

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Mullin
(Coauthors: Assembly Members Bonta and Gonzalez)
(Coauthor: Senator Anderson)

December 1, 2014

An act to amend Sections 15370, 15601, 15620, 15621, 15626, 15627, and 15632, and 19203 of, to add ~~Section~~ *Sections 15621.5 and 19204.5* to, and to add and repeal Article 5 (commencing with Section 15645) to Chapter 9 of Division 15 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Mullin. Elections: statewide recounts.

(1) Existing law prohibits a county elections official from opening a ballot after it is counted and sealed, except in certain circumstances, including a recount.

This bill would require a county elections official to store sealed ballots in a manner facilitating the retrieval of any particular ballot in that event.

(2) Existing law requires the Secretary of State to adopt regulations relating to the use of voting systems in recounting ballots.

This bill would also require the Secretary of State to adopt regulations relating to the charges a county elections official may impose when conducting a manual recount.

(3) 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. Existing law requires a voter to make this request within 5 days beginning on the 29th day after the election.

This bill would instead permit a voter to file a request for a recount within 5 days beginning on the 30th day after the election.

(4) Any time during the conduct of a recount and for 24 hours thereafter, existing law permits any other voter to request a recount of any precincts in an election for the same office, slate of presidential electors, or measure not recounted as a result of the original request. Existing law also provides that, where applicable, a voter requesting a recount may select whether the recount shall be conducted manually, or by means of the voting system used originally, or both.

This bill would instead require a voter to select whether the recount is to be conducted manually, or by means of the voting system used originally, but not both. This bill would also specify that if more than one voter requests a recount of the same office, slate of presidential electors, or measure, and at least one request is for a manual recount, then the county elections official of any county subject to multiple requests is only obligated to conduct one manual recount of the ballots subject to the request, and that those results will control.

(5) Under existing law, the voter seeking a 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 would permit a voter to request a state-funded manual recount of all votes cast for a statewide office, the office of President of the United States, or a state ballot measure if the difference in the number of votes received is less than or equal to the lesser of 1000 votes or 0.015%, as specified. This bill would also require a county elections official to review rejected ballots as part of a state-funded recount. This bill would repeal the provisions relating to state-funded recounts as of January 1, 2023.

(6) Under existing law, upon completion of a recount showing that a different candidate was nominated or elected, that a different presidential slate of electors received a plurality of the votes, or that a measure was defeated instead of approved or approved instead of defeated, the result of the recount in each affected precinct is entered and is thereafter considered the official return of the affected precincts. Existing law provides that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and

void unless each vote cast for the office, slates, or measure in any county specified in the request for recount is recounted.

This bill would instead provide that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and void unless each vote cast statewide for the office, slates, or measure is recounted.

(7) Existing law requires the Secretary of State to certify or conditionally approve a voting system prior to any election at which it is to be used, as specified. Existing law prohibits the Secretary of State from certifying or conditionally approving a voting system or part of a voting system that ~~uses paper ballots if the paper cannot maintain its integrity and readability throughout the retention period.~~ *does not have certain technical capabilities.*

This bill would also prohibit the Secretary of State from certifying or conditionally approving a voting system that cannot facilitate the conduct of a ballot level comparison risk-limiting audit; *however, it would expressly permit the Secretary of State to approve a proposed change or modification to a noncompliant voting system even if the voting system would be unable to facilitate the conduct of a ballot level comparison risk-limiting audit after the change or modification.*

By imposing new duties on local elections officials, this bill 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.

Vote: majority. 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 15370 of the Elections Code is amended
- 2 to read:
- 3 15370. (a) After ballots are counted and sealed, the elections
- 4 official may not open any ballots nor permit any ballots to be
- 5 opened except as permitted in Sections 15303 and 15304, or in the
- 6 event of a recount.

1 (b) The county elections official shall store sealed ballots in a
2 manner facilitating the retrieval of any particular ballot in the event
3 of a recount.

4 SEC. 2. Section 15601 of the Elections Code is amended to
5 read:

6 15601. (a) The Secretary of State, within the Secretary of
7 State's existing budget, shall adopt regulations no later than January
8 1, 2008, for each voting system approved for use in the state and
9 specify the procedures for recounting ballots, including vote by
10 mail and provisional ballots, using those voting systems.

11 (b) The Secretary of State shall adopt regulations, no later than
12 January 1, 2018, establishing uniform guidelines for charges a
13 county elections official may impose when conducting a manual
14 recount pursuant to this chapter.

15 SEC. 3. Section 15620 of the Elections Code is amended to
16 read:

17 15620. (a) Following completion of the official canvass and
18 again following completion of any postcanvass risk-limiting audit
19 conducted pursuant to Section 15560, any voter may, within five
20 days thereafter, file with the elections official responsible for
21 conducting an election in the county wherein the recount is sought
22 a written request for a recount of the votes cast for candidates for
23 any office, for slates of presidential electors, or for or against any
24 measure, provided the office, slate, or measure is not voted on
25 statewide. The request shall specify on behalf of which candidate,
26 slate of electors, or position on a measure (affirmative or negative)
27 it is filed.

28 (b) If an election is conducted in more than one county, the
29 request for the recount may be filed by any voter within five days,
30 beginning on the 30th day after the election, with the elections
31 official of, and the recount may be conducted within, any or all of
32 the affected counties.

33 (c) For the purposes of this section, "completion of the canvass"
34 shall be presumed to be that time when the elections official signs
35 the certified statement of the results of the election except that, in
36 the case of a city election, if a city council canvasses the returns
37 itself and does not order the elections official to conduct the
38 canvass, "completion of the canvass" shall be presumed to be that
39 time when the governing body declares the persons elected or the
40 measures approved or defeated.

1 SEC. 4. Section 15621 of the Elections Code is amended to
2 read:

3 15621. (a) Following completion of the official canvass any
4 voter may, within five days beginning on the 30th day after a
5 statewide election, file with the Secretary of State a written request
6 for a recount of the votes cast for candidates for any statewide
7 office or for or against any measure voted on statewide.
8 Additionally, any voter may file with the Secretary of State a
9 written request for a recount of the votes cast for candidates for
10 any statewide office or for or against any measure voted on
11 statewide within five days following completion of any postcanvass
12 risk-limiting audit conducted pursuant to Section 15560. A request
13 filed pursuant to this section shall specify in which county or
14 counties the recount is sought and shall specify on behalf of which
15 candidate, slate of electors, or position on a measure (affirmative
16 or negative) it is filed.

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

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

22 SEC. 5. Section 15621.5 is added to the Elections Code, to
23 read:

24 15621.5. If more than one voter requests a recount of the same
25 office, slate of presidential electors, or measure pursuant to Section
26 15620 or 15621, and at least one request is for a manual recount,
27 the county elections official of a county subject to multiple requests
28 as described in this section shall conduct only one manual recount
29 of the ballots subject to recount, the result of which shall be
30 controlling.

31 SEC. 6. Section 15626 of the Elections Code is amended to
32 read:

33 15626. The recount shall be commenced not more than seven
34 days following the receipt by the elections official of the request
35 or order for the recount under Section 15620, 15621, or 15645 and
36 shall be continued daily, Saturdays, Sundays, and holidays
37 excepted, for not less than six hours each day until completed. The
38 recount shall not be commenced until the first day following
39 notification of the individuals specified in Section 15628.

1 SEC. 7. Section 15627 of the Elections Code is amended to
2 read:

3 15627. (a) If in the election that is to be recounted the votes
4 were recorded by means of a punchcard voting system or by
5 electronic or electromechanical vote tabulating devices, the voter
6 who files the declaration requesting the recount shall select whether
7 the recount shall be conducted manually, or by means of the voting
8 system used originally.

9 (b) Notwithstanding subdivision (a), a county may recount vote
10 by mail and provisional ballots in a manner other than that
11 requested by the voter.

12 (c) For purposes of direct recording electronic voting systems,
13 “conducted manually” means that either the paper record copies
14 or the voter verified paper audit trail of the electronically recorded
15 vote are counted manually, as selected by the voter who requests
16 the recount.

17 SEC. 8. Section 15632 of the Elections Code is amended to
18 read:

19 15632. In lieu of the returns as reported in the official canvass,
20 upon completion of the recount showing that a different candidate
21 was nominated or elected, that a different presidential slate of
22 electors received a plurality of the votes, or that a measure was
23 defeated instead of approved or approved instead of defeated, there
24 shall be entered the result of the recount in each precinct affected,
25 which result shall, for all purposes thereafter, be the official returns
26 of those precincts for the office, slates of presidential electors, or
27 measure involved in the recount. If the office, slates of presidential
28 electors, or measure are not voted on statewide, the results of any
29 recount which is not completed by counting the votes in each and
30 every precinct in the jurisdiction within which votes were cast on
31 the candidates for the office, on the slates of electors, or on the
32 measure in question shall be declared null and void. If the office,
33 slates of presidential electors, or measure are voted on statewide,
34 the results of any recount will be declared null and void where
35 there is not recounted each vote cast statewide for the office, slates,
36 or measure.

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

Article 5. State-funded Recounts

15645. (a) (1) Within five days after the Secretary of State files a statement of the vote, as required by subdivision (b) of Section 15501, any voter may request a state-funded manual recount of all votes cast for a statewide office or state ballot measure if any of the following occurs:

(A) The official canvass of returns in a statewide primary election shows that the difference in the number of votes received by the second and third place candidates for a statewide office is less than or equal to the lesser of 1000 votes or ~~one-and-a-half of~~ ± 0.015 percent of the number of all votes cast for that office except as provided in paragraph (2).

(B) The official canvass of returns in a statewide general election shows that the difference in the number of votes received by the two candidates receiving the greatest number of votes for a statewide office is less than or equal to the lesser of 1000 voters or ~~one-and-a-half of~~ ± 0.015 percent of the number of all votes cast for that office.

(C) The official canvass of returns in a statewide election shows that the difference in the number of votes cast for and against a state ballot measure is less than or equal to the lesser of 1000 votes or ~~one-and-a-half of~~ ± 0.015 percent of the number of all votes cast on the measure.

(2) A voter shall not request a state-funded manual recount of all votes cast for the office of Superintendent of Public Instruction pursuant to this section if the official canvass of returns in a statewide primary election shows that a candidate received a majority of all votes cast.

(3) For purposes of this subdivision, “statewide office” means the office of Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, or Member of the United States Senate.

(b) Within five days after the Secretary of State files a statement of the vote, as required by subdivision (b) of Section 15501, any voter may request a state-funded manual recount of all votes cast for the office of President of the United States if ~~either of the following occurs:~~ *the official canvass of returns in a statewide general election shows that the difference in the number of votes*

1 *received by the two candidates receiving the greatest number of*
2 *votes for the office of President is less than or equal to the lesser*
3 *of 1000 votes or 0.015 percent of the number of all votes cast for*
4 *the office of President.*

5 ~~(1) The official canvass of returns in a statewide presidential~~
6 ~~primary election for a political party that received the greatest or~~
7 ~~second-greatest number of votes in that presidential primary~~
8 ~~election shows that the difference in the number of votes received~~
9 ~~by the first and second place candidates for the nomination of that~~
10 ~~party for the office of President is less than or equal to the lesser~~
11 ~~of 1000 votes or one-and-a-half of of 1 percent of the number of~~
12 ~~all votes cast for the office of President.~~

13 ~~(2) The official canvass of returns in a statewide general election~~
14 ~~shows that the difference in the number of votes received by the~~
15 ~~two candidates receiving the greatest number of votes for the office~~
16 ~~of President is less than or equal to the lesser of 1000 votes or~~
17 ~~one-and-a-half of 1 percent of the number of all votes cast for the~~
18 ~~office of President.~~

19 (c) If a state-funded recount is conducted pursuant to this
20 section, no other recount shall be conducted.

21 (d) The State shall reimburse counties for costs resulting from
22 conducting a manual recount pursuant to this section in an
23 expeditious manner upon certification of those costs.

24 15646. (a) Upon ordering a recount pursuant to subdivision
25 (a) or (b) of Section 15645, the Secretary of State shall notify the
26 elections official of each county and shall direct the county
27 elections officials to recount all the votes cast for the office or for
28 and against the state ballot measure.

29 (b) (1) While conducting a recount pursuant to Section 15645,
30 a county elections official shall also review ballots rejected
31 pursuant to Section 15154 to ensure that no ballots were improperly
32 discarded during the initial canvass.

33 (2) The process of reviewing rejected ballots pursuant to
34 subdivision (a) shall be open to members of the public, including
35 persons associated with a campaign or measure.

36 (c) The elections official in each county shall complete a
37 recount pursuant to this section as follows:

38 (1) In a primary election, by three business days before the
39 ballot-printing deadline.

1 (2) In a general election, within 60 days of the voter’s request
2 for a recount.

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

7 15648. The Secretary of State may adopt, amend, and repeal
8 rules and regulations necessary for the administration of this article.

9 15649. This article shall remain in effect only until January 1,
10 2023, and as of that date is repealed, unless a later enacted statute,
11 that is enacted before January 1, 2023, deletes or extends that date.

12 ~~SEC. 10. Section 19203 of the Elections Code is amended to~~
13 ~~read:~~

14 ~~19203. The Secretary of State shall not certify or conditionally~~
15 ~~approve either of the following:~~

16 ~~(a) A voting system or a part of a voting system that uses paper~~
17 ~~ballots unless the paper used for the ballots is of sufficient quality~~
18 ~~that it maintains its integrity and readability throughout the~~
19 ~~retention period specified in Chapter 4 (commencing with Section~~
20 ~~17300) of Division 17.~~

21 ~~(b) A voting system that cannot facilitate the conduct of a ballot~~
22 ~~level comparison risk-limiting audit.~~

23 ~~SEC. 10. Section 19204.5 is added to the Elections Code, to~~
24 ~~read:~~

25 ~~19204.5. (a) The Secretary of State shall not certify or~~
26 ~~conditionally approve a voting system that cannot facilitate the~~
27 ~~conduct of a ballot level comparison risk-limiting audit.~~

28 ~~(b) (1) For purposes of this subdivision, a voting system that~~
29 ~~is “noncompliant” is a voting system that cannot facilitate the~~
30 ~~conduct of a ballot level comparison risk-limiting audit.~~

31 ~~(2) Notwithstanding subdivision (a), the Secretary of State may~~
32 ~~approve a proposed change or modification to a noncompliant~~
33 ~~voting system even if the voting system will remain noncompliant~~
34 ~~after the change or modification.~~

35 SEC. 11. If the Commission on State Mandates determines
36 that this act contains costs mandated by the state, reimbursement
37 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O