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AB-2125 Election results: risk-limiting audits. (2017-2018)

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Assembly Bill No. 2125

CHAPTER 913

An act to add Article 5.5 (commencing with Section 15365) to Chapter 4 of Division 15 of, and to repeal Section 15560 of, the Elections Code, relating to elections.

[Approved by Governor September 29, 2018. Filed with Secretary of State September 29, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2125, Quirk. Election results: risk-limiting audits.

Existing law requires an elections official, during the official canvass of an election in which a voting system is used, to conduct a public manual tally of the ballots cast in 1% of the precincts chosen at random by the elections official, as specified. Existing law also authorizes the Secretary of State to establish a postcanvass risk-limiting audit pilot program.

This bill would authorize the use of risk-limiting audits in lieu of the 1% manual tally beginning with the March 3, 2020, statewide primary election. The bill would require the Secretary of State to adopt regulations to implement and administer risk-limiting audits. The bill would repeal these provisions on January 1, 2021. The bill would also repeal the existing postcanvass risk-limiting audit pilot program.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) Transparent, publicly observable auditing of election results is necessary to ensure effective election administration and justifiable public confidence in elections.

(b) Risk-limiting audits provide efficient and cost-effective scientific verification of election results when elections officials have adequate resources and education to conduct such an audit.

(c) By definition, a risk-limiting audit strictly limits the probability that an incorrect electoral outcome will pass the audit without being corrected.

(d) Further education is necessary for the implementation of risk-limiting audits in statewide contests and jurisdictions that lack resources for performing full manual recounts in close elections within the certification requirements required by state and federal law.

SEC. 2. Article 5.5 (commencing with Section 15365) is added to Chapter 4 of Division 15 of the Elections Code, to read:

Article 5.5. Risk-Limiting Audits Pilot Program

15365. The purpose of this article is to provide elections officials with a method to conduct a comprehensive verification of election outcomes through the post-election audit process. This article shall remain in effect only until January 1, 2021, and as of that date is repealed.

15366. As used in this article, the following terms have the following meanings:

(a) "Ballot" means original, voter-verifiable paper ballots, including voter-marked paper ballots whether marked manually or via a ballot marking device or system, and, where direct recording electronic (DRE) voting systems are used, the voter-verifiable paper audit trail (VVPAT). It does not mean electronic versions of ballots, digital images of ballots, or paper printouts of ballot images or digital cast vote records.

(b) "Ballot-level comparison audit" means a type of risk-limiting audit that involves both of the following steps:

(1) The elections official uses an independent system to verify that the cast vote records created by the voting system or ballots created independent from the tally or ballot marking system yield the same election results as those reported by the voting system.

(2) The elections official compares some or all of those cast vote records to a hand-to-eye, human interpretation of voter markings from the corresponding ballot marked by the voter or the voter verified paper audit trail, as defined by Section 19271.

(c) "Ballot polling audit" means a type of risk-limiting audit in which elections officials examine voter markings on randomly selected ballots seeking strong evidence that the reported tabulation outcome is correct.

(d) "Cast vote record" means an auditable document or electronic record that purports to reflect the selections a voter made on a ballot. It lists the contests on the ballot and the voter's selections in each of those contests.

(e) "Cross-jurisdictional contest" means an election contest in which ballots were cast in more than one county.

(f) "Electoral outcome" means the winner or winners of an election contest or whether a measure passed. It does not mean the numerical vote totals.

(g) (1) "Partial risk-limiting audit" of a cross-jurisdictional contest in a given county means any procedure that has at least a 95 percent chance of leading to a full manual tally of the votes in that contest on the ballots cast in that county if the electoral outcome is incorrect in part in that county. If a partial risk-limiting audit leads to such a full manual tally, the vote totals according to that manual tally shall replace the originally reported vote totals for that contest in that county.

(2) An electoral outcome of a cross-jurisdictional contest is incorrect in part in a given county if the tabulation error for that contest in the county, extrapolated in proportion to the number of ballots in the contest cast in that county compared to the total number of ballots cast in the entire contest, would alter the overall electoral outcome of the contest.

(3) The tabulation error of a contest in a county is the difference between the reported vote tally for the contest in that county and what a tally based on manual tally of the votes cast in that county would show, if the manual tally ascertains voter intent by eye, directly from the voter-verifiable paper records.

(h) "Risk-limiting audit" means a post-election process that involves hand-to-eye, human inspection of ballots in such a manner that if a full manual tally of all the ballots cast in the contest would show different outcomes than the results reported by the voting system, there is at most a five percent chance that the post-election process will not lead to such a full manual tally. If this post-election process does lead to a full manual tally, the winner or winners according to that full manual tally replace the winner or winners as reported by the voting system if they differ.

15367. (a) (1) Commencing with the statewide primary election held on March 3, 2020, the elections official conducting an election may conduct a risk-limiting audit in place of the one percent manual tally required by Section 15360 during the official canvass of any election in accordance with the requirements of this article.

(2) Participating counties shall conduct a risk-limiting audit on each contest fully contained within the county's borders, and partial risk-limiting audits for each cross-jurisdictional contest. Commencement of the audit and selection of ballots for the audit shall not occur before the reporting of the results to which the contests are being audited. The Secretary of State shall define in regulations how all ballots, including provisional ballots and vote by mail ballots whose status has not yet been resolved, shall be taken into account in the audit to ensure that if a full manual tally of the votes on all validly cast ballots would show an electoral outcome that differs from the reported outcome, there is at most a five percent chance that the audit will not require such a tally.

(3) An elections official is in compliance with this section if the elections official conducts a ballot-level comparison audit, or ballot polling audit, with a five percent risk limit or a risk-limiting audit with a five percent risk limit using another method for conducting risk-limiting audits as approved by the Secretary of State.

(b) (1) The Secretary of State, in consultation with recognized statistical experts, election verification and integrity stakeholders, voting system manufacturers, and local elections officials, shall adopt regulations to implement and administer this article.

(2) The regulations shall do all of the following:

(A) Require elections officials to establish appropriate audit boards and procedures to conduct the risk-limiting audits.

(B) Establish criteria for public education on risk-limiting audits.

(C) Establish procedures to ensure the security of the ballots, the selection of ballots to be inspected during each audit, and the rules governing cast vote records and other data involved in risk-limiting audits.

(D) Establish the calculations and other methods to be used in the audit to determine whether or when the audit of any contest is required to include the examination of more ballots, and to establish calculations and methods to be used in such an escalation, and to determine whether and when the audit of each contest is complete.

(E) Establish procedures and requirements for testing and disclosing the algorithms and source code of any software used by the Secretary of State for the selection of ballots to be included when elections officials conduct risk-limiting audits under this article.

(F) Establish requirements for the content of the risk-limiting audit report required by subdivision (d).

(G) Establish procedures and requirements to ensure the audit process is observable and verifiable by the public, including disclosing the methods used to select samples and to calculate the risk, providing public opportunity to verify that the correct ballots were inspected during the audit, and providing public opportunity to observe the inspection of the voters' marks on the ballots during the audit.

(c) The risk-limiting audit shall be a public and observable process, with the elections official providing at least a five-day public notice of the time and place of both the risk-limiting audit and the selection of the ballots to be used when conducting the risk-limiting audit.

(d) The elections official conducting the risk-limiting audit shall publish a report on the results of the risk-limiting audit in the certification of the official canvass of the vote.

SEC. 3. Section 15560 of the Elections Code is repealed.