

Fall 2018

State Administration and Veterans' Affairs Interim Committee
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FINAL REPORT TO THE 66TH MONTANA LEGISLATURE

**ELECTIONS:
ACCESSIBILITY FOR
DISABLED ELECTORS &
CYBERSECURITY**

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This report is a summary of the work of the State Administration and Veterans' Affairs Interim Committee on accessible voting machines for disabled electors and election security issues that emerged during the interim. The committee was not assigned a specific study. This report highlights key information presented by staff, stakeholders, and the interested public and explains the processes followed by the committee in reaching its conclusions. To review additional information, including audio/video minutes and exhibits from each meeting, visit the Legislative Branch website at www.leg.mt.gov and navigate to the 2017-2018 State Administration and Veterans' Affairs Interim Committee home page.

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INTRODUCTION

Two Issues Examined

Voting securely, privately, and with confidence that each vote will be counted accurately is the most fundamental right in a democracy. During the 2017-18 interim, the State Administration and Veterans' Affairs Interim Committee (SAVA) examined this fundamental right in the context of two concerns that emerged during the interim: (1) that voting machines used by electors with disabilities to mark their ballots are aging and difficult to set up and maintain, and (2) that in the wake of revelations about cyberattacks on election systems during the 2016 presidential election, election cybersecurity must be a top priority.

Report Organization

This report is organized into two parts:

- Part I: Accessible Voting Machines
- Part II: Election Cybersecurity

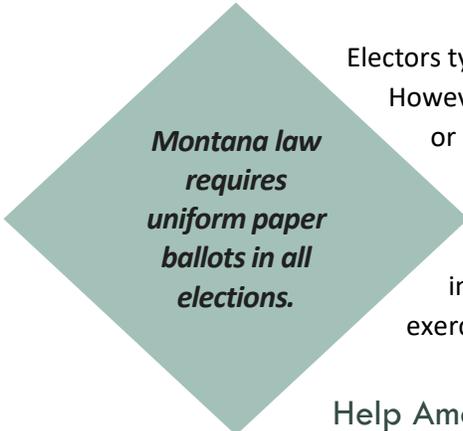
Each part summarizes the issues, research, testimony, discussion, and action on these topics.



PART I – ACCESSIBLE VOTING MACHINES

Background and History

Montana law requires uniform paper ballots in all elections. County election administrators conduct most elections. However, a school district may either conduct its own election or ask the county to conduct the election (with the cost paid by the school district).



**Montana law
requires
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elections.**

Electors typically cast votes by filling in an oval on the paper ballot. However, aging or disabled electors with impaired vision or limited arm or hand mobility may not be able to cast votes manually.

Voting machines that read a ballot aloud, enhance text, or allow the elector to use a breath command enable electors with impairments to cast ballots independently and privately, thus exercising the most basic constitutional right in a democracy.

Help America Vote Act of 2002 (HAVA)

In the wake of the Supreme Court ruling in *Bush v. Gore*, 531 U.S. 98 (2000), which involved, among other things, ensuring uniformity in determining voter intent and equity in how votes are counted, the U.S. Congress passed the Help America Vote Act of 2002 (HAVA) and appropriated a total of \$3 billion for grants to states for various election reforms.¹

States used a portion of this HAVA money to replace older lever and punch card voting machines and improve accessibility for disabled electors. The Act required that states “take into account the need to make voting equipment fully accessible for individuals with disabilities, including the blind and visually impaired” and “ensure that such individuals can vote independently and with privacy”.² The Act also established specific technical standards to be met by voting machines purchased with the HAVA funds, including voting machines with accessible technology. The Act stated that the accessible machine requirement was satisfied “through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place”.³ There is no waiver process or exemption from this requirement.

AutoMARK ballot marking machine

One voting system that meets the HAVA accessible voting technology requirements is the AutoMARK, a product by Election Systems & Software (ES&S). It uses a touchscreen machine that allows a disabled

¹ Public Law 107-252.

² *Ibid.*, Section 271.

³ *Ibid.*, Section 301(a)(3)(B).

elector to cast a ballot without another's assistance. An elector with impaired vision may enhance text, use a braille keypad, or have the ballot read aloud through headphones. An elector with limited hand or arm mobility may use "sip and puff" technology to make selections using breath commands. After the elector votes, the AutoMARK prints the votes on a standard ballot that can be tabulated in the same way as any other ballot, which is either by a manual count or by feeding the ballot through an optical or digital scanning machine.

Montana's initial purchase of AutoMARK

According to an August 2007 Legislative Audit Division performance audit, Montana received a total of \$17.3 million in HAVA funding awarded over a 5-year period from FY 2003 through FY 2007. The Secretary of State's office distributed most of the money to counties through grants of up to \$5,000 for each polling place. Counties applied for the funds on a voluntary basis, but were required to provide a 25 percent financial or in-kind match to receive the grant.⁴

AutoMARK by ES&S

The audit reported that the Secretary of State's office worked with the disability community as well as other organizations in the process of selecting an accessible voting system and determined that due to system specification requirements in federal and state statute and vendor availability, the AutoMARK was the best system for Montana. According to the audit, about \$4 million was spent for the purchase and deployment of AutoMARK machines for counties. This \$4 million included \$3.6 million for the actual machines (at about \$5,000 each); about \$28,000 for software and other applications; about \$288,000 for system technical support, service, and training; and about \$100,000 for shipping, handling, and installation. According to the audit report, a total of 725 AutoMARK machines were purchased.⁵



⁴ Legislative Audit Division, "The Help America Vote Act and Related Elections Issues", Performance Audit 07P-02 of the Office of the Secretary of State, August 2002, pp. 57-58.

⁵ Ibid.

Ongoing maintenance and service support for the AutoMARKs was not covered by HAVA funds. Counties were and remain responsible for these on-going costs.⁶

Legislative history

When revising state election laws in 2003, in part to conform with HAVA, the Montana legislature passed legislation prohibiting punch card ballots and specifying minimum technical requirements for any voting system certified by the Secretary of State for use in Montana.⁷

In 2005, the Legislature passed a bill providing that only paper ballots could be used in Montana, with an exception that disabled electors could use a direct recording electronic (DRE) system that did not mark a paper ballot, but only if technology for a DRE to mark a paper ballot had not yet been certified by the federal Election Assistance Commission (EAC) or the Secretary of State. Still, the bill required that the DRE produce a paper-based receipt so there could still be a manual audit of votes cast.⁸

In 2007, the Legislature passed a bill eliminating the option to use DRE machines.⁹

In the waning days of the 2017 session, the Legislature passed House Bill 103, a bill by request of the Office of the Secretary of State that generally revised election laws. After the bill passed, the governor returned the bill with [proposed amendments](#) that would allow counties to purchase accessible voting machines that did not produce a uniform ballot (i.e., machines that would print a “nonconforming” ballot).

The governor’s amendment proposal stated the revisions “will enable our counties to purchase new voting equipment for people with disabilities. Counties are seeking to replace older voting machines for people with disabilities, but the new machines cannot be certified for use in elections by the Secretary of State unless a statutory change is made.... These amendments have been requested by the Montana clerks and recorders.”

The Legislature did not concur in the amendments, so HB 103 was returned to the governor, who signed the bill without the proposed changes to Montana’s uniform ballot laws.

For this report, staff further researched the legislative history of Montana’s uniform ballot law, which is codified in [13-12-202, MCA](#). The first enactment of statutory language specifying that all ballots must be of uniform size dates back to a bill in 1901 that revised and updated laws on ballot style. House Bill 59 (1901) contained the following phrase: “ballots used in any one county must be uniform in size....”.

⁶ Ibid.

⁷ Ch. 414, Laws of Montana, 2003. (HB 155)

⁸ Ch. 275, Laws of Montana, 2005. (HB 297)

⁹ Ch. 273, Laws of Montana, 2007. (HB 520)

Issue Summary

During the public comment at the July 20, 2017, SAVA meeting, Regina Plettenberg, president of the Montana Clerks and Recorders and Election Administrators Association and Ravalli County election administrator, stated that the issue of most immediate concern for election administrators was the aging AutoMARK voting machines.

Upgrading to a new model accessible voting machine would require a change to Montana's uniform ballot law.

In a nutshell, the problem is the AutoMARK not only uses old technology but is no longer being manufactured. The vendor, ES&S, does not make an updated version of the AutoMARK. Rather, ES&S's newer ballot marking machine with updated technology is the ExpressVote machine, which does not print a standard ballot, so it does not meet Montana's uniform ballot law and cannot be certified by the Secretary of State for use by Montana counties. This means that unless Montana's uniform ballot law is revised to allow a nonstandard ballot for disabled electors or to require that all electors use these machines, counties are faced with having to make a significant financial investment in maintenance costs for the AutoMARK.

Constitutional and Statutory Framework

The committee reviewed the overall constitutional and statutory framework related to accessibility for disabled electors. These laws provide that electors must be able to vote in secret, that paper ballots must be used, that ballots must be uniform so that a ballot marked by a disabled elector would not be readily distinguishable from other ballots, and that votes on these ballots must be able to be manually counted. The key constitutional and statutory provisions are as follows:

- Article IV, Section 1 of Montana's Constitution provides that elections by the people "shall be by secret ballot".
- Section 13-1-101(5), Montana Code Annotated (MCA), defines the term "ballot" as "a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots." Also, section 13-1-101(53), MCA, defines the term "voting system" as "any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot".
- Section 13-12-202, MCA, specifies ballot form and uniformity requirements and states in subsection (3) that "it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue".

- Section 13-17-101, MCA, specifies that a county may not use a voting system that is not first certified by the Secretary of State as meeting minimum specifications outlined in section 13-17-103, MCA, and the rules adopted by the Secretary of State pursuant to that section.
- Section 13-17-103, MCA, which lists the standards that any voting system must meet before it may be certified by the Secretary of State for use by the counties, specifies in subsection (1)(k) that the machine must use “a paper ballot that allows votes to be manually counted”. This section also requires that the system be secure from fraud or tampering.

Options Available for Disabled Electors

Dana Corson, elections director for the Office of the Secretary of State, briefed the committee at its March 6, 2018, meeting about current options available for disabled electors. In summary, the options available for disabled electors are as follows:

- **AutoMARK** - Inside a polling place, the elector may ask to use the AutoMARK machine, which should be set up to provide privacy for the elector. At the Sept. 14, 2017, meeting, committee members received a demonstration of the AutoMARK by a disabled elector; and committee members were given an opportunity to cast a ballot using the AutoMARK. The elector’s regular ballot is fed into the ballot tray in the machine. After the elector has cast votes using the accessible electronic interface, the machine prints to the ballot, filling in the ovals on the ballot accordingly. The elector can reinsert the ballot to double check whether the votes have printed accurately. If there is an error or the elector wishes to change a vote, an election judge issues a new ballot. The ballot prints into a secrecy sleeve so that it can then be taken to and deposited in the regular ballot box while still maintaining ballot secrecy. All the ballots, including ballots cast by the AutoMARK, are tabulated or hand counted in the same manner. Also, although at least one AutoMARK must be made available at each polling place for disabled electors, any elector may use an AutoMARK to cast a ballot.
- **Curbside voting** – Section 13-13-118, MCA, provides that the chief election judge may appoint two election judges who represent different political parties to “take a ballot to an elector able to come to the premises where the polling place is located but unable to enter the polling place because of a disability”.
- **Home delivery** – Section 13-13-229, MCA, allows any elector to request that an absentee election board or authorized election official personally deliver a ballot to the elector.
- **Designated agent may assist** – Section 13-1-116, MCA, allows a disabled elector to designate an agent “for the purpose of providing a signature or other identifying mark required ... and for providing any other assistance to the elector throughout the registration and voting process.”

- **Election judges may assist** – Section 13-13-119, MCA, allows a disabled elector who enters a polling place to request assistance and two election judges who represent different political parties may assist the elector in casting a ballot.
- **Electronic ballot for absentee and mail election voting** – Section 13-13-246, MCA, allows a disabled elector to receive an electronic ballot to vote absentee or to vote in an election conducted by mail. This essentially involves the election administrator emailing to the elector a fillable PDF ballot that the elector may fill in using accessible technology available on the elector's computer. The elector then prints the ballot, encloses it in a secrecy envelope or cover page, and mails it to the election administrator. After receiving the ballot, at least three election judges transcribe the ballot onto a standard ballot that can then be processed and counted with the other ballots.

Expert Testimony and Research

At its Sept. 14, 2017, and March 6, 2018, meetings, the committee received expert testimony from several invited speakers who covered other ballot marking devices available on the market, what systems are used in other states, security concerns, voting rights for disabled electors, and the issues of most concern to disability advocates.

Alternatives to AutoMARK and activities in other states

Wendy Underhill, elections program director for the National Conference of State Legislatures (NCSL), briefed the committee at its March 6, 2018, meeting on some ballot marking systems in other states. Ms. Underhill explained that states all around the country are facing similar concerns about aging voting systems, including accessible machines. She informed the committee that in addition to the ES&S AutoMARK and ExpressVote machines, the U.S. Election Assistance Commission (EAC), has certified machines marketed by at least five other companies.

A staff review of the [EAC certified voting systems webpage](#) showed that the following companies market voting systems certified by the EAC:¹⁰

- ES&S
- Dominion Voting Systems, Corp.
- Clear Ballot Group, Inc.
- Microvote General, Corp.
- Unisyn Voting Solutions.
- Hart InterCivic, Inc.

¹⁰ The URL for the EAC's voting systems page is <https://www.eac.gov/voting-equipment/certified-voting-systems/>.

Ms. Underhill stated that the AutoMARK is often referred to as a “legacy” system, meaning that its hardware and software has been superseded by newer technology, but is difficult to replace because of its widespread use.

The [Verified Voting web page on the ES&S AutoMARK](#) states that in 2016, the AutoMARK was being used statewide in Alabama, Idaho, Massachusetts, Michigan, Minnesota, Montana, Nebraska, North Dakota, Rhode Island, South Dakota; and in 2 counties in Arizona, 13 counties in California, 24 counties in Florida, 45 jurisdictions in Illinois, 5 counties in Indiana, 38 counties in Iowa, 58 counties in Kansas, 4 counties in Mississippi, 14 counties in Missouri, 5 New York counties and all 5 New York City boroughs, 68 counties in North Carolina, 33 counties in Ohio, 13 counties in Pennsylvania, 97 counties in Texas, 22 localities in Virginia, 11 counties in Washington, 4 counties in West Virginia, 23 counties in Wisconsin, and 20 counties in Wyoming.¹¹

Verified Voting is a nonpartisan nonprofit organization that advocates for legislation that promotes accuracy, transparency, and verifiability of elections. The [Verified Voting website](#) describes in detail 12 different ballot marking devices, including the AutoMARK, that are presently in use somewhere in the country. The website also describes significant concerns about the AutoMARK and some of the other systems, which offer varying degrees of accessibility and may not meet federal accessibility standards.¹²

Ms. Underhill reported that Montana is one of just a few states with standards that do not specifically link to the federal EAC system certification guidelines, which are voluntary. She reported that 41 states do link their certification standards to the EAC guidelines.

Ms. Underhill explained that Utah had recently completed a statewide study examining several different types of voting systems by various vendors. The study, conducted by a task force with the aid of a consultant hired through an RFP process, included state and local election officials, security experts, advocates for voters with disabilities and encompassed all aspects of the election systems, not just accessible voting machines. The goal was to establish a uniform statewide system. Ultimately, Utah selected ES&S and awarded the contract in 2017. A key point that surfaced in testimony and research from various sources was that vendor products are proprietary, so a ballot marking device by one vendor is not compatible with a tabulator from a different vendor. This means that any ballot marking system not

Vendor products are proprietary, so a ballot marking device by one vendor is not compatible with a tabulator from a different vendor.

¹¹ The URL for the Verified Voting web page on the AutoMARK is <https://www.verifiedvoting.org/resources/voting-equipment/ess/automark/>.

¹² The URL for Verified Voting is <https://www.verifiedvoting.org>.

made by ES&S would not be compatible with the ES&S optical and digital scanners that Montana counties currently use to tabulate votes. Therefore, unless a Montana county also wanted to replace county tabulation machines or hand count ballots marked using some other system, the most viable alternative to the AutoMARK in Montana would be the ES&S ExpressVote.

The committee also learned that Minnesota is the only other state that has a uniform ballot law, but that legislation had been introduced in Minnesota to change that law to allow nonstandard ballots. If the legislation is successful, Montana would be the only state requiring a uniform ballot, thus prohibiting the use of any other ballot marking system currently on the market, except the AutoMARK.

ExpressVote by ES&S

An ExpressVote machine was set up for SAVA's March 6, 2018, meeting so committee members could test how it worked compared to the AutoMARK.

Verified Voting describes the machine as follows: "The ExpressVote is an electronic vote capture device designed for use by all electors. It features a touchscreen display and integrated thermal printer. Voters insert a blank paper activation card in the machine. This is the ballot. Voters have several options to make candidate selections. They may touch the screen or use the moveable keypad provided. The display includes various colors and effects to guide the voter. The voter may adjust the display contrast and text size in order to read the screen. Each key on the pad has both Braille and printed text labels designed to indicate function and a related shape to help the voter determine its use. Alternatively, voters may also use headphones to hear a recorded list of the instructions and candidates for each contest and then make selections by touching the screen, touching the keypad, touching a two-position switch, or through a sip/puff device. The voter may adjust the volume and tempo of the audio. The ExpressVote stores the choices in its internal memory. It can be programmed in multiple languages.



The [ExpressVote] machine provides a summary report for the voter to review his or her choices before the ballot is printed. Only the voter's choices are printed on the ballot. The phrase "No Selection" appears under any contest in which the elector did not vote. Overvotes and crossover votes cannot occur on this equipment and a voter is warned about undervotes prior to the completion of voting.

Once the ballot has been marked and is provided to the voter, the ExpressVote clears its internal memory and the paper

ballot is the only lasting record of the voting selections made. The voter may visually confirm his or her selections, or the ballot may be re-inserted into the machine and the voter selections summary report will provide an audio summary for voters with visual impairments. The voter proceeds to enter the ballot into the DS200 or a secured ballot box to be hand tabulated by election inspectors after the polls have closed. Ballots marked using the ExpressVote also may be tabulated using the DS850.”¹³

Demonstrations

At the committee’s January 18, 2018, meeting, Travis Hoffman, a disabled elector and community advocate, and county election administrators Regina Plettenberg of Ravalli County and Ms. Charlotte Mills of Gallatin County demonstrated both the AutoMARK and ExpressVote systems for the committee.

Click on the links below for YouTube videos that provide similar demonstrations:

- [AutoMARK demonstration video](#)
- [ExpressVote demonstration video](#)

Advantages

At its March 6, 2018, meeting, the committee received a briefing and handouts from Lori Mommaerts, Montana field representative for ES&S, [about the ExpressVote](#) and the [advantages of the ExpressVote](#) compared to the AutoMARK.

According to ES&S and some county election administrators, the advantages of the ExpressVote are as follows:

- The touchscreen is more responsive and other accessible technology is also more modern, which makes the machine easier to use than the AutoMARK and less susceptible to calibration problems.
- The machine is lighter and more compact than the AutoMARK, making it easier to transport, set up, and take down.
- The ExpressVote printer is better than the AutoMARK printer, which tends to jam from time to time.
- Because the summary card is half the size of a regular ballot, counties save money on ballot costs.
- ES&S tabulation machines currently used in Montana counties can be calibrated to process the summary card ballots.

¹³ See the Verified Voting web page at <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/>.

- Other states avoid the concern about the ExpressVote printing nonstandard ballots, which may compromise privacy for disabled electors, by having other voters also use the machine.

Disadvantages

The committee also learned about some disadvantages of the ExpressVote, which would apply to any similar voting machine:

- Although the summary card ballot shows the voter's choices so they can be visually verified, the text is small and difficult to read, which would not be conducive to a manual count.
- When the summary card ballots are being tabulated, the tabulators are really reading bar codes printed on the summary cards, not the text as verified by the voter. In Ms. Greenhalgh's opinion, this reliance on bar codes introduces a security risk because it is not "human-readable" and is based on the vendor's proprietary computer coding, not on the text the voter sees on the summary card. In theory, the bar code may be manipulated and may not actually reflect the vote as shown in the text on the summary card ballot.
- The summary card ballot is not a standard ballot, so does not meet Montana's uniform ballot law. Even if the law were changed to allow for a nonconforming ballot, unless other voters also use the machine, the only ballots cast using the ExpressVote will be by disabled electors, which compromises secrecy.¹⁴

Costs

According to Ms. Mommaerts, a total of 541 AutoMARK machines are currently deployed in Montana counties. Each county maintains a contract with ES&S for ongoing maintenance and technical support of these machines. Table 1 provides a by-county cost comparison between the AutoMARK and the ExpressVote machines. The spreadsheet includes information on what type of tabulation machine the county uses or whether ballots are counted by hand.¹⁵

¹⁴ This information was provided at the March 6, 2018, SAVA meeting by Ms. Susan Greenhalgh of the National Election Defense Coalition (NEDC), a nonpartisan network of recognized experts in cyber security and elections administration, bipartisan policymakers, and concerned citizens and movement-builders that promotes policies to secure elections.

¹⁵ Most counties have optical or digital scanning machines that process the ballots and tabulate the votes. Some counties manually count ballots. The [Secretary of State's webpage on voting systems](#) states that the Model 650 (optical scan), DS850 (digital scan), and DS450 (digital scan) machines are central count tabulators, while the Model 100 (optical scan) and DS200 (digital scan) machines are precinct-level tabulators. These tabulators are also an ES&S product. Neither the AutoMARK, nor the tabulators are connected to the Internet.

ELECTIONS: ACCESSIBILITY FOR DISABLED ELECTORS & CYBERSECURITY

A final report of the State Administration and Veterans' Affairs Interim Committee: 2017-18

TABLE 1 – Cost of AutoMARK Compared to ExpressVote Machines

Jurisdiction	Tabulation Type	M100				AutoMark # Units	Estimated ExpressVote	ExpressVote Hardware Maintenance	AutoMark Hardware Maintenance	ExpressVote Firmware Maintenance	AutoMark Firmware Maintenance	ExpressVote Installation	AutoMark Installation
		DS200 # Units	DS450 # Units	DS850 # Units	M650 # Units								
Beaverhead	DS450	1				17	\$59,500	\$1,676	\$3,273	\$1,105	\$1,105	\$105	\$105
Big Horn	DS850	1				15	\$52,500	\$1,463	\$2,963	\$975	\$975	\$105	\$105
Blaine	DS200	9				11	\$38,500	\$1,073	\$2,118	\$715	\$715	\$105	\$105
Broadwater	DS200	7				4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Carbon	DS200	16				11	\$38,000	\$1,073	\$2,118	\$715	\$715	\$105	\$105
Carter	Hand Count					4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Cascade	DS850/DS200	2		1		10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Chouteau	DS200	9				9	\$31,500	\$878	\$2,633	\$585	\$585	\$105	\$105
Custer	DS200	9				14	\$40,000	\$1,365	\$2,695	\$910	\$910	\$105	\$105
Daniels	Hand Count					5	\$17,000	\$488	\$963	\$325	\$325	\$105	\$105
Dawson	DS200	10				6	\$21,000	\$585	\$1,155	\$390	\$390	\$105	\$105
Deer Lodge	DS450	1				6	\$21,000	\$585	\$1,155	\$390	\$390	\$105	\$105
Fallon	DS200	2				7	\$24,500	\$683	\$1,348	\$455	\$455	\$105	\$105
Fergus	DS450		1			8	\$28,000	\$780	\$1,540	\$520	\$520	\$105	\$105
Flathead	DS850/M100	45		2		44	\$154,000	\$4,290	\$8,470	\$2,860	\$2,860	\$105	\$105
Gallatin	DS850/M100	24		2		21	\$73,500	\$2,048	\$4,043	\$1,365	\$1,365	\$105	\$105
Garfield	Hand Count					8	\$28,000	\$780	\$1,540	\$520	\$520	\$105	\$105
Glacier	DS200	5				10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Golden Valley	Hand Count					3	\$10,500	\$293	\$888	\$195	\$195	\$105	\$105
Granite	DS450		1			4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Hill	DS450				1	8	\$28,000	\$780	\$1,540	\$520	\$520	\$105	\$105
Jefferson	DS450	1				10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Judith Basin	M100	3				5	\$17,500	\$488	\$963	\$325	\$325	\$105	\$105
Lake	DS450		1			10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Lewis & Clark	DS850			2		37	\$129,500	\$3,608	\$7,123	\$2,405	\$2,405	\$105	\$105
Liberty	M100	2				3	\$10,500	\$293	\$578	\$195	\$195	\$105	\$105
Lincoln	DS450		1			12	\$42,000	\$1,170	\$2,310	\$780	\$780	\$105	\$105
Madison	DS450		1			9	\$31,500	\$878	\$1,733	\$586	\$586	\$105	\$105
McCone	Hand Count					4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Meagher	Hand Count					1	\$3,500	\$98	\$193	\$65	\$65	\$105	\$105
Mineral	DS200	2				7	\$24,500	\$683	\$1,348	\$455	\$455	\$105	\$105
Missoula	DS850/M100	86		3		39	\$136,500	\$3,803	\$7,508	\$2,535	\$2,535	\$105	\$105
Musselshell	M100	5				4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Park	DS450		1			11	\$38,500	\$1,073	\$2,118	\$715	\$715	\$105	\$105
Petroleum	M100	1				2	\$7,000	\$195	\$385	\$130	\$130	\$105	\$105
Phillips	DS200	5				10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Pondera	DS200	3				5	\$17,500	\$488	\$1,463	\$326	\$326	\$105	\$105
Powder River	Hand Count					5	\$17,500	\$488	\$1,863	\$325	\$325	\$105	\$105
Powell	DS450		1			10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Prairie	Hand Count					3	\$10,500	\$293	\$578	\$195	\$195	\$105	\$105
Ravalli	DS850/M100	26		1	1	10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Richland	M100	9				11	\$38,500	\$1,069	\$2,118	\$715	\$715	\$105	\$105
Roosevelt	DS200	3				11	\$38,500	\$1,069	\$2,118	\$715	\$715	\$105	\$105
Rosebud	M100	10				10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Sanders	DS850			1		10	\$35,000	\$975	\$1,925	\$650	\$650	\$105	\$105
Sheridan	DS200	5				4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Silver Bow	DS850			2		15	\$52,500	\$1,463	\$2,888	\$975	\$975	\$105	\$105
Stillwater	M100	10				9	\$31,500	\$878	\$1,733	\$585	\$585	\$105	\$105
Sweet Grass	Hand Count					2	\$7,000	\$195	\$385	\$130	\$130	\$105	\$105
Teton	DS200	5				6	\$21,000	\$585	\$1,155	\$390	\$390	\$105	\$105
Toole	DS200	3				7	\$24,500	\$683	\$1,348	\$455	\$455	\$105	\$105
Treasure	Hand Count					4	\$14,000	\$390	\$770	\$260	\$260	\$105	\$105
Valley	DS200	3				2	\$11,400	\$195	\$385	\$130	\$130	\$105	\$105
Wheatland	Hand Count					5	\$17,500	\$488	\$963	\$325	\$325	\$105	\$105
Wibaux	DS200	2				2	\$7,000	\$488	\$385	\$130	\$130	\$105	\$105
Yellowstone	DS850			3		21	\$73,500	\$2,145	\$4,043	\$1,365	\$1,365	\$105	\$105
						541	\$1,887,900	\$53,149	\$106,828	\$35,167	\$35,167	\$5,880	\$5,880

In summary:

- An ExpressVote machine costs \$3,500.
- The AutoMARK is no longer in production, but ES&S still has an inventory of unused and refurbished systems. These range in price from about \$1,500 to \$2,000.
- Maintenance costs for the ExpressVote are roughly half the cost of maintaining the AutoMARK.
- Software and installation costs are the same for the AutoMARK and ExpressVote.
- If all 541 county AutoMARK machines were replaced with ExpressVote machines, the total cost statewide would be \$1,887,900.

Security considerations

At its March 6, 2018, meeting, the committee heard from Susan Greenhalgh of the National Election Defense Coalition (NEDC) about best practices when considering accessible voting technology.

Ms. Greenhalgh stated that using a paper ballot was itself an important security feature because it “provides a physical artifact of voter intent that is out of reach of a software bug, programming error, or malicious attack”.

With respect to accessible ballot marking devices, Ms. Greenhalgh stated that some of the important security and verifiability elements to consider were as follows:

- **The ballot marking device should render marks that are easily readable and verifiable by the voter and election workers for post-election audits and recounts.**
 - Ms. Greenhalgh stated: “The use of barcodes on paper ballots is inadvisable for several reasons. The barcode introduces additional security vulnerabilities, it is not human-readable and must not be used for recounts and audits, and from most vendors it is proprietary- which means that the voter cannot use her own device to confirm the vote choices were correctly recorded in the barcode.”
- **Ballot marking devices that mark a standard ballot are preferable.**
 - Ms. Greenhalgh stated: “Employing an assistive ballot marking device that marks a standard ballot ensures that voters that use assistive technology will not submit a ballot that is unlike the ballots marked without the device, which could compromise voter secrecy.”

- **Ballot marking devices should not receive or store identifying voter information.**
 - Ms. Greenhalgh stated: "Some ballot marking devices are activated to retrieve the correct ballot style for each voter through an activation card that is encoded with the voter's information in order for the ballot marking device to call up the correct ballot for the voter's residence. In order to protect voter secrecy, the card and the ballot marking device should not receive any information that may identify the voter."

Ms. Greenhalgh's [written testimony](#) provides additional detail.

National disability rights perspective

At its March 6, 2018, meeting, the committee also heard from Michelle Bishop, Disability Advocacy Specialist on Voting Rights for the [National Disability Rights Network \(NDRN\)](#). The NDRN is a nonprofit membership organization for federally mandated protection and advocacy program for disabled individuals. Ms. Bishop informed the committee about several federal acts that include provisions protecting voting rights for disabled electors.

A [fact sheet from the U.S. Department of Justice](#) summarizes voting right protections for disabled electors contained in the following federal laws as including protections for the rights of electors with disabilities:

- Americans with Disabilities Act.
- Voting Rights Act of 1965.
- Voting Accessibility for the Elderly and Handicapped Act of 1984.
- National Voter Registration Act of 1993.
- Help America Vote Act of 2002 (HAVA).¹⁶

Ms. Bishop stated that security concerns need to be balanced with accessibility and the right to cast a ballot in private and independent of assistance from another person. Accordingly, Ms. Bishop's written testimony reflected the NDRN's position that requiring paper ballots may help address security concerns, but could "inevitably, inexcusably disenfranchise voters" with disabilities. She noted that even if a ballot marking device printed a paper ballot, an elector may still not be able to physically handle a paper ballot after it is printed and so would still need assistance, which compromises privacy and independence. Ms. Bishop added that ballot marking devices that print a paper ballot or summary card that looks different than the ballot used by other electors also compromises privacy.

¹⁶ U.S. Department of Justice, Civil Rights Division, Disability Rights Section, "The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities" September 2014, electronic publication at https://www.ada.gov/ada_voting/ada_voting_ta.htm.

Ms. Bishop said that HAVA provides a “gold standard” for accessible voting systems with technology that will allow a disabled elector to mark, verify, and cast a ballot with privacy and independence. She said the Voluntary Voting System Guidelines (VVSG) established as a result of HAVA and used by the EAC to certify voting systems are essential to ensuring the deployment of the best accessible voting technology in the states. Ms. Bishop reported that several states incorporate the substance of the VVSG in their state statutes. She did note, however, that these guidelines have recently been updated.

Turning to DRE systems that do not use paper ballots but record votes electronically, Ms. Bishop said DREs have traditionally provided the best access for disabled electors in meeting the privacy and independence requirements. She acknowledged, however, that security concerns have been raised about DREs because of this reliance on a completely electronic system. However, she advocated caution in drafting statutes to prohibit innovations or advancements in technology that could make paperless voting a secure solution in the future.



Disability rights advocates say paper ballots may help address security concerns, but could disenfranchise disabled electors.

Ms. Bishop emphasized that accessible voting systems need to be tested by voters with a variety of disabilities because a system that may work well for an elector with impaired vision may not necessarily work well for an elector paralyzed from the neck down. However, this broad representation testing was not always being done, she said, stating that the states most successful in selecting accessible voting systems are those states that have held public demonstrations, established broad based testing, and actively recruited the participation of disabled electors with diverse types of impairments.

Disability Rights Montana

At SAVA’s January 18, 2018, meeting, Beth Brenneman, attorney with Disability Rights Montana, discussed with SAVA the federal laws related to voting rights for disabled electors, which were also discussed by Ms. Bishop of the National Disability Rights Network and summarized earlier in this report. Ms. Brenneman emphasized that HAVA does not only require an accessible voting machine at every polling place, even during mail ballot elections, but also requires that a disabled elector be able to vote privately and independently. She explained that in 2002 when the initial HAVA money was provided to Montana, the AutoMARK was determined to be the best available technology for independent accessibility as well as for privacy because it could print a uniform paper ballot as required by Montana law.

Ms. Brenneman cautioned that vendors are in business to make money and that unfortunately, ES&S has chosen not to upgrade the AutoMARK but to develop and market a new machine, ExpressVote, that does not print on a regular ballot but instead prints a summary card that does not conform to

Montana's uniform ballot law. She said this will compromise privacy for disabled electors, especially in small counties where only a few electors would be using it.

Regarding other technology, Ms. Brenneman mentioned other states are turning to DRE machines to provide accessibility. For example, she said New Hampshire was looking at electronic voting with an elaborate electronic "pen and paper" on a tablet and that the system has never been hacked, as far as she knows. Ms. Brenneman said that if Montana wanted to look at electronic voting for disabled electors, it would be worth examining this technology more closely. She acknowledged that with respect to electronic voting, security has been raised as a concern and that the AutoMARK and casting a paper ballot has provided a very secure way of voting.

Ms. Brenneman also cautioned that many vendors market their machines as accessible, but the machines really offer poor options for certain types of disabilities. For example, a machine might be accessible for a hearing impaired elector, but have poor options for a visually impaired elector or an elector with limited arm or hand mobility.

Ms. Brenneman mentioned that another option she and county election administrators had discussed was simply having an accessible computer at each polling place where the elector could fill in an electronic ballot. Currently, Montana law allows an electronic ballot to be filled in by an absentee elector using the elector's computer, but the elector must print and mail the ballot back to the election administration, and many electors do not have printers. Ms. Brenneman said providing this option at the polling place is an idea that may be worthy of further consideration.

Ms. Brenneman suggested a vendor and voter fair may be a great way to further explore available options before changing Montana's statutes.

League of Women Voters perspective

Ms. Nancy Leifer, president of the Montana League of Women Voters, stated in public comment that the League supports only those voting systems that:

- mark a paper ballot;
- allow electors to verify during the voting process that their votes have been accurately recorded;
- allow the actual ballots to be used for audits and recounts; and
- allow vote totals to be verified by an independent hand count.

Los Angeles County "freeware"

At the January 18, 2018, meeting, committee members expressed interest in learning more about the "freeware" being developed by Los Angeles County, which some members had heard about at a national conference. The topic had come up in discussions about reducing reliance on proprietary voting technology owned and marketed by various vendors.

Because the topic of the Los Angeles County “freeware” was raised at several junctures during the interim, staff conducted further research for this report, which is summarized below.

A 2014 article in *Governing* magazine quotes Dean Logan, Los Angeles County’s registrar-recorder/county clerk, as explaining:

The traditional model of voting systems procurement is that jurisdictions contract with a vendor for a system that has been designed, built and certified by that vendor. So there is a profit relationship. In many cases, the equipment remains owned by the vendor and it's serviced by the vendor, with oversight by the jurisdiction.

Los Angeles County is somewhat unique in that we have a very old voting system that was developed by L.A. County government back in the late 1960s with punch-card voting. We have different contracts for the components of our voting system, but we're not tied to a single relationship to one commercial vendor operating and supporting the whole voting system.

We see value in that. There isn't a voting system that meets our needs, so that takes us out of the market in the first place. But we also believe that it's important that the voting system be publicly owned and operated and that it has transparency and security provisions to ensure that voters have confidence that their vote is being cast as intended and counted as intended.¹⁷

In 2009, the Los Angeles County election administrator instituted a project called Voting Solutions for All People (VSAP). The county website on the VSAP explains the project as a collaborative approach to modernizing the county’s entire process for conducting elections, including voting technology and accessibility features. The multi-phase project involves public opinion research, advisory committees, design teams, and system engineering, manufacturing, and certification.

As a step in the county’s transition to a modernized infrastructure for elections, the California Secretary of State on Aug. 21, 2018, [approved](#) the Los Angeles County Voting Solutions for All People (VSAP) Tally 1.0 voting system for use in counting mail ballots. The VSAP Tally 1.0 is the first open-source, publicly owned election technology. It consists of a central tabulation software program and a ballot scanning system.

An overview in the Los Angeles County [procedures manual](#) for the VSAP Tally 1.0 states:

A critical piece of Los Angeles County’s Voting Solutions for All People (VSAP) is the VSAP Tally System solution, which scans ballots and tabulates the votes. The Tally System is both unique and innovative, and like other components of VSAP, is challenging the election industry to look at the design and engineering of voting solutions in a new and modern way. There is enormous

¹⁷ J.B. Wogan, “L.A. County Designs a Whole New Voting System”, *Governing*, July 7, 2014, available at <http://www.governing.com/topics/politics/gov-why-los-angeles-county-wants-to-design-a-new-voting-system.html>.

potential to make an impact on voting systems development and implementation both in California and throughout the United States. The VSAP Tally System Version 1, as prescribed by the Use Procedures document, is intended to process full-face Vote-by-Mail (VBM) ballots. Los Angeles County's previous VBM ballot used a 312 vote position ballot card based on the IBM Hollerith card with pre-printed ovals for inking votes. The Tally System is a transition to a scanning technology of a digital image that then processes the ballot into Cast Vote Records (CVR). CVRs are ballot summaries of every ballot that the Tally System is able to tabulate and report results.¹⁸

Los Angeles County's ultimate goal is to develop its own ballot marking device that is fully accessible for disabled electors but used by all voters at a polling place to cast their votes. A voter would feed a full-sized blank ballot into the voting machine and then use the touch screen to make their selections. The machine would print the choices onto the full-faced paper ballot. The voted ballot is then fed into a scanner. The scanner would tabulate the votes by reading a QR code.¹⁹

Analysis of statutes and administrative rules

The committee asked staff to review, with the assistance of stakeholders, current statutes and administrative rules concerning accessible voting technology for disabled electors and determine if updates were needed. A preliminary analysis, which was an inventory of statutes and administrative rules with staff comments and questions on each MCA section, was presented at the committee's May 16, 2018, meeting. The analysis was further developed for the committee's July 18, 2018, meeting. In presenting the analysis at the July meeting, staff emphasized that due to other workload priorities for the committee, staff time had been limited, also stakeholders had not developed feedback or recommendations.²⁰

More evaluation and scrutiny from stakeholders was invited. (See stakeholder comments under the LCsa05 (general revision discussion bill draft) and the LCsa5A (study bill) sections later in this report.)

¹⁸ Los Angeles County Registrar-Recorder/County Clerk, "Los Angeles County 2018 Blended Use Procedures", V.1.0, May 7, 2018, available at <https://votingsystems.cdn.sos.ca.gov/vendors/LAC/lac-vsap-use-proc.pdf>.

¹⁹ The big picture concept for modernizing elections in Los Angeles County is explained in an [informational graphic](#) available on their VSAP website, along with other resources, at the following URL: <http://vsap.lavote.net/>.

²⁰ The analysis is available on the committee's web page for the July 18, 2018, meeting and at the following link: <https://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/July-2018/Analysis%20Chart%20-%20Disability%20Provisions%20-%20June%2014%202018.pdf>.

Committee Questions and Discussion

March 6, 2018, expert panel

At the March 6, 2018, meeting, during the questions and discussion following presentations from the invited panel of national and state experts, committee member questions led to discussion about accessibility at Montana polling places in general. The committee learned that in some polling places AutoMARK machines may not be set up or turned on because election judges are either untrained, the system is too cumbersome to set up, or the precinct is so small it is rare for a disabled elector to request to use the system. This led to questions about centralized vote centers. Ms. Underhill and Ms. Bishop discussed the pros and cons of vote centers. Responding to questions, Ms. Underhill spoke about how Colorado elections are all by mail ballot, but the state does have vote centers as well as mobile units (buses or trailers) that provide a way for people to register and vote early as well as on election day.

Other committee questions related to the use of AutoMARK in state and local elections, including school district elections. The committee learned that every county has AutoMARKs for the elections they administer, but school districts that run their own elections probably do not have AutoMARKs.

Committee members asked Ms. Mommaerts about the cost of purchasing ES&S machines and why ES&S does not make a newer machine that will print a standard ballot. The discussion surfaced the fact that Montana is not a large enough market to provide the economies of scale for large purchases. The committee received some preliminary information about costs. However, see Appendix A for the detail obtained from ES&S for this report.

In further questions and discussion about whether Montana should change its uniform ballot law, the committee learned that if the law was changed to allow for a nonstandard ballot, such as is printed by the ES&S ExpressVote, counties could choose between purchasing the ExpressVote or maintaining their use of the AutoMARK.

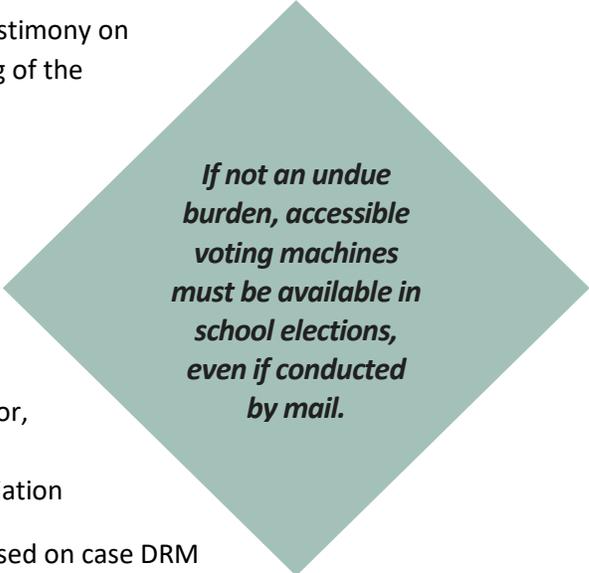
Other questions related to security and the vulnerabilities of electronic ballot marking devices. Ms. Greenhalgh's reiterated her opinion that DREs present a significant security risk as well as tabulators reading bar codes on paper ballot summary cards. In responding to questions, Ms. Plettenberg noted the importance of pre-election testing and post-election audits irrespective of which types of machines were being used. Ms. Greenhalgh noted that if counties are using two different types of ballot styles, post-election hand count audits would be more complex and difficult, which in her opinion mitigated toward keeping Montana's uniform ballot law.

The discussion wrapped up with committee members commenting that technology was evolving fast and security concerns added complexities, so additional consideration was needed before changing Montana's statutes.

July 18, 2018, expert panel

At its July 18, 2018, meeting, the committee received testimony on accessibility for disabled electors from a panel consisting of the following speakers:

- Beth Brenneman, attorney, Disability Rights Montana (DRM)
- Regina Plettenburg, county election administrators
- Nicole Thuotte, school finance specialist, Office of Public Instruction (OPI)
- Kara Sperle, school finance division administrator, OPI
- Denise Williams, Montana School Boards Association



If not an undue burden, accessible voting machines must be available in school elections, even if conducted by mail.

Ms. Brenneman stated that from DRM's perspective, based on case DRM brought before the Human Rights Bureau and won several years ago against a municipality, current law in Montana already requires schools and municipalities to make accessible voting machines available to disabled electors in all of their elections, even if the election is run by the county or conducted by mail. The basis of the argument was that because the county already had the equipment and providing the equipment was not an undue burden, the equipment needed to be made available. She said she would use the same analysis regarding a school election.²¹

Ms. Brenneman said the primary issue is not necessarily with the law, but with implementation and resources. She said the \$3 million HAVA grants would probably not be enough to help counties with replacing aging AutoMARKs. However, she also stated that if counties were allowed to purchase a system other than the AutoMARK and the situation became that different voting systems were being used in different counties, the state would be running into the very situation that HAVA was trying to avoid with respect to lack of uniformity and disparities.

Ms. Brenneman cautioned that perhaps updates to the law should wait until the EAC was finished developing and issuing new guidelines and certification standards. She said the EAC was supposed to issue those new guidelines by January 2019, but it remained to be seen if the EAC could meet that deadline.

²¹ Order Granting and Denying Cross-Motions for Summary Judgment on Liability and Setting a Filing Deadline for Briefs on Certification or a Damages Hearing, *Maffit v. Helena*, No. 1139-2009 & 1140-2009 (Mont. Dep. Of Labor and Industry filed Nov. 3, 2009) <https://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/Sept-2018/Exhibits/CaseNo1139-2009and1140-2009.pdf>.

Ms. Brenneman said the electronic voting provisions enacted for disabled electors allows them to electronically apply for absentee ballots and receive a ballot electronically, but this has not been as successful as hoped because the electors still must print the application and the ballot and mail them back and most people do not have printers at home. She said she would like to see disabled electors allowed to electronically return the application and the ballot, just as the overseas and military voters do. Ms. Brenneman spoke in favor of other measures that would benefit disabled electors, such as automatic voter registration. She acknowledged the security concerns involved in any electronic transactions but said technology was advancing that could also address these concerns.

Ms. Brenneman also said that physical accessibility at polling places continued to be an issue and encouraged actions to address this. She noted that disability and some type of impairment is something everyone would experience in the aging process and that should be recognized.

Nicole Thuotte, joining the meeting by phone, said that OPI was 100% committed to allowing everyone to vote in school elections. She pointed the committee to section 20-20-203, MCA, and section 20-20-411, MCA, and stated these ensure that voters have the same rights in school elections as in other elections. She said in the 2017 May special election, 63% of school elections were conducted by mail. Based on a partial analysis, it seemed most school districts are running their own elections. Ms. Thuotte said OPI does specific training on the electronic ballot available for disabled electors.

Denise Williams stated that MASBO and OPI partner in doing training for school officials conducting elections and those trainings cover disabled elector accessibility. She said if Title 20 statutes do not have specific statutes on accessibility, then the Title 13 statutes on accessibility would apply. Ms. Williams said she was seeing many districts moving toward conducting their elections by mail. She said in several larger school districts, the county conducts the election and there is a close relationship between the schools and counties in any school election. Ms. Williams reported that schools that conduct polling place elections say they see very few disabled electors actually come to the polls. She said in the election judges' handbook, there is information provided on options for disabled electors, including use of the AutoMARK. She said some schools borrow the AutoMARK from the counties, but there may be some instances in some larger districts where there is not an AutoMARK in every polling place.

Ms. Plettenberg said accessibility has to be balanced with security so requiring the electronic ballot to be printed and mailed back was part of that effort to strike a balance, but perhaps it could be reconsidered since the electronic ballot is not being used extensively. She also addressed confusion among voters that they cannot register online. Ms. Plettenberg said election administrators are not opposed to electronic options, but security would need to be part of that conversation. Regarding school elections, she said that county election administrators were more than willing to work with schools not only regarding training, but also in providing accessible voting machines.

Mr. Dana Corson, elections director for the Secretary of State's Office, said the conversation about future accessible technology was something that would be good to talk about, but in the meantime, the AutoMARK has been a good system and that counties have contracts with ES&S for maintenance. He

encouraged the counties to lean on ES&S to make sure the AutoMARKs were well-maintained, tuned up, and tested for upcoming elections.

In response to committee questions, the following additional information was provided:

- School districts that do not provide AutoMARKs at a polling place rely on curbside voting or the elector could be assisted by the elector's designated agent or election judges.
- About 75% of school districts run their own elections.
- Challenges for county election administrators in running school elections include that election staff are very busy in even years preparing for primary elections, also special district and special district elections are complicated because district boundaries are so different.
- Accessible voting technology needs to be available even in mail ballot elections.

Discussion bill draft – LCsa05 generally revising laws related to disabled electors

To facilitate and structure stakeholder input related to the preliminary staff analysis of statutes for potential updates regarding accessible voting technology for disabled electors, staff prepared a bill draft for discussion purposes only. The draft was not prepared by request of the committee.²²

In summary, the general revision discussion draft made the following revisions:

- In sections that referenced the federal ADA with respect to voting rights for disabled electors, the draft added references to other applicable federal law, which include the Voting Rights Act of 1965, 52 U.S.C 10101, et seq., the Voting Accessibility for the Elderly and Handicapped Act of 1984, 52 U.S.C. 20101, et seq., and the Help America Vote Act of 2002, Public Law 107-252.
- The term “accessible ballot marking technology” and “accessible voting machines” was added to MCA sections related to standards for accessibility.
- In a definition section that limited the applicability for polling place standards for accessibility to general, special, or primary elections in even-numbered years, the bill made revisions that would have made these standards applicable to all elections, including school elections.
- A new section in the bill draft articulated what is already a requirement under HAVA that there be at least one accessible voting machines available for disabled electors at each polling place.

²² A copy of the discussion draft is available upon request by contacting Sheri Scurr, research analyst, Legislative Services Division.

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- Several revisions were intended to clarify current processes for how disabled electors may receive assistance at a polling place, for curbside assistance, or for voting absentee after receiving an electronic blank ballot by email.
- A penalty for deceiving a disabled elector when providing assistance for curbside voting or inside the polling place was broadened to apply to any provision regarding providing assistance to a disabled elector under any provision of the Title 13.
- Required that a school district would need to ensure an accessible voting system, if available from the county, would be used in an election administered by the school district.

The discussion draft was provided to the following stakeholders:

- Montana Clerks and Recorders and County Election Administrators Association
- Secretary of State's Office
- Office of Public Instruction
- Montana Association of School Business Officials
- Montana School Boards Association
- Disability Rights Montana (DRM)
- Mr. Travis Hoffman, advocacy coordinator, Summit Independent Living and disabled elector.

Comments were provided to staff prior to the meeting by the county election administrators, OPI staff, and DRM. County election administrator comments on the draft indicated concern about the technical wording of some of the changes, potential unintended consequences in citing federal laws, and added costs if accessible voting technology was to be made available for special district elections. Comments from OPI staff also indicated concern about the technical wording of some of the changes, costs to school districts, and the need for more clarity about whether it was the school district or the county that would be responsible for the ensuring the availability of accessible voting machines for school elections.

Committee's Final Discussion and Recommendation

LCsa5A – study resolution

In preparing the September 6, 2018, meeting, staff consulted with Sen. Malek, presiding officer, Vice Presiding Officer Sen. Kary, vice presiding officer, and Sen. Brown, who made the initial motion for staff to work with stakeholders in analyzing state statutes and administrative rules for potential updates, about whether to provide the discussion draft, LCsa05, to the full committee for a detailed discussion or whether to draft for the committee's consideration a study bill for next interim. The consensus was that a study bill should be drafted due to the technical concerns still to be worked out on the discussion draft and the fact that this was the committee's last meeting of the interim, except for the November meeting which was supposed to be totally dedicated to the committee's oversight of public employee pensions.

In testimony on September 6, 2018, Ms. Brenneman, noted she did not have significant concerns about the comprehensive discussion draft (LCsa05) from a policy standpoint and that the bill did not seem to be controversial. She said the concerns from other stakeholders were basically logical and could be worked out. Ms. Brenneman emphasized that voting rights for disabled electors applied to all elections under current state nondiscrimination laws, even without consideration of federal law. She offered the committee a copy of a [Human Rights Bureau decision](#) concerning a complaint she had mentioned at a previous meeting. The complaint came from two disabled electors, both blind, alleging that the city of Helena discriminated against them by not providing for the use of an AutoMARK in the Helena Citizens' Council "redo" election conducted in mid-December 2007.²³

Ms. Brenneman did not review this case with the committee. However, the core of the matter was that because of compressed deadlines in redoing the election, the ballots for the Helena Citizens' Council were not printed on AutoMARK compatible ballots. The plaintiffs argued that their rights to cast a ballot privately and independently had been violated because they could not cast their votes on an accessible voting machine, i.e., the AutoMARK. The city argued (1) absolute secrecy was not necessarily a requirement, (2) government entities are not always required to provide visually impaired voters with accessible technology to vote completely independently and secretly, and (3) the AutoMARK had been provided in the original election and re-running the election was a county obligation and cost so the city had neither the right nor the obligation to specify use of the AutoMARK in the election.²⁴

On the question of secrecy, the ruling noted that Montana statute did authorize voters to request assistance in casting a ballot without the use of an AutoMARK so did authorize limited disclosure of the votes cast. However, the ruling stated that the case did not require the ruling to address whether absolute secrecy was always required. The ruling states: "Since it [the AutoMARK] was available, and within the power of the city and/or the county to provide, whether absolute ballot secrecy would always be necessary is a moot question for this case. In this case, the local government entity already had the technology to provide absolute ballot secrecy for visually impaired voters and the time to implement the technology for the election at issue. In addition, there is no evidence that the cost of implementation of the technology for this particular election was unduly burdensome. Under these facts, failure to make that technology available to visually impaired voters did violate their rights to a secret ballot."²⁵

On the question of whether the city had an obligation to provide accessible voting technology, the ruling stated the key point was not whether state or federal anti-discrimination law generally requires local governments to use accessible technology, but rather whether the local government discriminated against the voters by not using accessible technology that was available. The ruling concluded that

²³ Order Granting and Denying Cross-Motions for Summary Judgment on Liability and Setting a Filing Deadline for Briefs on Certification or a Damages Hearing, *Maffit v. Helena*, No. 1139-2009 & 1140-2009 (Mont. Dep. Of Labor and Industry filed Nov. 3, 2009) <https://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/Sept-2018/Exhibits/CaseNo1139-2009and1140-2009.pdf>

²⁴ Ibid.

²⁵ Ibid.

failing to use accessibility technology for the redo election that the local government already possessed and already used for other municipal elections violated Montana anti-discrimination law.²⁶

Ms. Plettenberg stated that one of the key concerns was not about the need to provide accessible voting technology to disabled electors in special district elections, but how would affect special districts that might only involve a handful of electors. The cost for a special district to pay for the printing and programming for an AutoMARK ballot for the election would be about \$600 to \$700, which is significant to a district that has a very small, perhaps \$7,000, total budget to begin with. She stated that special districts should be a stakeholder at the table in further study of this issue so that they could remain informed and aware of their obligations.

Mr. Corson stated that accessibility for disabled electors was a shared concern statewide and warranted further examination. He said the Secretary of State's Office looked forward to participating in any interim study on the issues raised.

Ms. Brenneman addressed the study bill language and recommended a few amendments. She also stated that during the study it would be great if the committee could gather actual numbers from the school and special districts. She said state anti-discrimination laws recognize the concept of an undue burden and that it may be appropriate for the Legislature to set a threshold number of total electors beyond which an accessible voting machine must be provided for that election.

Committee members expressed support for the study resolution approach, acknowledging that further discussion with stakeholders would be beneficial. The committee generally expressed support for the amendments suggested by Ms. Brenneman.

Shantil Siaperas, representing the Montana Association of Counties (MACo), provided public comment in support of the study bill and said MACo looked forward to being a resource to the committee and included as a stakeholder during the study.

Committee action

After approval of amendments to LCsa5A as initially drafted, the committee voted unanimously to adopt LCsa5A as a committee bill to be recommended to the 2019 Legislature. Rep. Mandeville agreed to carry the bill on SAVA's behalf. The bill was assigned an official LC number of LC 323. A copy of the draft as approved by the committee is provided at Appendix B. The introduced bill and all actions on the bill are available on the Legislative Branch LAWS website, by clicking on "Find A Bill" on the Legislative Branch website at <https://leg.mt.gov/>.

²⁶ Order, *Maffit v. Helena*, No. 1139-2009 & 1140-2009 (Mont. Dep. Of Labor and Industry filed Nov. 3, 2009)

ELECTIONS: ACCESSIBILITY FOR DISABLED ELECTORS & CYBERSECURITY

A final report of the State Administration and Veterans' Affairs Interim Committee: 2017-18



PART II – ELECTION CYBERSECURITY

Background

News reports about cyberattacks on state voter registration databases began in mid-July 2016 after the Illinois Board of Elections revealed its voter registration database had been hacked. In an National Public Radio interview, Steve Sandvoss, executive director of the Illinois Board of Elections, stated: “Well, we were the victim of a malicious cyberattack. It occurred in the summer of 2016. It began as a subtle intrusion that we initially did not detect because it was so small. And then it - two weeks later - three weeks later, rather - the volume of the attack increased to the point where it caused a disruption in the performance of our statewide voter registration database. And we discovered, after shutting the system down, that it had captured data on voter registration records of Illinois voters somewhere in the range of 76,000.”²⁷

By September 2016, news outlets were reporting that the hacking attempts had been traced to the Russian government and that more than 20 states had been targeted. In an interview with NBC News, Jeanette Manfra, the head of cybersecurity at the Department of Homeland Security (DHS), said that while she could not talk publicly about specific details that remained classified, at least 21 state election systems had been targeted, though only a small number of the attacks had actually successfully penetrated the systems. The NBC News report stated that, according to U.S. officials, there was no evidence that any of the statewide voter registration databases had been altered. But the report also quoted Jeh Johnson, who was the secretary of DHS during the Russian intrusions as saying “2016 was a wake-up call and now it's incumbent upon states and the Feds to do something about it before our democracy is attacked again”.²⁸



Initial reports stated hacking attempts traced to the Russian government targeted voter registration databases in more than 20 states.

In January 2017, DHS declared the nation’s electoral system “critical infrastructure”, which allowed DHS to make assisting state and local governments protect their election systems an official duty and a top priority. In his declaration, Secretary Jeh Johnson stated:

²⁷ National Public Radio, Weekend Edition Sunday, July 15, 2018, transcript available at <https://www.npr.org/2018/07/15/629212908/russia-and-state-voting-systems>.

²⁸ Cynthia McFadden, William M. Arkin, and Kevin Monahan, NBC News, Feb. 7, 2018, available at <https://www.nbcnews.com/politics/elections/russians-penetrated-u-s-voter-systems-says-top-u-s-n845721>.

ELECTIONS: ACCESSIBILITY FOR DISABLED ELECTORS & CYBERSECURITY

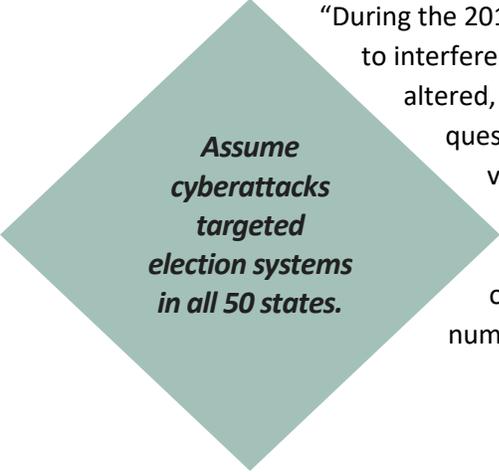
A final report of the State Administration and Veterans' Affairs Interim Committee: 2017-18

I have reached this determination so that election infrastructure will, on a more formal and enduring basis, be a priority for cybersecurity assistance and protections that the Department of Homeland Security provides to a range of private and public sector entities. By "election infrastructure," we mean storage facilities, polling places, and centralized vote tabulation locations used to support the election process, and information and communications technology to include voter registration databases, voting machines, and other systems to manage the election process and report and display results on behalf of state and local governments.²⁹

In March 2018, the Consolidated Appropriations Act of 2018 was signed into law and included \$380 million in Help America Vote Act (HAVA) funding for grants to states to make election security improvements. Montana received \$3 million in April 2018.

In his July 2018 newsletter, Secretary of State Corey Stapleton stated that Montana was one of the states "scanned for weaknesses in our election systems" and announced his office was "partnering with the Department of Homeland Security, Montana Department of Justice, Governor's Office, and the National Guard in a variety of projects to test, train, and update security protocols both at the state and county levels."³⁰

A National Election Security Summit held September 10-11, 2018, brought together top security experts and secretaries of state from across the country to discuss cybersecurity threats to state and local election infrastructure and how best to protect against these attacks. DHS Secretary Kirstjen Nielsen addressed attendees. The following are some excerpts of her presentation:



**Assume
cyberattacks
targeted
election systems
in all 50 states.**

"During the 2016 elections, the Russian government made a brazen attempt to interfere with our elections....we have no evidence that votes were altered, plain and simple. What we did see, though, is without question concerning: Russian government cyber actors seeking vulnerabilities and access to U.S. election infrastructure. We assume Russia's campaign targeted all 50 states, but in almost all cases, only preparatory activity, such as scanning or basic research, was observed. In an exceptionally small number of cases, actors were able to access the system...."

²⁹ U.S. Department of Homeland Security, "Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector", News Release, Jan. 6, 2017, <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>

³⁰ Montana Secretary of State Corey Stapleton, "Montana Elections and the Russians", July 2018 edition, electronic newsletter available at <http://www.montanasecretaryofstate.net/emailmarketer/display.php?M=3200714&C=2a1ece7816e16ad1f52d2aeb14174cfa&S=990&L=6&N=258>

I want to ask for your assistance in three areas:

First, continue to get prepared and protected. Don't underestimate the abilities of our adversaries. And don't assume you won't be affected by the next attempt. I assure you, they learn and get better. Whether you seek assistance from DHS, private sector partners, or other state agencies—utilize the resources available to you. None of us should assume that we can withstand a nation-state attack on our own. Let's continue to work together to protect America's election systems.

Second, raise awareness with your partners and constituents. Over the last year we have established relationships and built trust with election officials across this country. But we can do more to get city and county officials prepared for the potential risks they face. They are truly on the front lines, and we need your help to ensure that every jurisdiction has access to information and best practices, and knows who to call when they see a problem. ...

Finally, build redundancy and resilience into your systems. Our elections are too important for single points of failure. We must have the ability to assure the American public that even if a disruption occurs, the results of the election are beyond question. This means thoughtfully upgrading technology, knowing your vendors and ensuring that they are reliable and secure, and having the right personnel to bring it all together.

In that spirit, last month, I called on all election officials to ensure that every American votes on a verifiable and auditable ballot by the 2020 election. This is an essential step in giving the American people the confidence that their votes were counted, were counted correctly and that their voices were heard.”³¹

Approaching the Issues

The committee's activities on election cybersecurity were conducted in the context of monitoring and oversight of election administration. In this oversight role, the committee received testimony and research and engaged in discussions about protecting voter information and election systems in general from bad actors. Much of the committee's work on election cybersecurity intersected the committee's work on accessible voting technology. Security issues related to electronic ballot marking devices and accessible voting technology were covered in Part I of this report.

Part II of this report provides general educational information about what the committee learned during the interim about election cybersecurity. A good portion of what the committee learned was from materials provided at an NCSL conference in Cheyenne, Wyoming, on April 26-27, 2018, entitled

³¹ U.S. Department of Homeland Security, “Secretary Kirstjen M. Nielsen Remarks to the National Election Security Summit: As Prepared for Delivery”, News Release, Sept. 10, 2018, available at <https://www.dhs.gov/news/2018/09/10/secretary-kirstjen-m-nielsen-remarks-national-election-security-summit>.

“Elections Security: States Teaming Up”. Five of SAVA’s eight members and the committee’s staff researcher attended the conference.³²

Understanding the Threat

Overview

At the NCSL conference in Cheyenne, attendees received a briefing from security experts participating in the Defending Digital Democracy Project. The project, launched in July 2017 by the Belfer Center for Science and International Affairs of the Harvard Kennedy School, brings together a coalition of political and technical leaders, national security experts, and the social media industry to identify and recommend strategies, tools, and technology to protect democratic processes and systems from cyber and information attacks.³³

The following are some highlights of the briefing, which was based on “The State and Local Election Cybersecurity Playbook”, published by the Defending Digital Democracy Project in February 2018:

- A cyberattack is an attack that targets a network for the purpose of disrupting, disabling, destroying, or maliciously controlling it; or an attempt to destroy the integrity of data or steal controlled information. Common attacks include spear phishing (i.e., sending emails under false pretense in an attempt to infiltrate a system or gain account credentials from the individuals targeted), denial of service, or device takeover.
- Although election administration is decentralized, which makes it harder for attackers to compromise multiple jurisdictions at once, the disparities also cause vulnerabilities.
- Smaller jurisdictions with fewer resources may be seen as more vulnerable and therefore may be considered by attackers as an attractive target.
- Possible bad actors include nation-states, most notably Russia, China, Iran, and North Korea, “black hat” hackers, terrorists, criminals, insiders with malintent, and politically motivated groups.
- Possible goals of attackers include financial gain, fame, disruption and chaos, retribution, social division, subversion of democratic institutions, and distrust.

³² Resources provided at this conference are posted at the following NCSL link:

<http://www.ncsl.org/research/elections-and-campaigns/elections-security-states-teaming-up-cheyenne.aspx>

³³ Belfer Center for Science and International Affairs of the Harvard Kennedy School, “Belfer Center Launches “Defending Digital Democracy” Project To Fight Cyber Attacks and Protect Integrity of Elections”, Press Release, July 18, 2017, available at <https://www.belfercenter.org/publication/belfer-center-launches-defending-digital-democracy-project-fight-cyber-attacks-and->

- Vendors of election hardware and software are high value targets for cyber attackers and can become a point of vulnerability.
- Avenues of attack are both technical and human. Ultimately, most cybersecurity breaches result from malicious actors exploiting human behavior, not technical shortcomings.³⁴

Threats to voter registration processes

One of the sessions at the Cheyenne NCSL conference focused on security of voter registration databases. Some of the key points made in that session included the following:

- Potential interaction or data exchanges with the voter registration system, depending on each state's actual processes, involve multiple entities and various types of systems:
 - Motor vehicle divisions
 - Online voter registration
 - Automatic voter registration
 - County election offices
 - Secretary of state office
 - Electronic pollbooks
- Points of vulnerability or potential security gaps include:
 - Humans opening an email that is a spear phishing attempt
 - Network connections to the Internet
 - Security weaknesses in commercial products (i.e., vendor hardware and software)
 - Passwords and authentication/access control configurations
 - Data validation processes
 - Backup and auditing processes
- Potential harm caused if hackers gain access to voter registration databases include:
 - Fake voter registration records
 - Misinformation that confuses voters
 - Unauthorized changes to voter registration files
 - Access to upstream state and cloud-based infrastructure

Threats to voting processes

Another session at the NCSL conference addressed security threats related to the voting process itself. The following is an outline of session highlights:

³⁴ A copy of The State and Local Cybersecurity Playbook is available online at the following link:
<https://www.belfercenter.org/sites/default/files/files/publication/StateLocalPlaybook%201.1.pdf>.

- Points of potential security vulnerabilities include:
 - Absentee and military and overseas ballot delivery and return processes
 - Ballot marking systems
 - Ballot tabulation systems
 - Reporting systems

Best Practices and Policy Options

“The State and Local Election Cybersecurity Playbook” presented at the Cheyenne NCSL conference offered the following best practice recommendations:

- Create a proactive security culture.
- Treat elections as an interconnected system and safeguard all devices that touch the system.
- Have a paper vote record that is verifiable and auditable.
- Use audits for transparency and trust but also use it to test data integrity and accuracy.
- Implement strong passwords and two-factor authentication.
- Control and actively manage access.
- Prioritize and isolate sensitive data and systems.
- Monitor, log, and back up data.
- Require vendors to make security a priority.
- Build public trust through outreach and information operations.³⁵

In discussions among conference attendees about how to translate the information presented at the Cheyenne NCSL conference into legislative policy options, attendees commented that legislators could assess the following:

- **Funding** – Will states receive any federal funding assistance and to what extent should the legislature appropriate state funding to assist counties with election security efforts?
- **Voter information files** – Does state law provide for or could new laws be enacted to protect what personal information is available in voter registration databases or to restricting public access to certain personal information, such as full birth dates?
- **Post-election audits** – Does state law provide for or could new laws be enacted to require “risk limiting” post-election audits (i.e., audits that require a certain statistical assurance that the election outcomes are correct through a manual examination of paper ballots or voter-verifiable paper records)?

³⁵ More detail about each of these recommendations is available in the playbook at the following link: <https://www.belfercenter.org/sites/default/files/files/publication/StateLocalPlaybook%201.1.pdf>.

- **Voting system certification** - Does state law provide for or could new laws be enacted to specify in statute certain security requirements must be met by voting system vendors before a system may be certified for use in the state?

Funding - 2018 HAVA Grants

At its July 18, 2018, meeting, the committee received background information on the 2018 HAVA grants provided to states for improving election administration and security.³⁶

The key points highlighted for the committee at the July 18, 2018, meeting were as follows:

- Montana received a \$3 million grant.
- Montana's state match requirement is \$150,000.
- The HAVA funds may be used to:
 - Replace voting equipment that only records a voter's intent electronically with equipment that utilizes a voter verified paper record.
 - Implement a post-election audit system that provides a high level of confidence in the accuracy of the final vote tally.
 - Upgrade election-related computer systems to address cyber vulnerabilities identified through Department of Homeland Security, or similar scans or assessments of, existing election systems.
 - Facilitate cybersecurity training for the state chief election official's office and local election officials.
 - Implement established cybersecurity best practices for election systems.
 - Fund other activities that will improve the security of elections for federal office.
- States are authorized to begin spending the funds prior to submitting to the EAC a budget narrative, which is due 90 days after a state receives the funds. (Note: As of the writing of this report, Montana's budget narrative has not been approved by the EAC.)

Dana Corson, elections director for the Secretary of State's office, told the committee at the July 18, 2018, meeting that Montana's budget narrative to EAC was due Sept. 24, 2018, and that the Secretary of State's office would be working on grant processes and reaching out to stakeholders and counties to identify projects that qualify for expenditures under the grant.

In response to questions, Mr. Corson explained that the Secretary of State's Office had not expended any of the \$3 million grant but had made recent expenditures from original HAVA money received in 2005. When asked about the \$150,000 match, Ms. Corson said the match could be a "soft match" or a

³⁶ See Part I of this report for more background on the HAVA grants. Additional detail is also available on the Election Assistance Commission website at <https://www.eac.gov/>.

combination of a “soft match” and hard cash and would come from the Secretary of State’s budget. When asked if the Secretary of State’s office would be surveying counties on their voting systems, Mr. Corson said the office would be looking at all voting systems being used and assessing security risks associated with dependency on older systems or reliance on computer infrastructure that was not in the control of election administrators.

Regina Plettenberg, representing the Montana Association of Clerks and Recorders and County Election Administrators, in responding to committee member questions at the July 18, 2018, meeting, stated there did not seem to be enough time, given the planning steps that still needed to be completed, for counties to use the \$3 million in 2018 HAVA funds to upgrade voting machines for disabled electors by replacing or refurbishing AutoMARK machines by the 2018 general election in November. She said there seemed to still be questions about whether accessible voting systems for disabled electors was an eligible expenditure under the grant’s criteria.

Committee members encouraged the Secretary of State’s office to continue to keep the committee informed about plans for the \$3 million 2018 HAVA grant money, provide public information about our voting systems and security efforts, and consider how aging voting systems could be upgraded in Montana by staggering purchase of new ballot marking system or tabulation machines to avoid a critical need to replace the machines all at once in the future.

Status of Election Security Efforts in Montana

At the committee’s Sept. 6, 2018, meeting, Mr. Corson provided an update on the Secretary of State’s activities related to election security. In summary, Mr. Corson reported the following:

- In February 2018, at an election administrator’s certification training conference, almost an entire day was spent on security issues, such as recognizing threats, such email spear phishing attempts, how to do risk assessments, who to contact for assistance or to report concerns, and best practices.
- Multi-factor authentication for access to the statewide voter registration database has been implemented statewide.
- A training module for “securing the human” has been provided to all counties. It involves a series of video clips that employees view and progress through as they pass a test of their knowledge about what the video covered, which raises security awareness and ensures employees have been trained and understand appropriate security protocols in various situations.
- The Secretary of State’s Office recently hired and now has on staff a certified information security professional, a special designation, to help enhance election system security.

- In August, the Secretary of State's Office provided security information at a conference of county election administrators and also participated in a national table top exercise with other states, the DHS, and the Department of Justice.
- The Secretary of State's Office continues to do risk and vulnerability assessments, evaluate election system vendors, and to consider how best to spend the \$3 million HAVA grant.

In response to questions, Mr. Corson explained the state's voter registration database was an older system and the Secretary of State's Office was assessing the extent to which the system could be upgraded or whether new system components are available and would be better.

Voter Information Files

Discussions among attendees at the NCSL election security conference in Cheyenne turned to the topic of voter registration files and what voter information was publicly available in various states. Upon returning from the conference, committee members requested more information about what voter information in Montana was public.

What information is available?

When completing a voter registration form, if an applicant does not have a Montana driver's license or Montana identification number, the applicant provides only the last four digits of a social security number. An applicant who does not have a social security number is asked to provide a copy of a photo identification or other acceptable document (paycheck stub, utility bill, bank statement, or government document) that shows the applicant's name and current address. Providing a phone number or email address is optional.³⁷

The following information about each voter is contained in the Secretary of State's publicly available voter files extracted from the statewide voter registration database:

- Unique identification number (not a social security number and not a drivers' license or state ID number)
- First name, middle name, last name, and suffix
- Voter status (active, or inactive, etc.)
- Voter status reason (a description of why the voter is listed as active or inactive, etc.)
- Residential address information (residence house number, street name, street type, or description such as a pre-directional code, post-directional codes, etc.)
- Mailing address
- Phone number (if provided by voter)

³⁷ A copy of the Montana voter registration application is at the following link:

https://flathead.mt.gov/election/documents/Voter_Registration_Application.pdf

- Full date of birth
- Voter effective date of registration
- County of residence
- Voter precinct description
- Voter house district
- Voter senate district
- Voter absentee indicator (to identify whether the voter is an absentee voter)
- Voter city ward (if applicable)
- Voter city limits information (if applicable)

Publicly available voter history information includes what previous elections the elector voted in and whether the elector voted absentee or at a polling place. The history is available for voters in some counties going back to 1984, but the statewide system was not implemented until early 2006, so most voter history files only go back to 2006.³⁸

Montana law, [section 13-2-122, MCA](#), provides that extracts and reports from Montana's statewide voter registration system may be purchased by any individual for noncommercial use.³⁹ Montana law [section 13-2-115, MCA](#), also allows address information to be kept confidential for personal security reasons.

According to the [Secretary of State's webpage of the voter information files](#), the fee for a single copy of the complete voter file or for an extract of the voter file such as the absentee ballot report is \$1,000, while a one-year subscription is \$5,000. A subscription entitles the user to unlimited downloads for the available extracts and copies of the complete file. Customized reports, such as for a county file, are available for different fees.⁴⁰

What is the public's right to know?

At the July 18, 2018, meeting, staff reviewed Montana constitutional and statutory provisions related to public information and voter files. The committee was informed about how the courts balance the public's constitutional right to know with a person's constitutional right of privacy. The legal question is does an individual's right of privacy clearly exceed the public's right to know. A court has looked at privacy interests as being information that reveals an individual's attitudes, beliefs, behaviors, or any other aspect of that individual's life.

Ms. Nancy Leifer, president of the Montana League of Women Voters, told the committee that the League is particularly concerned about the public availability of a voter's full birth date. She said the

³⁸ See the Secretary of State's webpage at the following link for detailed information about the voter files: <https://sosmt.gov/elections/voter-file/>.

³⁹ See [section 13-2-122, MCA](#).

⁴⁰ See the Secretary of State's webpage at the following link for detailed information about the voter files: <https://sosmt.gov/elections/voter-file/>.

League believes that the full birth date should be given privacy protection and be considered confidential. Ms. Leifer said the League would like to see the committee introduce legislation to make a statutory change so that the full birth date would not be released with the voter information files. Additionally, she said the League would like people to be able to find out who has been accessing the voter information files.

Ms. Plettenberg said most of the information requests regarding the voter information files are being made to the Secretary of State's office rather than the county. She said she does hear from voters that they do not want to provide their phone numbers and she noted that providing the information is optional.

What do other state laws provide?

The committee requested research on other states' laws that may restrict public access to certain information, such as an elector's full date of birth. Staff provided selected state statutes, research gathered by NCSL, and information on selected states gathered by the U.S. Elections Project, a 2015 project funded in part by the University of Florida and the National Institute for Money in State Politics to create a clearinghouse of information about what voter information is available from each state's voter registration database.

In summary:

- All 50 states provide access to voter information files, but who can access it and how much it costs varies state-by-state.
- At least 25 states have laws limiting access to one or more of the following information: social security numbers, dates of birth, or other identifying factors, such as a drivers' license number.
- Thirteen states have no codified restrictions on the information available to the public, but the secretary of state may have the ability to limit access to the information.
- Six states have general statutes that prohibit distribution of "information of a personal nature".
- Every state except Rhode Island provides information on voter history.⁴¹

⁴¹ NCSL, "It's a Presidential Election Year: Do you Know Where Your Voter Records Are?", *The Canvass*, Issue 66, February 2016. See <https://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/Sept-2018/Exhibits/SAVA-Sept6-2018-Ex7.pdf>.

At its Sept. 6, 2018, meeting, detailed information, including the text of state statutes, was provided to the committee on laws in Colorado, Idaho, North Dakota, South Dakota, Utah, and Wyoming. This information is available at the following link: <https://leg.mt.gov/content/Committees/Interim/2017-2018/State-Administration-and-Veterans-Affairs/Meetings/Sept-2018/Voter%20file%20access%20-%20Packet%20on%20state%20laws.pdf>

Committee discussion

Discussing voter information files at the July 18, 2018, meeting following staff and panel presentations, some committee members expressed interest in making a voter's full birth date confidential, restricting who could access the voter information files, requiring those who access the voter information files to sign an affidavit that they would protect the information, or restricting the voter information from being available on the Internet. Committee members also cautioned against too much restriction, noting the need to honor and protect the public's right to know under Montana's constitution.

Committee discussion and additional information provided by Mr. Corson in answer to questions at the Sept. 6, 2018, meeting clarified the following points:

- The voter registration application form does not request information about a voter's criminal history. In Montana, a person on parole or probation may vote. Only individuals currently incarcerated are restricted from voting.
- The voter registration application form itself is not in statute or rule. Montana statute allows the secretary of state to prescribe those forms.
- Political campaigns are users of voter information files and are often very interested in voter history information.
- Those who request data from the voter information files often aggregate the information about voters with information available from a number of different sources, so although a voter's phone number may not be provided from the voter files, a user of the voter information file could find that voter's phone number (or full date of birth if that were not provided in the voter files) from other sources.

Post-election Audits

Montana law requires post-election audits for federal elections. Prior to the election, counties must appoint a county audit committee of at least three people. No sooner than 7 days after the election but prior to certification of the official results, the committee must conduct a random-sample audit of vote-counting machines. The random sample must include at least 5% of the precincts in each county or a minimum of one precinct in the county, whichever is greater. The audit must be conducted on the vote

tally for one statewide office race, if any, one federal office race, one legislative office race, and one statewide ballot issue if a statewide ballot issue was on the ballot.⁴²

In response to questions and comments at SAVA's July 18, 2018, meeting, Mr. Corson stated he thought the audits conducted were good and cautioned that as he understands it, risk-limiting audits done in some states focus on finding cost-saving measures and that if Montana wanted to do this type of audit, the scope and purpose of the audit should be well-considered.

The committee did not further discuss or request further information concerning post-election audits.

General Public Comment

In public comment on July 18, 2018, Montana League of Women Voters President Nancy Leifer spoke in favor of post-election "risk-limiting" audits, asking the Department of Homeland Security to conduct a security assessment for Montana, and a public information campaign to enhance public confidence by highlighting the strengths of Montana's election system and information the public about what is being done to continue to protect the security of elections.

Committee's Final Action

The committee did not develop final recommendations, but instructed staff to prepare this final report to summarize the committee's election cybersecurity activities and available information.



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⁴² See Title 13, chapter 17, part 5, MCA, accessible at the following link:
https://leg.mt.gov/bills/mca/title_0130/chapter_0170/part_0050/sections_index.html.