

AMENDED IN SENATE JUNE 9, 2004

AMENDED IN SENATE JANUARY 6, 2004

AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 714**

**Introduced by Assembly Member Leno**

February 19, 2003

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~~An act to amend Sections 12223 and 18403 of, to amend and renumber Section 22000 of, to add Division 22 (commencing with Section 22000) to, and to repeal Article 3 (commencing with Section 2050) of Chapter 1 of Division 2, Sections 12280, 13304, and 14282, and Article 2.5 (commencing with Section 19225) of Chapter 2 of Division 19 of, the Elections Code, relating to voting. An act to amend Sections 14299, 15210, and 15211 of, and to add Sections 14299.5, 14299.7, and 14299.9 to, the Elections Code, relating to election day procedures.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 714, as amended, Leno. ~~Accessible voting~~ *Elections: election day procedures.*

*Existing law requires an elections official to deliver additional ballots to a precinct that has an insufficient number of ballots.*

*This bill would require the elections official to additionally deliver provisional ballot envelopes, as necessary. The bill would require a precinct board that is unable to provide ballots to all voters on election day who are eligible to vote to authorize use of sample ballots in place of a ballot, and, in the event that the precinct board is unable to comply,*

would require the precinct board to ensure access to a sample ballot for reference and authorize votes to be cast in writing, as specified. The bill would set forth requirements for counting votes cast by sample ballot and in writing.

The bill would further require every county utilizing a direct recording electronic voting system as the primary precinct voting system to establish and implement an alternative voting procedure for use in the event that the direct recording electronic voting system fails. A county would be required to submit the alternative voting procedure to the Secretary of State for approval as part of the existing approval process for any direct recording electronic voting system. A county implementing an alternative voting procedure would be permitted to make changes to the procedure so long as the changes were approved by the Secretary of State at least 60 days before an election to which the procedure would apply.

By placing these additional requirements on elections officials and precinct boards, this bill would impose a state-mandated local program.

The bill would require, in the event that a precinct runs out of ballots, that an investigation be conducted by the Secretary of State and would require the Secretary of State to report the findings of the investigation, as specified.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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.

~~Under existing law, the Visually Impaired Voter Assistance Act of 1989, the Visually Impaired Voter Assistance Advisory Board is established to assist the Secretary of State in improving voter accessibility to visually impaired voters.~~

~~This bill would eliminate the Visually Impaired Voter Assistance Advisory Board and, instead, require the Secretary of State to establish~~



~~a new advisory board to counsel the secretary on issues related to improving access for disabled voters.~~

~~This bill would amend, and amend and renumber, certain provisions of the Elections Code to correct internal cross references.~~

~~Existing law requires election precinct boards to assist voters who declare under oath that they are unable to mark a ballot.~~

~~This bill would require that precinct boards ensure that voters receiving assistance are afforded privacy while voting equivalent to that provided to other voters and, by so doing, would impose a state-mandated local program.~~

~~Existing law requires the Secretary of State to adopt rules and regulations governing voting technology and systems used to provide access to blind and visually impaired voters.~~

~~This bill would require the Secretary of State to adopt rules and regulations governing voting technology and systems used to provide access to mobility impaired individuals as well. This bill would impose a state-mandated local program by requiring each local agency to report to the secretary on its expenditure of funds, activities, and progress toward improving access to polling places for persons who are blind, visually impaired, or mobility impaired.~~

~~Existing law requires that each polling place have at least one voting unit, approved by the Secretary of State, to provide access to individuals who are blind or visually impaired.~~

~~This bill would impose a state-mandated local program by requiring that at least one voting unit provide access to the blind, visually impaired, or mobility impaired, and would delay imposition of the requirement until January 1, 2006.~~

~~Existing law permits a person who is injured by the failure of a local agency to comply with specified statutes concerning voter access for the blind and visually impaired to sue for injunctive relief.~~

~~This bill would extend the right to sue to the mobility impaired. This bill would further preclude actions against the state or its political subdivisions that are based on information contained in the plans, reports, or applications for funding required by specified statutes requiring voter access for the blind, visually impaired, or mobility impaired, except for actions arising from a criminal act or omission.~~

~~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.—This act shall be known as the California Access~~

2 *SECTION 1. (a) The Legislature finds and declares the*  
 3 *following:*

4 *(1) There are occasions when, either due to human error or*  
 5 *other circumstances, precincts utilizing punchcard, optical scan,*  
 6 *or other types of paper ballots for voting purposes can run out of*  
 7 *ballots.*

8 *(2) Although existing law requires additional ballots be*  
 9 *supplied as soon as possible and that polling places stay open later,*  
 10 *eligible voters, through no fault of their own, can still be*  
 11 *disenfranchised when a precinct runs out of ballots.*

12 *(3) Allowing an eligible voter to use a sample ballot to cast his*  
 13 *or her ballot, or, if necessary, to write his or her choices on a piece*  
 14 *of paper, is an option of last resort intended to ensure that no*  
 15 *eligible voter is deliberately or inadvertently disenfranchised*  
 16 *should a precinct run out of ballots.*

17 *(b) The Legislature further finds and declares:*

18 *(1) Counties are increasingly purchasing or considering the*  
 19 *purchase of direct electronic voting systems for precinct use.*

20 *(2) In addition to the extensive national and state testing these*  
 21 *systems undergo during their certification for use in California, it*  
 22 *is prudent that counties develop alternative voting procedures for*  
 23 *use in the unforeseen and unanticipated event that all of the*  
 24 *machines in a precinct fail.*

25 *SEC. 2. Section 14299 of the Elections Code is amended to*  
 26 *read:*

27 *14299. If a precinct board is unable to furnish a ballot to a*  
 28 *qualified voter, because there is an insufficient number of ballots*  
 29 *at the precinct, the elections official shall deliver to the precinct*  
 30 *additional ballots and provisional ballot envelopes as necessary to*  
 31 *ensure that all eligible voters can cast their ballots by 10 p.m. on*  
 32 *election day.*

33 *SEC. 3. Section 14299.5 is added to the Elections Code, to*  
 34 *read:*

35 *14299.5. (a) Notwithstanding Sections 14102 and 14299, in*  
 36 *the event that the precinct board is unable to provide a ballot to any*  
 37 *voter entitled to vote who comes to the polls to exercise his or her*  
 38 *right to vote on election day, the precinct board shall authorize*



1 official sample ballots, whether supplied by the precinct board or  
2 a voter, to be marked by the voter and used in the place of a ballot.

3 (b) If the precinct board is unable to comply with the  
4 requirement set forth in subdivision (a), the precinct board shall  
5 ensure that an eligible voter has access to a sample ballot for  
6 reference, paper, and pen, and shall allow the voter to cast his or  
7 her vote in writing.

8 (c) If the precinct board is unable to comply with the  
9 requirements set forth in subdivisions (a) or (b), the precinct board  
10 shall ensure that an eligible voter has access to a sample ballot for  
11 reference and shall allow the voter to supply paper and a pen to  
12 cast his or her vote in writing. A slate mailer, as defined by Section  
13 82048.3 of the Government Code, or any preprinted paper other  
14 than a sample ballot with the names of candidates or ballot  
15 measures which is not supplied by the precinct board, shall not be  
16 used in place of a ballot.

17 (d) A ballot cast pursuant to this section shall be cast in a  
18 polling place and placed in a provisional ballot envelope to be  
19 completed and signed by the voter.

20 (e) A ballot cast pursuant to this section shall be processed and  
21 counted in accordance with Sections 15210 and 15211.

22 (f) In the event that a voter is casting his or her ballot in writing,  
23 the precinct board shall direct the voter to write as clearly as  
24 possible, and shall inform the voter that if the elections official  
25 cannot determine the voter's intention during the canvass process,  
26 the vote shall not be counted.

27 SEC. 4. Section 14299.7 is added to the Elections Code, to  
28 read:

29 14299.7. Every county utilizing a direct recording electronic  
30 voting system as the primary precinct voting system shall establish  
31 and implement an alternative voting procedure to be used in the  
32 event that the direct recording electronic voting system fails. The  
33 alternative voting procedure shall be submitted to the Secretary of  
34 State for approval pursuant to Chapter 3 (commencing with  
35 Section 19200) of Division 19 as part of the approval process for  
36 any direct recording electronic voting system. A county  
37 implementing an alternative voting procedure may make changes  
38 to an approved alternative voting procedure so long as the changes  
39 are approved by the Secretary of State at least 60 days before an  
40 election to which the procedure applies.



1 SEC. 5. Section 14299.9 is added to the Elections Code, to  
 2 read:

3 14299.9. (a) If a precinct runs out of ballots and requires a  
 4 voter to cast his or her vote pursuant to an alternative voting  
 5 method as set forth in Section 14299.5, the Secretary of State shall  
 6 investigate and report as follows:

7 (1) The investigation shall at a minimum determine all of the  
 8 following:

9 (A) The circumstances that resulted in the precinct running out  
 10 of ballots.

11 (B) Whether or not any voters were disenfranchised.

12 (C) Changes that can be made to prevent reoccurrence,  
 13 including, but not limited to, procedural and statutory changes.

14 (2) The report of the Secretary of State shall be forwarded to the  
 15 Assembly Committee on Elections, Redistricting and  
 16 Constitutional Amendments, or its successor, the Senate  
 17 Committee on Elections and Reapportionment, or its successor,  
 18 and to the elections official for each county.

19 (b) In conducting the investigation, the Secretary of State shall  
 20 confer, as necessary to prepare the report, with elections officials  
 21 from other jurisdictions who possess experience in the day-to-day  
 22 operations of conducting elections. The Secretary of State may  
 23 confer with the county district attorney or city district attorney, the  
 24 Attorney General, or any other appropriate office, agency, or  
 25 resource.

26 SEC. 6. Section 15210 of the Elections Code is amended to  
 27 read:

28 15210. In preparing the voted ballots for processing, any  
 29 ballot that is torn, bent, or otherwise defective shall be corrected  
 30 so that every vote cast by the voter shall be counted by the  
 31 automatic tabulating equipment. If necessary, a true duplicate  
 32 copy of the defective ballot or any sample ballot or handwritten  
 33 ballot cast pursuant to Section 14299.5 shall be made and  
 34 substituted therefor, following the intention of the voter insofar as  
 35 it can be ascertained from the defective ballot. All duplicate ballots  
 36 shall be clearly labeled “duplicate,” and shall bear a serial number  
 37 that shall be recorded on the damaged or defective ballot, the  
 38 sample ballot, or the handwritten ballot.

39 SEC. 7. Section 15211 of the Elections Code is amended to  
 40 read:



1 15211. If paper ballots are used for absentee voting *or*  
2 *pursuant to Section 14299.5*, the canvass may be conducted in  
3 accordance with Chapter 1 (commencing with Section 15000), or  
4 the elections official may have a true duplicate copy of absentee  
5 voter paper ballots *or ballots cast pursuant to Section 14299.5*  
6 made on punchcard ballots, *following the intention of the voter*  
7 *insofar as it can be ascertained from the paper ballot or ballot cast*  
8 *pursuant to Section 14299.5*, and that shall be verified in the  
9 presence of witnesses. After verification the punchcard ballots  
10 shall be counted in the same manner as other punchcard ballots.

11 *SEC. 8. Notwithstanding Section 17610 of the Government*  
12 *Code, if the Commission on State Mandates determines that this*  
13 *act contains costs mandated by the state, reimbursement to local*  
14 *agencies and school districts for those costs shall be made*  
15 *pursuant to Part 7 (commencing with Section 17500) of Division*  
16 *4 of Title 2 of the Government Code. If the statewide cost of the*  
17 *claim for reimbursement does not exceed one million dollars*  
18 *(\$1,000,000), reimbursement shall be made from the State*  
19 *Mandates Claims Fund.*

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**All matter omitted in this version of the  
bill appears in the bill as amended in the  
Senate January 6, 2004 (JR 11)**

