

AMENDED IN SENATE SEPTEMBER 4, 2009
AMENDED IN ASSEMBLY APRIL 2, 2009
AMENDED IN ASSEMBLY MARCH 18, 2009
AMENDED IN ASSEMBLY FEBRUARY 18, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 21

**Introduced by Assembly Member ~~Bonnie Lowenthal~~ Members
*Bonnie Lowenthal and Saldana***

December 1, 2008

An act to ~~add Section 14083 to the Food and Agricultural Code, relating to pesticides; amend Sections 15620, 15621, 16401, and 16421 of, and to add Chapter 8.5 (commencing with Section 15560) to Division 15 of, the Elections Code, relating to elections.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 21, as amended, Bonnie Lowenthal. ~~Pesticides: methyl bromide: study and report. Elections: audits.~~

Under existing law, an elections official must conduct a public manual tally of votes cast in an election and tabulated by a mechanical, electromechanical, or electronic system in 1% of the precincts in the jurisdiction, chosen at random by the elections official.

This bill would require an elections official, after an election, to calculate the margin of victory for each contest on the ballot at the election. For each contest in which the margin of victory was less than $\frac{1}{2}$ of 1%, this bill would require the elections official to conduct a public manual tally for a specified percentage of precincts within the jurisdiction, which would be known as a postcanvass audit. The bill

would require an elections official to report to the public any variances between the results of the machine tally and postcanvass audit. The bill would require the elections official to calculate the percentage of variance in the audited precincts, by dividing the number of variances found in the audited precincts by the total number of votes cast within those precincts. If the percentage of variance is 50% or greater of the margin of victory for the contest, this bill would require the elections official to add precincts to the postcanvass audit until either the percentage of variance is less than 50% of the margin of victory for the contest or all of the votes cast for the contest in the jurisdiction have been manually tallied, whichever occurs first. If the postcanvass audit includes all of the precincts in the jurisdiction and reveals that the outcome of a contest in a precinct was different than that found by the machine tally, this bill would require the elections official to amend the certified statement of results for that precinct to reflect the result revealed by the postcanvass audit. The bill would also provide other related procedures for conducting the postcanvass audit.

Because this bill would require a higher level of service from local elections officials, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires the Director of Pesticide Regulation to adopt regulations that govern the use of methyl bromide and chloropicrin as field fumigants, and authorizes the director to prescribe the time when, and the conditions under which, methyl bromide and chloropicrin may be used in different areas of the state.~~

~~This bill would require the Department of Pesticide Regulation to conduct a review of the assessment undertaken pursuant to the 8th meeting of the Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer and the 20th meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer by the Technology and Economic Assessment Panel regarding methyl bromide, and comment on the findings of the panel.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8.5 (commencing with Section 15560)
2 is added to Division 15 of the Elections Code, to read:

3
4
5

CHAPTER 8.5. POSTCANVASS AUDITS

6 15560. For purposes of this chapter:

7 (a) “Postcanvass audit” means a public manual tally of the
8 votes cast in a contest in a percentage of precincts within the
9 jurisdiction, pursuant to this chapter.

10 (b) “Unofficial final results” means the election results upon
11 completion of the official canvass, as defined in Section 335.5 and
12 subdivisions (a) to (g), inclusive, of Section 15302, but before
13 reporting final results to the governing board or the Secretary of
14 State, or both, as specified in subdivision (h) of Section 15302.

15 (c) “Variance” means a difference between the machine tally
16 and the postcanvass audit for a contest, including differences due
17 to a machine or operational malfunction or due to a ballot that
18 has been marked in a manner that cannot be machine counted.

19 (d) “Vote-for-one contest” means an election on a measure or
20 a contest in an election for an office in which a voter may select
21 only one candidate.

22 (e) “Vote-for-multiple contest” means a contest in an election
23 for an office in which a voter may select two or more candidates.

24 15561. After an election, each elections official shall determine
25 the margin of victory within the jurisdiction of that election in each
26 contest in the election based upon the official canvass results as
27 follows:

28 (a) For a vote-for-one contest, the margin of victory is the
29 difference between the percentage of overall votes cast for the
30 winning candidate or position and the percentage of overall votes
31 cast for the second place candidate or position.

32 (b) For a vote-for-multiple contest, the margin of victory is the
33 difference between the percentage of overall votes cast for the
34 candidate with the lowest number of votes needed to win a seat

1 *and the percentage of overall votes cast for the candidate with the*
2 *next lowest number of votes.*

3 *(c) For a ballot measure contest, including a recall contest, the*
4 *margin of victory is the difference between the percentage of votes*
5 *cast in favor of the measure and the percentage of overall votes*
6 *required for the measure to pass.*

7 *15562. (a) In an election contest in which the margin of*
8 *victory, based upon the official canvass results or the unofficial*
9 *final results, as provided in subdivision (b), is less than one-half*
10 *of 1 percent, the elections official shall conduct a postcanvass*
11 *audit of the votes cast in that contest as follows:*

12 *(1) For a statewide contest, the postcanvass audit shall include*
13 *2 percent of the precincts, chosen at random, in each county.*

14 *(2) For a legislative or congressional contest, or a contest*
15 *involving 100 precincts or more that is not a statewide contest,*
16 *the postcanvass audit shall include 5 percent of the precincts in*
17 *the jurisdiction in which votes were cast in the contest, chosen at*
18 *random.*

19 *(3) For a contest not subject to paragraph (1) or (2), the*
20 *postcanvass audit shall include 10 percent of the precincts in each*
21 *jurisdiction in which votes were cast in the contest, chosen at*
22 *random.*

23 *(4) In lieu of the requirements set forth in paragraphs (1) to*
24 *(3), inclusive, an elections official may instead conduct a*
25 *postcanvass audit of a higher percentage of randomly selected*
26 *precincts. If the postcanvass audit does not include 100 percent*
27 *of the precincts involved in the contest, then the elections official*
28 *must comply with Section 15571.*

29 *(b) If the unofficial final results indicate that a postcanvass*
30 *audit will be required by this chapter, an elections official may*
31 *begin the postcanvass audit during the canvass period based on*
32 *the unofficial final results.*

33 *15563. (a) In a contest voted upon in more than one*
34 *jurisdiction, the elections official of each jurisdiction in which*
35 *votes were cast in the contest shall do the following:*

36 *(1) Determine whether a postcanvass audit is required by*
37 *Section 15562 by calculating the overall margin of victory in all*
38 *jurisdictions in which votes were cast in the contest.*

39 *(2) If a postcanvass audit is required, conduct the audit pursuant*
40 *to this chapter separate of any postcanvass audit conducted in*

1 another jurisdiction in which the contest was voted upon, except
2 that the determination of whether additional precincts must be
3 included in the postcanvass audit pursuant to Section 15571 shall
4 be determined based on the overall variance percentage for all
5 jurisdictions in which votes were cast in the contest after
6 completion of the initial audit pursuant to Section 15561 in all
7 jurisdictions.

8 (b) For a legislative, congressional, or statewide contest, the
9 Secretary of State shall determine whether a postcanvass audit is
10 required based upon the official canvass results and margin of
11 victory for the entire district for a legislative or congressional
12 contest or the entire state for a state contest.

13 15564. Before beginning a postcanvass audit, the elections
14 official shall do the following:

15 (a) Provide public notice of the time and place of the random
16 selection of the precincts to be manually tallied and of the time
17 and place of the postcanvass audit at least five days prior to the
18 selection of the precincts.

19 (b) Make the official canvass precinct tally results, or the
20 unofficial final precinct tally results if the audit is being performed
21 in accordance with subdivision (b) of Section 15562, available to
22 the public.

23 15565. (a) A postcanvass audit shall commence as soon as
24 possible after the random selection of precincts and in no event
25 later than five days after the elections official prepares a certified
26 statement of the results of the election pursuant to Section 15372.
27 If a contest voted upon in more than one jurisdiction is subject to
28 a postcanvass audit pursuant to this chapter, the elections officials
29 from each jurisdiction shall begin the postcanvass audit not later
30 than 5 days after the certified statement of results of the election
31 has been completed in all of the jurisdictions involved in the
32 contest.

33 (b) The elections official shall permit the public to observe the
34 postcanvass audit process, including the random selection of
35 precincts. The elections official shall not permit members of the
36 public to touch ballots, voter verifiable paper audit trail records,
37 or other official materials used in the postcanvass audit process
38 or to interfere in any way with the postcanvass audit process.

1 (c) *Nothing in this chapter permits the examination of ballots*
2 *and other materials as permitted in a recount pursuant to Section*
3 *15630.*

4 15566. (a) *Results for ballots manually tallied pursuant to*
5 *Section 15360 may be included as part of the postcanvass audit*
6 *required by this chapter, provided that ballots tallied after election*
7 *night remain segregated and can be tallied separately.*

8 (b) *The elections official shall comply with the tally procedures*
9 *established for conducting manual tallies under Section 15360*
10 *when conducting a postelection postcanvass audit required by this*
11 *chapter, except that the elections official is not required to include*
12 *a report of the results in the certification of the official tally in*
13 *accordance with subdivision (e) of Section 15360.*

14 15567. *An individual performing a postcanvass audit shall*
15 *perform the audit by hand without the use of electronic scanning*
16 *equipment. At no time during the postcanvass audit process shall*
17 *the individual be informed of the corresponding machine tally*
18 *results. An individual performing a postcanvass audit shall not be*
19 *assigned to tally the results from a precinct in which he or she was*
20 *a poll worker on election day.*

21 15568. *The elections official shall take appropriate measures*
22 *to ensure the following:*

23 (a) *That voter verifiable paper audit trail records from direct*
24 *recording electronic ballots that were canceled before being cast*
25 *are not tallied as valid ballots in the postcanvass audit.*

26 (b) *That a damaged or defective ballot that has been substituted*
27 *for by a duplicate copy pursuant to Section 15210 is not tallied as*
28 *a valid ballot in the postcanvass audit.*

29 15569. *The elections official shall establish security procedures*
30 *for the secure interim storage of ballots and to detect any*
31 *unauthorized access to ballots.*

32 15570. *An elections official shall document and disclose to the*
33 *public any variances. Variances shall be calculated as follows:*

34 (a) *If a postcanvass audit establishes that the machine tally*
35 *erroneously attributed a vote for one candidate or measure instead*
36 *of another candidate or measure, two variances result because*
37 *the vote totals for each candidate or measure are changed by one*
38 *vote in the postcanvass audit.*

39 (b) *If the postcanvass audit determines that a vote was cast in*
40 *a contest on a ballot that the machine tally interpreted as an*

1 *undervote in the contest, one variance results because the machine*
2 *tally undervote becomes a vote for a candidate or a vote for or*
3 *against a measure in the postcanvass audit.*

4 *15571. (a) For a contest in which there exists one or more*
5 *variances, the elections official shall calculate the percentage of*
6 *variance as follows:*

7 *(1) For vote-for-one contests, only variances that narrow the*
8 *margin between the winner and any of the losers shall be included*
9 *in the total number of variances.*

10 *(2) For vote-for-multiple contests, only variances that narrow*
11 *the margin of victory between any of the winners and any of the*
12 *losers shall be included in the total number of variances.*

13 *(3) For any contest, variances resulting from ballots cast for*
14 *unqualified write-in candidates shall not be included in the total*
15 *number of variances.*

16 *(4) After deducting variances in accordance with paragraphs*
17 *(1) to (3), inclusive, the elections official shall divide the remaining*
18 *number of variances found in the postcanvass audit for the contest*
19 *by the total number of votes cast for that contest in precincts*
20 *included in the postcanvass audit.*

21 *(b) If the percentage of variance is equal to or greater than 50*
22 *percent of the margin of victory for that contest based on the*
23 *official canvass results, or based on the unofficial final results if*
24 *the audit was performed in accordance with subdivision (b) of*
25 *Section 15562, additional precincts shall be manually tallied for*
26 *that contest.*

27 *(c) Precincts added to the postcanvass audit pursuant to*
28 *subdivision (b) shall be tallied in randomly selected blocks of 5*
29 *percent of the precincts in which votes were cast in the contest*
30 *until the percentage of variance, recalculated using the method*
31 *set forth in subdivision (a), is less than 50 percent of the overall*
32 *margin of victory in that contest, or until all votes cast for the*
33 *contest in the jurisdiction have been manually tallied, whichever*
34 *occurs first.*

35 *(d) If a variance is found between manually tallied voter*
36 *verifiable paper audit trail records and corresponding electronic*
37 *vote results that cannot be accounted for by some obvious*
38 *mechanical problem, the elections official shall preserve the voter*
39 *verifiable paper audit trail records, memory cards and devices,*

1 *and direct recording electronic voting machines and notify the*
2 *Secretary of State in order to investigate the cause of the problem.*

3 *15572. If a postcanvass audit to which all precincts in the*
4 *jurisdiction were subject reveals a different outcome in a contest*
5 *than that shown by the machine tally for that contest, the elections*
6 *official shall amend the certified statement of results of the election,*
7 *prepared pursuant to Section 15372, by entering the result of the*
8 *postcanvass audit in each precinct affected, which result shall, for*
9 *all purposes thereafter, be the official return of the precinct for*
10 *the contest subject to the postcanvass audit.*

11 *(b) The elections official shall submit the amended statement*
12 *of the results of the election to the governing body of the*
13 *jurisdiction or the Secretary of State, as required for the original*
14 *statement of results of the election.*

15 *15573. (a) The elections official shall keep a log to record the*
16 *postcanvass audit process, including the results of each round of*
17 *postcanvass auditing for each precinct included in the audit, how*
18 *variances were reconciled, and details of actions taken contrary*
19 *to this chapter. The elections official shall make the log available*
20 *to the public.*

21 *(b) The elections official shall compile and submit to the*
22 *Secretary of State a report summarizing the results of a postcanvass*
23 *audit required by this chapter. The report shall contain, at a*
24 *minimum, the following information:*

25 *(1) For each precinct in the postcanvass audit, a comparison*
26 *of the results tallied by machine and the postcanvass audit results,*
27 *including undervotes and overvotes.*

28 *(2) Identification of any variances between the machine count*
29 *and the postcanvass audit.*

30 *(3) A description of how each identified variance was reconciled.*

31 *15574. This chapter does not:*

32 *(a) Authorize the opening or auditing of ballots for a precinct*
33 *except for the purposes specified in this chapter.*

34 *(b) Limit other provisions of law regarding an election recount*
35 *or contest.*

36 *15575. This chapter does not apply to the following election*
37 *contests:*

38 *(a) A political party central committee election, as provided for*
39 *in Division 7 (commencing with Section 7050).*

40 *(b) An advisory election, as provided for in Section 9603.*

1 15576. *The Secretary of State shall adopt regulations consistent*
2 *with this chapter and may promulgate regulations to develop a*
3 *statistical auditing model that achieves a higher level of statistical*
4 *confidence in the audited election results.*

5 SEC. 2. *Section 15620 of the Elections Code is amended to*
6 *read:*

7 15620. (a) *Following completion of the official canvass and*
8 *any postcanvass audit conducted pursuant to Chapter 8.5*
9 *(commencing with Section 15560), any a voter may, within five*
10 *days thereafter, file with the elections official responsible for*
11 *conducting an election in the county wherein the recount is sought*
12 *a written request for a recount of the votes cast for candidates for*
13 *any office, for slates of presidential electors, or for or against any*
14 *measure, provided the office, slate, or measure is not voted on*
15 *statewide. The request shall specify on behalf of which candidate,*
16 *slate of electors, or position on a measure (affirmative or negative)*
17 *it is filed.*

18 (b) *If an election is conducted in more than one county, the*
19 *request for the recount may be filed with the elections official of,*
20 *and the recount conducted within, any or all of the affected*
21 *counties.*

22 (c) *For the purposes of this section “completion of the canvass”*
23 *shall be presumed to be that time when the elections official signs*
24 *the certified statement of the results of the election except that, in*
25 *the case of a city election, if a city council canvasses the returns*
26 *itself and does not order the elections official to conduct the*
27 *canvass as permitted by Section 10263, “completion of the*
28 *canvass” shall be presumed to be that time when the governing*
29 *body declares the persons elected or the measures approved or*
30 *defeated.*

31 SEC. 3. *Section 15621 of the Elections Code is amended to*
32 *read:*

33 15621. (a) *Following completion of the official canvass and*
34 *any postcanvass audit conducted pursuant to Chapter 8.5*
35 *(commencing with Section 15560), any a voter may, within five*
36 *days beginning on the 29th day after a statewide election, file with*
37 *the Secretary of State a written request for a recount of the votes*
38 *cast for candidates for any statewide office or for or against any*
39 *measure voted on statewide. The request shall specify in which*
40 *county or counties the recount is sought and shall specify on behalf*

1 of which candidate, slate of electors, or position on a measure
 2 (affirmative or negative) it is filed.

3 (b) The Secretary of State shall forthwith send by registered
 4 mail one copy of the request to the elections official of each county
 5 in which a recount of the votes is sought.

6 (c) All the other provisions of this article shall apply to recounts
 7 conducted under this section.

8 *SEC. 4. Section 16401 of the Elections Code is amended to*
 9 *read:*

10 16401. The contestant shall verify the statement of contest, as
 11 provided by Section 446 of the Code of Civil Procedure, and shall
 12 file it within the following times after the declaration of the result
 13 of the election *or of a postcanvass audit conducted pursuant to*
 14 *Chapter 8.5 (commencing with Section 15560)* by the body
 15 canvassing the returns thereof:

16 (a) In cases other than cases of a tie, where the contest is brought
 17 on any of the grounds mentioned in subdivision (c) of Section
 18 16100, six months.

19 (b) In all cases of tie, 20 days.

20 (c) In cases involving presidential electors, 10 days.

21 (d) In all other cases, 30 days.

22 *SEC. 5. Section 16421 of the Elections Code is amended to*
 23 *read:*

24 16421. The affidavit shall be filed in the office of the clerk of
 25 the superior court having jurisdiction, within five days after *either*
 26 the completion of the official canvass *or of a postcanvass audit*
 27 *conducted pursuant to Chapter 8.5 (commencing with Section*
 28 *15560)* by the ~~board of supervisors of the county last making the~~
 29 declaration.

30 *SEC. 6. If the Commission on State Mandates determines that*
 31 *this act contains costs mandated by the state, reimbursement to*
 32 *local agencies and school districts for those costs shall be made*
 33 *pursuant to Part 7 (commencing with Section 17500) of Division*
 34 *4 of Title 2 of the Government Code.*

35 ~~SECTION 1. The Legislature finds and declares all of the~~
 36 ~~following:~~

37 ~~(a) The economic benefits of ports to state, national, and global~~
 38 ~~economies are as follows:~~

39 ~~(1) About 13.3 million Americans were employed in jobs created~~
 40 ~~by commercial port activities in 2007, and average wages for these~~

1 jobs were forty-nine thousand dollars (\$49,000) a year, twelve
2 thousand dollars (\$12,000) more than the average United States
3 wage.

4 (2) Exporter/importer businesses and support industries that
5 rely on seaports contributed \$3.15 trillion to the United States
6 economy in 2007 and paid nearly \$212.5 billion in taxes that same
7 year.

8 (3) Seaport activities in 2007 accounted for \$31.21 billion in
9 federal, state, and local tax revenues.

10 (4) Customs revenue through seaports was \$23.2 billion in 2007.

11 (5) Deep-draft ports, which accommodate oceangoing vessels,
12 account for 99 percent of United States overseas trade by weight
13 and 64 percent by value, international trade represents 29.7 percent
14 of the United States Gross Domestic Product, and the United States
15 is the largest trading nation in the world, accounting for 19 percent
16 of world goods trade.

17 (b) (1) Trade activity through California's seaports is crucial
18 to the overall health of the state's economy.

19 (2) California's ports handle one-fifth of all United States
20 international trade, and Los Angeles and Long Beach rank first
21 and second in dollar value of goods processed.

22 (c) There are cases in which meeting the requirements of our
23 trading partners requires the use of methyl bromide in cleaning or
24 fumigating the containers used for shipments at the ports.

25 (d) Methyl bromide is an odorless and colorless gas that has
26 been used as a soil fumigant and structural fumigant and to control
27 pests across a wide range of agricultural sectors. Methyl bromide
28 depletes the stratospheric ozone layer and has been largely phased
29 out with some exceptions for critical use where no substitute is
30 available and for quarantine and preshipment fumigation functions.

31 (e) Because methyl bromide poses a threat to humans, animals,
32 and the environment, it is in the interest of the state that its use be
33 conducted under careful and appropriate regulation.

34 (f) Workers who perform necessary fumigation with methyl
35 bromide are engaged in a dangerous activity and would benefit
36 from the most stringent health safeguards possible.

37 (g) The report of the eighth meeting of the Conference of the
38 Parties to the Vienna Convention for the Protection of the Ozone
39 Layer and the twentieth meeting of the Parties to the Montreal
40 Protocol on Substances that Deplete the Ozone Layer called for

1 the Technology and Economic Assessment Panel referred to in
2 that report to review all relevant, currently available information
3 on the use of methyl bromide for specified applications and related
4 emissions, to assess trends in the major uses, available alternatives,
5 and other mitigation options and barriers to the adoption of
6 alternatives, or determine what additional information or action
7 may be required to meet those objectives. This assessment is
8 required to contain, among other things, both of the following:

9 (1) The technological and economic availability of alternative
10 substances and technologies for methyl bromide uses by volume
11 and of technologies for methyl bromide technologies for methyl
12 bromide recovery, containment, and recycling.

13 (2) Projects demonstrating technical and economic feasible
14 alternatives, including technologies for recapture and destruction
15 of methyl bromide for quarantine and pre-shipment applications.

16 SEC. 2. Section 14083 is added to the Food and Agricultural
17 Code, to read:

18 14083. The department shall conduct a review of the assessment
19 undertaken pursuant to the eighth meeting of the Conference of
20 the Parties to the Vienna Convention for the Protection of the
21 Ozone Layer and the twentieth meeting of the Parties to the
22 Montreal Protocol on Substances that Deplete the Ozone Layer
23 by the Technology and Economic Assessment Panel regarding
24 methyl bromide, and comment on the findings of the panel,
25 focusing on those issues that are relevant to California, including,
26 but not limited to, alternatives to methyl bromide, the options or
27 possibilities for recapture, containment, and recycling of methyl
28 bromide, and technologies that could reduce or prevent emissions.
29 The department shall submit the review and comments to the
30 Legislature in a timely manner after the publishing of the
31 assessment by the Technology and Economic Assessment Panel.