use with the system are provided. The procedures are to provide, at minimum: guidance to election staff and vendor support staff for use of a voting system in an election to ensure compliance with election law; verifiable established standards to protect the security, integrity and accuracy of the election and insure privacy of all voters; a baseline for evaluating the suitability of the proposed voting system; and protection of an election from legal challenge by establishing statewide uniformity on use of the system. These must be written to conform to the template for such procedures that is available from the Secretary of State’s website.

Paragraph (c)(9) – The purpose of this paragraph is to ensure the applicant submits a detailed network diagram of what components are connected or related and how they are connected. This is necessary to allow for proper identification of connected system components by the Secretary of State, to ensure the manner(s) in which system components are connected comply with all Federal and State statutes, regulations, and procedures.

Paragraph (c)(10) – The purpose of this paragraph is to ensure adequate photographs of the voting system are submitted with the application. This is necessary to provide the Secretary of State the ability to identify the particular make(s) and model(s) of the individual components of the piloted voting system.

Paragraph (c)(11) – The purpose of this paragraph is to require the applicant to provide a list of any other jurisdictions that are using, or have used, the exact version of the voting system being submitted. This is necessary to allow the Secretary of State to determine if the version of the voting system being presented has a proven record of use during live elections in any other location.

Paragraph (c)(12) – The purpose of this paragraph is to require the applicant to provide a list of California jurisdictional users who are using a predecessor version of the voting system being submitted. This is necessary to allow the Secretary of State to determine if any predecessor version of the voting system being presented has a proven record of use during live elections in any other location.

Paragraph (c)(13) – The purpose of this paragraph is to require the applicant to provide all financial relationships between the applicant and the manufacturer, distributor, or retailer of the various components comprising the voting system. This is necessary to allow the Secretary of State to determine if any relationships exist between the applicant and the manufacturer, distributor, or retailer of the various components comprising the proposed voting system.

Paragraph (c)(14) – The purpose of this paragraph is to require the applicant to provide all the documentation necessary for the identification of the full system configuration submitted for use in the pilot program. This is necessary to allow the Secretary of State to identify and define the

voting system's design, method of operation, and related resources. It also provides a system overview and documents the system's functionality, hardware, software, security, verification specifications, operations procedures, maintenance procedures, and personnel deployment and training regulations.

Paragraph (c)(15) – The purpose of this paragraph is to require the applicant to provide the main part of the Technical Data Package (TDP) main part. The subsequent sub-paragraphs, (i) through (vii) outline what must be included within the main part of the TDP. This is necessary to ensure the Secretary of State is provided adequate technical documentation to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(i) – The purpose of this paragraph is to require the applicant to provide an Implementation Statement declaring which standard options are implemented in the system. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot voting systems available standard options to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(ii) – The purpose of this paragraph is to require the applicant to provide a System Hardware Specification document detailing the specifications of the hardware components of the system, including specifications of hardware used to support telecommunications capabilities of the system. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot voting system hardware specifications to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(iii) – The purpose of this paragraph is to require the applicant to provide an Application Logic Design and Specification document detailing specifications of all included non-Commercial-Off-the-Shelf (COTS) software, firmware, and hardwired logic. In addition, the applicant is required to provide precise identification of all included COTS software, firmware, and hardwired logic. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot voting system logic design and specifications to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(iv) – The purpose of this paragraph is to require the applicant to provide a System Security Specification document detailing descriptions of all system security specifications including but not limited to; system design/interface specifications, security architecture, development environment specifications, security threat controls, security testing, and vulnerability analysis documentation. This is necessary to ensure the Secretary of State is provided adequate information regarding the voting system security specifications to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(v) – The purpose of this paragraph is to require the applicant to provide a System Test Specification document detailing all information regarding previous development tests, usability test reports, or any additional test information available for the pilot voting system. This is necessary to ensure the Secretary of State is provided adequate information

regarding the pilot voting system previous testing to determine that the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(vi) – The purpose of this paragraph is to require the applicant to provide a Configuration for Review document detailing the configuration actions necessary to obtain conforming behavior of the pilot voting system. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot voting system review configuration to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(15)(vii) – The purpose of this paragraph is to require the applicant to provide a Quality and Configuration Management Manual detailing the manufacturer's quality and configuration management processes and procedures. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot voting system quality and configuration management to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(16) – The purpose of this paragraph is to require the applicant to provide the User Documentation part of the Technical Data Package (TDP). The subsequent sub-paragraphs, (i) through (vii), outline what must be included within the User Documentation part of the TDP. This is necessary to ensure the Secretary of State is provided adequate technical documentation to properly identify the technical aspects of the system and to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures. The User Documentation part of the TDP is intended to provide, at minimum: information that identifies the functional and physical components of the system, how the components are structured, and the interfaces between them; the scope of the system's functional capabilities, establishing the performance, design, manufacture, and acceptance context for the system; all aspects of system design, development, and proper usage that are relevant to system security; all information necessary for system use by all personnel who support pre-election and election preparation, polling place activities and central counting activities; maintenance procedure information in sufficient detail to support election workers, information systems personnel, or maintenance personnel in the adjustment or removal and replacement of components or modules in the field; information about the staff needed to run the system, as well as the training required for the various roles; and Use Procedures as identified in Paragraph (c)(8) of this Section.

Paragraph (c)(16)(i) – The purpose of this paragraph is to require the applicant to provide a System Overview document identifying the functional and physical components of the system, how the components are structured, and the interfaces between them. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot voting system to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(16)(ii) – The purpose of this paragraph is to require the applicant to provide a System Functionality Description document outlining the scope of the system's functional capabilities, performance, design, test, manufacture, and acceptance context for the system. This is necessary to ensure the Secretary of State is provided adequate information regarding the pilot

voting systems functionality to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (c)(16)(iii) – The purpose of this paragraph is to require the applicant to provide a System Security Manual identifying all aspects of system design, development, and proper usage that are relevant to system security. This may include but is not limited to access controls, system event logging, software installation, setup inspection, communications, and the voter verifiable paper audit trail (VVPAT). The security component of this paragraph is intended to identify the voting system’s hardware, software, and communication components ability to detect, prevent, log, and recover from a broad range of security risks determined by the design of the system and potential exposure to risk. This is necessary to ensure the Secretary of State is provide adequate information regarding the pilot voting systems security to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures. Security in elections is our first priority in California. Because a proposed pilot system will be used in a real election, security must be identified and adhered to.

Paragraph (c)(16)(iv) – The purpose of this paragraph is to require the applicant to provide a System Operations Manual identifying all information necessary for system use by all personnel who support pre-election and election preparation, polling place activities and central counting activities, as applicable, with regard to all system functions and operations identified. This may include but is not limited to operational environment and features, system installation and test specification, operating procedures, documentation for poll workers, operations support, and transportation and storage recommendations. This is necessary to ensure that adequate supporting documentation is available to facilitate competent system use by all jurisdiction personnel that support the election process.

Paragraph (c)(16)(v) – The purpose of this paragraph is to require the applicant to provide a System Maintenance Manual identifying all maintenance procedure information in sufficient detail to support election workers, information systems personnel, or maintenance personnel in the adjustment or removal and replacement of components or modules in the field. This is necessary to ensure that adequate maintenance documentation is available to the to facilitate competent system maintenance by all jurisdiction personnel that support the election process.

Paragraph (c)(16)(vi) – The purpose of this paragraph is to require the applicant to provide a Personnel Deployment and Training Regulations document providing all information about the staff needed to run the system, as well as the training required for the various roles. This is necessary to ensure that adequate documentation is provided to identify the need for and facilitate training of all jurisdiction personnel that will support the election process.

Paragraph (c)(16)(vii) – The purpose of this paragraph is to ensure the applicant submits adequate use procedures for the piloted voting system.. This is necessary to establish minimum standards to provide the secure and accurate use of the proposed voting system in compliance with all Federal and State laws and regulations. The procedures are to provide, at minimum: guidance to election staff and vendor support staff for use of a voting system in an election to ensure compliance with election law; verifiable established standards to protect the security, integrity and accuracy of the election and insure privacy of all voters; a baseline for evaluating



the suitability of the proposed voting system; and protection of an election from legal challenge by establishing statewide uniformity on use of the system. These must be written to conform to the template for such procedures that is available from the Secretary of State's website. The template provides standardized structure to ensure sufficient information is provided in a consistent format.

Paragraph (c)(17) – The purpose of this paragraph is to require the applicant to provide any additional information the Secretary of State may request on an as-needed basis from the applicant. This is necessary to ensure the applicant provides any additional information the Secretary of State deems necessary regarding the pilot voting systems to determine if the voting system meets all applicable Federal and State statutes, regulations, and procedures.

### **Section 20687. Pilot Program Plan**

Paragraph (a) – The purpose of this paragraph is to require the applicant to provide a proposed plan for their piloted voting systems use and identify what shall be included in the plan. This is necessary as it is a requirement of California Elections Code section 19209(d) and it also ensures that adequate information regarding the pilot program plan is provided to the Secretary of State to establish that the plan is adequate for the intended use and complies with all other Federal and State statutes, regulations, and procedures.

Paragraph (a)(1) – The purpose of this paragraph is to require the applicant to provide a description of all devices that will be utilized in the pilot program. This is necessary to ensure the Secretary of State is provided adequate information regarding each type of device that will be deployed during the pilot program to determine if the devices will be adequate for their intended use and to establish that the devices comply with all Federal and State statutes, regulations, and procedures.

Paragraph (a)(2) – The purpose of this paragraph is to require the applicant to provide the number of voters the voting system is expected to serve as well as the voting system's maximum capacity and any information about what specialized segment of the voting population the voting system will serve. This is necessary as it is a requirement of California Elections Code section 19209(c)(3) and it also affords the Secretary of State the ability to determine that the voting system can serve the intended voter population.

Paragraph (a)(3) – The purpose of this paragraph is to require the applicant to provide the number of each type of device that will be deployed during the pilot program. This is necessary to ensure the Secretary of State can determine the extent of the pilot voting systems proposed installation and to determine if the proposed installation is adequate for its intended use.

Paragraph (a)(4) – The purpose of this paragraph is to require the applicant to provide details regarding how the device(s) will be set up and deployed, including who will be doing the set up and deployment. This is necessary to ensure the Secretary of State can determine if the deployment plan for the pilot voting systems is adequate for its intended use, will have adequate support during use, and complies with all Federal and State statutes, regulations, and procedures.

Paragraph (a)(5) – The purpose of this paragraph is to require the applicant to provide a description, including diagrams or pictures, where each device be located during the pilot program. This is necessary to ensure the Secretary of State can determine if the deployment plan for the pilot voting systems is adequate for its intended use, will not prevent or hinder a voter from participating in the election in which the piloted voting system will be deployed, and is in compliance with all Federal and State statutes, regulations, and procedures.

Paragraph (a)(6) – The purpose of this paragraph is to require the applicant to provide the number of reserve/backup units that will be available during the pilot program and how they will be deployed if needed. This is necessary as it is a requirement of California Elections Code section 19209(c) and it also affords the Secretary of State the ability to determine if the deployment plan for the pilot voting systems will have an adequate contingency plan in the event any devices need replacement during the election.

Paragraph (a)(7) – The purpose of this paragraph is to require the applicant to provide the source of ballots used by the voting system, for example ballots prepared by a certified ballot printer or ballots printed on demand by the voting system. This is necessary to ensure the Secretary of State can determine if the pilot voting system meets the paper ballot requirements set forth in the California Elections Code and this Chapter.

Paragraph (a)(8) – The purpose of this paragraph is to require the applicant to provide specifications about the ballot style that will be used on the system. This is necessary to ensure that enough information is provided to determine if the ballot style used by the system will comply with all Federal and State statutes, regulations, and procedures.

Paragraph (a)(8)(i) – The purpose of this paragraph is to require the applicant to provide specifications about the ballot type that will be used in the pilot program. This is necessary to ensure the applicant adequately identifies the specification for the ballot type (e.g. poll ballot or VBM ballots) to be used by the pilot system during the election.

Paragraph (a)(8)(ii) – The purpose of this paragraph is to require the applicant to provide specifications about the ballot dimensions for the ballot that will be used in the pilot program. This is necessary to ensure the applicant adequately identifies, at minimum, the length and width of the ballot card in inches, that will be used by the pilot system during the election.

Paragraph (a)(8)(iii) – The purpose of this paragraph is to require the applicant to provide specifications about the ballot content for the ballot that will be used in the pilot program. This is necessary to ensure the printed information on the ballot for the election which the pilot program will be used complies with applicable sections of California Elections Code Division 13.

Paragraph (a)(8)(iv) – The purpose of this paragraph is to require the applicant to provide specifications about the vendor, brand, and specifications for ballot paper being used in the pilot program. This is necessary to ensure adequate information is provided regarding the ballot paper to afford the Secretary of State the ability to determine that the paper complies with all Federal and State statutes, regulations, and procedures.

Paragraph (a)(9) – The purpose of this paragraph is to require the applicant to provide specifications about the voting system’s ability to accommodate voting in all languages in which the jurisdiction is required to provide ballots. This is necessary to ensure the voting system meets all applicable Federal and State accessibility requirements.

Paragraph (a)(10) – The purpose of this paragraph is to require the applicant to provide specifications about the voting system’s ability to accommodate voting by persons with a broad range of physical and cognitive disabilities. This is necessary to ensure the voting system meets all applicable Federal and State accessibility requirements.

Paragraph (a)(10)(i) – The purpose of this paragraph is to require the applicant to provide specifications regarding the jurisdictions plan to accommodate voters with disabilities that the voting system will not accommodate. This is necessary to ensure that a method is in place to ensure that all voters are afforded the opportunity to vote in the election on the pilot voting system and that the voting system meets all applicable Federal and State accessibility requirements.

Paragraph (a)(11) – The purpose of this paragraph is to require the applicant to provide specifications about the current and projected number of voting-eligible individuals in the jurisdiction. This is necessary to provide metrics that will aid in determining the expected turnout for the election and subsequent use of the piloted voting system during the election to ensure voters’ needs are met on election day.

Paragraph (a)(12) – The purpose of this paragraph is to require the applicant to provide specifications regarding the geography and distribution of the population in the jurisdiction. This is necessary to ensure that the proposed pilot voting system implementation can meet the needs of the population within the jurisdiction as well as all applicable Federal and State accessibility requirements.

Paragraph (a)(13) – The purpose of this paragraph is to require the applicant to provide a description of how the risk-limiting audit regulations of Elections Code section 19209, subdivision (e) will be met. This is necessary to ensure that votes cast on the voting system used in the pilot program are subject to a risk limiting audit as required by the Elections Code.

Paragraph (a)(14) – The purpose of this paragraph is to require the applicant to provide the location of a repository where the code is publicly available if the voting system utilizes software and firmware with disclosed source code. This is necessary to ensure that, if the pilot voting system only utilizes software and firmware with disclosed source code, then the publicly available location of the code is provided to the Secretary of State.

Paragraph (a)(14)(i) – The purpose of this paragraph is to ensure the repository shall remain publicly available for the duration of the pilot program and that if the location of the publicly available repository changes, that location shall be made available to the public and the Secretary of State immediately upon such change. This is necessary to ensure that the code repository is consistently available to the public and the Secretary of State as required by the Elections Code.

Paragraph (a)(14)(ii) – The purpose of this paragraph is to ensure that the jurisdiction engaging in the pilot program designates a responsible person for repository management and make that person’s name available to the Secretary of State. This is necessary to ensure that a responsible person is identified and made available for management of the pilot voting system source code repository.

Paragraph (a)(14)(iii) – The purpose of this paragraph is to ensure that if there are multiple applications or products within the source code, each shall be clearly identified. This is necessary to ensure that the source code for each individual application or product is separated and neatly organized in a manner that makes it simple to identify the different source code sets.

Paragraph (a)(15) – The purpose of this paragraph is to ensure that information about how the ballot on demand system meets the certification testing criteria in Section 20263 of Title 2 of the California Code of Regulations, if one is included as a module to the voting system. This is necessary to provide the Secretary of State enough information regarding the proposed ballot on demand system to determine the viability of the systems use in conjunction with the pilot voting system during the election.

Paragraph (b) – The purpose of this paragraph is to establish the methods for source code administration that must be developed and provided to the Secretary of State. This is necessary to ensure that a plan for adequate source code administration is created, provided to the Secretary of State, and implemented for the pilot program.

Paragraph (b)(1) – The purpose of this paragraph is to establish that the applicant must provide a method to monitor code access for the pilot voting system source code. This is necessary to ensure that a method for the monitoring of code access to the pilot voting system source code is created, provided to the Secretary of State, and implemented for the pilot program.

Paragraph (b)(2) – The purpose of this paragraph is to establish that the applicant must provide a method to manage code contributions for the pilot voting system source code. This is necessary to ensure that a method for the managing of code contributions to the pilot voting system source code is created, provided to the Secretary of State, and implemented for the pilot program.

Paragraph (b)(3) – The purpose of this paragraph is to establish that the applicant must provide a method to track code versioning for the pilot voting system source code. This is necessary to ensure that a method for tracking the code versioning of the pilot voting system source code is created, provided to the Secretary of State, and implemented for the pilot program.

Paragraph (b)(4) – The purpose of this paragraph is to outline the process for reporting any defect, failure, fault, bug, and/or vulnerability in the voting system to the Secretary of State. This is necessary to ensure that a process for reporting of any defect, failure, fault, bug, and/or vulnerability in the pilot voting system source code is created, provided to the Secretary of State, and implemented for the pilot program.

Authority: Section 19209, Elections Code. Reference: Section 19209, Elections Code; Section 20263 of Title 2 of the California Code of Regulations.

## **Section 20688. System Demonstration**

Paragraph (a) – The purpose of this paragraph is to provide that the governing board of the jurisdiction that plans to conduct the pilot program shall conduct a demonstration of the system within 30 days of submitting the pilot plan to the Secretary of State. This is necessary to ensure that the system proposed operates in a manner consistent with the plan presented by the jurisdiction and that the system meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(1) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State the pilot voting systems installation and configuration. This is necessary to ensure the pilot voting system’s installation and configuration meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(2) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State the pilot voting system’s election setup. This is necessary to ensure the pilot voting system’s election setup meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(3) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State the pilot voting system’s ballot marking device. This is necessary to ensure the pilot voting system’s ballot marking meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(4) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State the pilot voting system’s accessibility. This is necessary to ensure the pilot voting system’s accessibility meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(5) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State the pilot voting system’s tabulation. This is necessary to ensure the pilot voting system’s tabulation meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(6) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State the pilot voting system’s post-election procedures. This is necessary to ensure the pilot voting system’s post-election procedures meets all applicable Federal and State statutes, regulations, and procedures.

Paragraph (a)(7) – The purpose of this paragraph is to require that jurisdictions demonstrate to the Secretary of State any additional processes and/or procedures specific to the pilot voting system’s function deemed relevant to the Secretary of State to verify compliance with this Chapter. This is necessary to ensure that all processes and/or procedures of the pilot voting system follow all applicable Federal and State statutes, regulations, and procedures.

Authority: Section 19209, Elections Code. Reference: Sections 19209, 19216, and 19217, Elections Code.

### **Section 20689. Review Procedures**

Paragraph (a) – The purpose of this paragraph is to provide that the Secretary of State shall review the application, Pilot Program Plan, and other documents and materials required pursuant to this Chapter in order to evaluate the voting system. This is necessary to establish that the Secretary of State must review and evaluate all documentation and material submitted for the voting system pilot plan.

Paragraph (b) – The purpose of this paragraph is to provide that the applicant shall make available all equipment needed to review the application and Pilot Program Plan to the Secretary of State. This is necessary to establish that the applicant must make available for review by the Secretary of State an exact copy of the proposed piloted voting system.

Paragraph (c) – The purpose of this paragraph is to provide that the applicant shall respond to clarifying questions from the Secretary of State regarding the pilot program or any application materials within 72 hours or as otherwise agreed by the applicant and the Secretary of State. This is necessary to establish a reasonable timeline for review and response by the applicant to any questions regarding the pilot program or application materials from the Secretary of State and to ensure the Secretary of State is afforded adequate time to review all requested material to approve or reject the plan in accordance with California Election Code section 19209(d).

Paragraph (d) – The purpose of this paragraph is to provide that the Office of Voting Systems Technology Assessment of the Secretary of State's office shall maintain one working copy of each approved voting system, in its approved configuration, for a minimum of one Gubernatorial or Presidential Election cycle. This is necessary to establish that the Secretary of State must be in custody of one working copy of each approved voting system, in its approved configuration. This is intended to create a backup of the voting system to be used in the event all voting system equipment within the jurisdiction is rendered inoperable. In such an event, the Secretary of State can deploy the secured equipment to allow the jurisdiction to complete election.

Authority: Section 19209, Elections Code. Reference: Section 19209, Elections Code.

### **Section 20691. Incident Notification**

Paragraph (a) – The purpose of this paragraph is to establish that the governing board of the jurisdiction conducting an approved pilot program shall notify the Secretary of State of any incident, defect, failure, or fault in the voting system within 30 calendar days. This is necessary to establish a timeline in which the jurisdiction must notify the Secretary of State is notified of any incident, defect, failure, or fault of the voting system and ensure compliance with the requirements of California Elections Code section 19215.

Paragraph (a)(1) – The purpose of this paragraph is to establish that incidents reference in Paragraph (a) include, but are not limited to, issues such as paper jams, printing errors, or any

defect, fault, or failure pursuant to Elections Code sections 19215 and 19290, and Title 2, California Code of Regulations, section 20161. This is necessary to provide reference to the jurisdiction as to what constitutes an incident, defect, failure, or fault in the voting system.

Paragraph (b) – The purpose of this paragraph is to provide chain of custody statutes, regulations, and procedures for the pilot voting system. This is necessary to establish the actions the jurisdiction conducting an approved pilot program must take if, the chain of custody for any component of the voting system has been compromised, the security or information has been breached or attempted to be breached or experiences a fatal error from which it cannot recover gracefully.

Paragraph (b)(1) – The purpose of this paragraph is to provide that the voting system vendor and/or jurisdiction staff must notify the chief elections official of the jurisdiction immediately upon identification of any item identified in Paragraph (b). This is necessary to ensure timely notification of any chain of custody issue encountered regarding the voting system.

Paragraph (b)(2) – The purpose of this paragraph is to provide that the voting system vendor and/or jurisdiction must notify the Secretary of State within 24 hours of discovery of any item identified in Paragraph (b). This is necessary to ensure timely notification of any chain of custody issue encountered regarding the voting system.

Paragraph (b)(3) – The purpose of this paragraph is to establish that the voting system vendor and/or jurisdiction must immediately remove and/or replace any equipment in which the chain of custody has been compromised. This is necessary to ensure that any compromised equipment is immediately segregated and no longer utilized in the election.

Paragraph (b)(4) – The purpose of this paragraph is to provide that the jurisdiction must subject any votes cast on a device removed from service in accordance with this paragraph to a 1% manual tally or a risk-limiting audit, by the processes described in Elections Code sections 15360 and 15367, as part of the official canvass. This is necessary to verify that the compromise in the chain of custody of the device had no effect on the intended function of the device.

Paragraph (b)(5) – The purpose of this paragraph is to provide that the jurisdiction must secure any memory card containing data from that device and retain it for the full election retention period as described in Chapter 4 of Division 17 of the Elections Code. This is necessary to ensure that any forensic data related to the device is retained.

Paragraph (b)(6) – The purpose of this paragraph is to provide that the jurisdiction must store an image of all device software and firmware on write-once media and securely retain the image for the full election retention period described in Chapter 4 of Division 17 of the Elections Code; and This is necessary to ensure that an image of all device software and firmware used in the election is retained.

Paragraph (b)(7) – The purpose of this paragraph is to establish that the voting system vendor and/or jurisdiction must reinstall all device software and firmware from a read-only version of the approved firmware and software supplied directly by the Secretary of State before the

equipment is placed back into service. This is necessary to ensure that the voting system vendor and/or jurisdiction only install the version of software and/or firmware that is approved by the Secretary of State.

Authority: Section 19209, Elections Code. Reference: Sections 17300, 17301, 17302, 17303, 17304, 17305, 17306, 19209, 19215, and 19290 Elections Code; Section 20161, Title 2, California Code of Regulations.

### **Section 20691. Changes or Modifications to Approved Pilot Program**

Paragraph (a) – The purpose of this paragraph is to establish that the voting system submitted for approval in the pilot program shall not be changed or modified without prior written approval from the Secretary of State consistent with Section 19216 of the Elections Code. This is necessary to ensure that no changes or modifications are made to the voting system without verification and approval by the Secretary of State to determine that the changes or modifications do not adversely affect the voting system’s function and/or security.

Paragraph (a)(1) – The purpose of this paragraph is to provide that the Secretary of State shall respond to a notification of a change or modification to the voting system within 72 hours or as otherwise agreed by the applicant and the Secretary of State. This is necessary to establish a reasonable timeline for review and response by the Secretary of State, to any notification of a change or modification to the voting system by the applicant. .

Paragraph (a)(2) – The purpose of this paragraph is to provide that the Secretary of State’s failure to respond to such notification shall not constitute approval of any change or modification. This is necessary to ensure that, even if the Secretary of State does not respond to a notification of a change or modification to the voting system submitted for approval in the pilot program within 72 hours, no changes or modifications can be made to the voting system without verification and approval by the Secretary of State that said changes have had no impact on the voting systems functionality, security, or performance.

Paragraph (b) – The purpose of this paragraph is to provide that the Secretary of State may terminate an approved voting system pilot program plan if the jurisdiction conducting an approved pilot program fails to comply with any provision of this Chapter or Section 19209 of the Elections Code. This is necessary to establish that approval for use of a voting system in a pilot program in accordance with this Chapter is valid if and only if all other applicable provisions of this Chapter, or Section 19209 of the Elections Code, are continually met throughout the planning, implementation, and use of the pilot program.

Paragraph (b)(1) – The purpose of this paragraph is to provide that the Secretary of State shall notify the jurisdiction of its intent to terminate an approved plan, and allow the jurisdiction an opportunity to cure the presented issue(s), 72 hours before terminating. This is necessary to establish a reasonable timeline for review and response by the jurisdiction to the Secretary of State’s notification of its intent to terminate approved pilot program plan, and allow the jurisdiction an opportunity to cure any issue(s) identified within the voting system and/or pilot program plan.



Paragraph (b)(2) – The purpose of this paragraph is to provide that the Secretary of State may terminate an approved plan immediately and without notice if it identifies a significant risk to the conduct of the election or voter confidence in the election results. This is necessary to establish that the Secretary of State has the authority to terminate an approved plan immediately and without notice if the Secretary of State has reason to believe that the voting system, or portion thereof, is not adequate, presents a security risk, does not perform to adopted standards, does not tabulate votes accurately, is defective, contains installed software that is not identical to the software that has been approved for use, or any other reason in which a significant risk to the conduct of the election or voter confidence in the election results is identified.

Paragraph (c) – The purpose of this paragraph is to provide that the Secretary of State may impose conditions for use as part of the approved pilot program, and the implications of a jurisdiction's failure to comply with any established conditions. This is necessary to establish that the Secretary of State may impose conditions of use as part of the approved pilot program plan if the Secretary of State determines the need to mitigate or prevent a risk to the conduct of the election or voter confidence in the election results.

Paragraph (c)(1) – The purpose of this paragraph is to provide that The Secretary of State shall notify the jurisdiction of its intent to terminate an approved pilot plan, and allow an opportunity to cure the presented issues, 72 hours before terminating. This is necessary to establish a reasonable timeline for review and response by the jurisdiction to the Secretary of State's for notification to a jurisdiction of its intent to terminate approved pilot program plan, and allow the jurisdiction an opportunity to cure, any issue(s) identified within the jurisdiction's voting system and/or pilot program plan.

Paragraph (c)(2) – The purpose of this paragraph is to provide that the Secretary of State may terminate an approved plan immediately and without notice if it identifies a significant risk to the conduct of the election or voter confidence in the election results. This is necessary to establish that the Secretary of State has the authority to terminate an approved plan immediately and without notice if the Secretary of State has reason to believe that the voting system, or portion thereof, is not adequate, presents a security risk, does not perform to adopted standards, does not tabulate votes accurately, is defective, contains installed software that is not identical to the software that has been approved for use, or any other reason in which a significant risk to the conduct of the election or voter confidence in the election results is identified.

Paragraph (d) – The purpose of this paragraph is to provide that, consistent with Section 19217 of the Elections Code, the Secretary of State may seek injunctive and administrative relief as appropriate. This is necessary to provide the Secretary of State the ability to seek injunctive or administrative relief regarding the submission of a voting system pilot program should a voting system or a part of a voting system be compromised by the addition or deletion of hardware, software, or firmware without prior approval or is defective due to a known hardware, software, or firmware defect, fault, or failure that has not been disclosed pursuant to California Elections Code Section 19215 and Sections 20686 (c)(7), 20687 (b)(4), 20691 (a), and 20691 (a)(1) of this Chapter..

