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AB-2400 Election results: risk-limiting audits. (2019-2020)

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Assembly Bill No. 2400

CHAPTER 33

An act to amend Sections 15365, 15366, and 15367 of the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2020. Filed with Secretary of State August 27, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2400, 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, operative until January 1, 2021, authorizes the use of risk-limiting audits in lieu of this 1% manual tally beginning with the March 3, 2020, statewide primary election. Under this law, a participating county is required to perform a partial risk-limiting audit of each cross-jurisdictional contest.

This bill would extend the authority to use risk-limiting audits until January 1, 2023. The bill would authorize a county to choose to perform the risk-limiting audit in only some of the contests within the county. The bill would remove the requirement to perform a partial risk-limiting audit of each cross-jurisdictional contest.

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

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 15365 of the Elections Code is amended to read:

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 This article shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 2. Section 15366 of the Elections Code is amended to read:

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

(f) "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.

SEC. 3. Section 15367 of the Elections Code is amended to read:

15367. (a) (1) Commencing with the statewide general election held on November 3, 2020, the elections official conducting an election may conduct a risk-limiting audit 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 one or more contests fully contained within the county's borders. A participating county may exclude any contest that has been subject to a risk-limiting audit from the one-percent manual tally required by Section 15360.

(3) 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.

(4) 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. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure elections officials have the flexibility they need to effectively administer the November 3, 2020, statewide general election, it is necessary for this act to take effect immediately.