

AMENDED IN SENATE AUGUST 18, 2014

AMENDED IN SENATE AUGUST 11, 2014

AMENDED IN SENATE JUNE 18, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2194

Introduced by Assembly Member Mullin
(*Coauthor: Senator Padilla*)

February 20, 2014

An act to amend ~~Sections 15360, 15560, and~~, *repeal, and add Section 15626 of, to amend the heading of Chapter 8.5 (commencing with Section 15560) of Division 15 of,* and to add *and repeal Article 5 (commencing with Section 15645) to of Chapter 9 of Division 15 of,* the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2194, as amended, Mullin. Elections: statewide recounts.

~~(1) Existing~~

Existing law establishes procedures by which a voter may request a recount of the votes cast in an election following completion of the official canvass. Under existing law, the voter seeking the recount is required, before the recount is commenced and at the beginning of each subsequent day, to deposit with the elections official the amount of money required by the elections official to cover the cost of the recount for that day.

This bill, *until July 1, 2015*, would require the Secretary of State to order an automatic manual recount of all votes cast for a statewide office or state ballot measure if the difference in the number of votes received

is less than or equal to 0.1%. ~~The bill would allow the Secretary of State and the candidates, or the proponents of a state ballot measure and the persons filing ballot arguments against the measure, to agree to an alternative method of conducting a recount in lieu of a full statewide recount. By imposing new duties on local elections officials, this bill would impose a state-mandated local program.~~

~~(2) Existing law authorizes the Secretary of State to establish a postcanvass risk-limiting audit pilot program for the purpose of verifying the accuracy of election results. Under the program, a participating county would conduct an audit of one or more contests in each election after the tabulation of the unofficial final results, as defined, or after completion of the official canvass for the election. Existing law requires, during the official canvass of an election in which a voting system is used, the elections official conducting the election to conduct a public manual tally of the ballots tabulated by those devices, including vote by mail voters' ballots, cast in 1% of the precincts chosen at random by the elections official.~~

~~This bill would allow a county to conduct a postcanvass risk-limiting audit in lieu of a 1% manual tally.~~

~~(3) The~~

~~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.~~

~~(4) This~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.~~

~~State-mandated local program: yes.~~

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

- 1 SECTION 1. ~~Section 15360 of the Elections Code is amended~~
- 2 ~~to read:~~
- 3 15360. ~~(a) During the official canvass of every election in~~
- 4 ~~which a voting system is used, the official conducting the election~~
- 5 ~~shall conduct a public manual tally of the ballots tabulated by those~~

1 devices, including vote by mail ballots, using either of the
2 following methods:

3 (1) (A) A public manual tally of the ballots, including vote by
4 mail ballots, cast in 1 percent of the precincts chosen at random
5 by the elections official. If 1 percent of the precincts is less than
6 one whole precinct, the tally shall be conducted in one precinct
7 chosen at random by the elections official.

8 (B) (i) In addition to the 1 percent manual tally, the elections
9 official shall, for each race not included in the initial group of
10 precincts, count one additional precinct. The manual tally shall
11 apply only to the race not previously counted.

12 (ii) Additional precincts for the manual tally may be selected
13 at the discretion of the elections official.

14 (2) A two-part public manual tally, which includes both of the
15 following:

16 (A) A public manual tally of the ballots, not including vote by
17 mail ballots, cast in 1 percent of the precincts chosen at random
18 by the elections official and conducted pursuant to paragraph (1).

19 (B) (i) A public manual tally of not less than 1 percent of the
20 vote by mail ballots cast in the election. Batches of vote by mail
21 ballots shall be chosen at random by the elections official.

22 (ii) For the purposes of this section, a “batch” means a set of
23 ballots tabulated by the voting system devices, for which the voting
24 system can produce a report of the votes cast.

25 (iii) (I) In addition to the 1 percent manual tally of the vote by
26 mail ballots, the elections official shall, for each race not included
27 in the initial 1 percent manual tally of vote by mail ballots, count
28 one additional batch of vote by mail ballots. The manual tally shall
29 apply only to the race not previously counted.

30 (II) Additional batches for the manual tally may be selected at
31 the discretion of the elections official.

32 (b) If vote by mail ballots are cast on a direct recording
33 electronic voting system at the office of an elections official or at
34 a satellite location of the office of an elections official pursuant to
35 Section 3018, the official conducting the election shall either
36 include those ballots in the manual tally conducted pursuant to
37 paragraph (1) or (2) of subdivision (a) or conduct a public manual
38 tally of those ballots cast on no fewer than 1 percent of all the
39 direct recording electronic voting machines used in that election
40 chosen at random by the elections official.

1 (e) ~~The elections official shall use either a random number
2 generator or other method specified in regulations that shall be
3 adopted by the Secretary of State to randomly choose the initial
4 precincts, batches of vote by mail ballots, or direct recording
5 electronic voting machines subject to the public manual tally.~~

6 (d) ~~The manual tally shall be a public process, with the official
7 conducting the election providing at least a five-day public notice
8 of the time and place of the manual tally and of the time and place
9 of the selection of the precincts, batches, or direct recording
10 electronic voting machines subject to the public manual tally prior
11 to conducting the selection and tally.~~

12 (e) ~~The official conducting the election shall include a report
13 on the results of the 1 percent manual tally in the certification of
14 the official canvass of the vote. This report shall identify any
15 discrepancies between the machine count and the manual tally and
16 a description of how each of these discrepancies was resolved. In
17 resolving any discrepancy involving a vote recorded by means of
18 a punchcard voting system or by electronic or electromechanical
19 vote tabulating devices, the voter verified paper audit trail shall
20 govern if there is a discrepancy between it and the electronic
21 record.~~

22 (f) ~~This section does not apply to a county that conducts a
23 postcanvass risk-limiting audit pursuant to Section 15560.~~

24 ~~SEC. 2. The heading of Chapter 8.5 (commencing with Section
25 15560) of Division 15 of the Elections Code is amended to read:~~

26
27 ~~CHAPTER 8.5. POSTCANVASS RISK-LIMITING AUDIT~~
28

29 ~~SEC. 3. Section 15560 of the Elections Code is amended to
30 read:~~

31 ~~15560. (a) (1) Any county may conduct a postcanvass
32 risk-limiting audit of one or more contests after each election in
33 that county pursuant to this section in lieu of a 1 percent manual
34 tally, as provided for in Section 15360. The contest or contests to
35 be audited and the audit units examined shall be chosen at random
36 by the elections official using a random number generator or other
37 method approved by the Secretary of State pursuant to subdivision
38 (e) of Section 15360.~~

39 ~~(2) An elections official conducting an audit pursuant to this
40 section shall do all of the following:~~

1 ~~(A) Provide at least a five-day public notice of the time and~~
2 ~~place of the random selection of the audit units to be manually~~
3 ~~tallied and of the time and place of the audit.~~

4 ~~(B) Make available to the public a report of the vote tabulating~~
5 ~~device results for the contest, including the results for each audit~~
6 ~~unit in the contest, prior to the random selection of audit units to~~
7 ~~be manually tallied and prior to the commencement of the audit.~~

8 ~~(C) Conduct the audit upon tabulation of the unofficial final~~
9 ~~results or upon completion of the official canvass for the election.~~

10 ~~(D) Conduct the audit in public view by hand without the use~~
11 ~~of electronic scanning equipment using the tally procedures~~
12 ~~established by Section 15360 for conducting a manual tally.~~

13 ~~(b) For purposes of this section, the following terms have the~~
14 ~~following meanings:~~

15 ~~(1) "Audit unit" means a precinct, a set of ballots, or a single~~
16 ~~ballot. A precinct, a set of ballots, or a single ballot may be used~~
17 ~~as an audit unit for purposes of this section only if all of the~~
18 ~~following conditions are satisfied:~~

19 ~~(A) The relevant vote tabulating device is able to produce a~~
20 ~~report of the votes cast in the precinct, set of ballots, or single~~
21 ~~ballot.~~

22 ~~(B) The elections official is able to match the report described~~
23 ~~in subparagraph (A) with the ballots corresponding to the report~~
24 ~~for purposes of conducting an audit pursuant to this section.~~

25 ~~(C) Each ballot is assigned to not more than one audit unit.~~

26 ~~(2) "Contest" means an election for an office or for a measure.~~
27 ~~"Contest" shall not include either of the following:~~

28 ~~(A) An election for a political party central committee, as~~
29 ~~provided in Division 7 (commencing with Section 7000).~~

30 ~~(B) An advisory election, as provided in Section 9603.~~

31 ~~(3) "Risk-limiting audit" means a manual tally employing a~~
32 ~~statistical method that ensures a large, predetermined minimum~~
33 ~~chance of requiring a full manual tally whenever a full manual~~
34 ~~tally would show an electoral outcome that differs from the~~
35 ~~outcome reported by the vote tabulating device for the audited~~
36 ~~contest. A risk-limiting audit shall begin with a hand tally of the~~
37 ~~votes in one or more audit units and shall continue to hand tally~~
38 ~~votes in additional audit units until there is strong statistical~~
39 ~~evidence that the electoral outcome is correct. In the event that~~
40 ~~counting additional audit units does not provide strong statistical~~

1 evidence that the electoral outcome is correct, the audit shall
2 continue until there has been a full manual tally to determine the
3 correct electoral outcome of the audited contest.

4 (4) “Unofficial final results” means election results tabulated
5 pursuant to an official canvass conducted pursuant to Chapter 4
6 (commencing with Section 15300) but not yet reported to the
7 governing board or the Secretary of State pursuant to subdivision
8 (h) of Section 15302.

9 (e) The Secretary of State may adopt, amend, and repeal rules
10 and regulations necessary for the administration of this section.

11 ~~SEC. 4.~~

12 *SECTION 1.* Section 15626 of the Elections Code is amended
13 to read:

14 15626. (a) The recount shall be commenced not more than
15 seven days following the receipt by the elections official of the
16 request for the recount under Section 15620, 15621, or 15645 and
17 shall be continued daily, Saturdays, Sundays, and holidays
18 excepted, for not less than six hours each day until completed. The
19 recount shall not be commenced until the first day following
20 notification of the individuals specified in Section 15628.

21 (b) *This section shall remain in effect only until July 1, 2015,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before July 1, 2015, deletes or extends that date.*

24 *SEC. 2. Section 15626 is added to the Elections Code, to read:*

25 15626. (a) *The recount shall be commenced not more than*
26 *seven days following the receipt by the elections official of the*
27 *request for the recount under Section 15620 or 15621 and shall*
28 *be continued daily, Saturdays, Sundays, and holidays excepted,*
29 *for not less than six hours each day until completed. The recount*
30 *shall not be commenced until the first day following notification*
31 *of the individuals specified in Section 15628.*

32 (b) *This section shall become operative on July 1, 2015.*

33 ~~SEC. 5.~~

34 *SEC. 3.* Article 5 (commencing with Section 15645) is added
35 to Chapter 9 of Division 15 of the Elections Code, to read:

36

37 Article 5. Automatic Recounts

38

39 15645. (a) Within five days after the Secretary of State files
40 a statement of the vote, as required by subdivision (b) of Section

1 15501, the Secretary of State shall order an automatic manual
2 recount of all votes cast for a statewide office or state ballot
3 measure if any of the following occurs:

4 (1) The official canvass of returns in a statewide primary election
5 shows that the difference in the number of votes received by the
6 second and third place candidates for a statewide office is less than
7 or equal to one-tenth of 1 percent of the number of all votes cast
8 for both candidates.

9 (2) The official canvass of returns in a statewide general election
10 shows that the difference in the number of votes received by the
11 two candidates receiving the greatest number of votes for a
12 statewide office is less than or equal to one-tenth of 1 percent of
13 the number of all votes cast for both candidates.

14 (3) The official canvass of returns in a statewide election shows
15 that the difference in the number of votes cast for and against a
16 state ballot measure is less than or equal to one-tenth of 1 percent
17 of the number of all votes cast on the measure.

18 ~~(b) (1) The Secretary of State and both candidates, or the~~
19 ~~proponents of the state ballot measure and the persons filing ballot~~
20 ~~arguments against the measure, subject to a recount under this~~
21 ~~section may agree to use an alternative method of conducting the~~
22 ~~recount in lieu of a full statewide recount. The reason for agreeing~~
23 ~~to an alternative method of recount may include, but is not limited~~
24 ~~to, the discovery of uncounted ballots or a counting error in one~~
25 ~~or more precincts or counties.~~

26 ~~(2) The Secretary of State shall notify the elections official of~~
27 ~~each county of, and shall direct county elections officials to~~
28 ~~implement, the alternative method of conducting the recount.~~

29 ~~(3) If an alternative method of conducting a recount is~~
30 ~~implemented pursuant to this subdivision, a voter may request a~~
31 ~~recount pursuant to Section 15623.~~

32 (e)

33 (b) It is the intent of the Legislature to fully reimburse counties
34 for costs resulting from conducting an automatic manual recount
35 required by this section in an expeditious manner upon certification
36 of those costs. A candidate shall not be charged for an automatic
37 manual recount required by this section.

38 15646. Upon ordering a recount pursuant to subdivision (a) of
39 Section 15645, the Secretary of State shall notify the elections
40 official of each county and shall direct the county elections officials

1 to recount all the votes cast for the office or for and against the
2 state ballot measure. The elections official in each county shall
3 commence the recount within seven days of receiving notice under
4 this section.

5 15647. All the provisions of Article 3 (commencing with
6 Section 15620), except Sections 15620, 15621, 15622, 15623,
7 15624, and 15627, shall apply to this article unless otherwise
8 provided herein.

9 15648. The Secretary of State may adopt, amend, and repeal
10 rules and regulations necessary for the administration of this article.

11 *15649. This article shall remain in effect only until July 1,*
12 *2015, and as of that date is repealed, unless a later enacted statute,*
13 *that is enacted before July 1, 2015, deletes or extends that date.*

14 ~~SEC. 6:~~

15 *SEC. 4.* If the Commission on State Mandates determines that
16 this act contains costs mandated by the state, reimbursement to
17 local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.

20 ~~SEC. 7:~~

21 *SEC. 5.* This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 In order to ensure that all eligible voters are able to have their
26 votes counted at the November 4, 2014, statewide general election,
27 it is necessary for this act to take effect immediately.