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AB-1219 Elections: ballots. (2023-2024)

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Assembly Bill No. 1219

CHAPTER 676

An act to amend Sections 302, 303.3, 305, 6821, 10704, 11320, 11322, 11323, 13105, 13200, 13202, 13203, 13206.5, 13208, 13209, 13210, 13211, 13211.5, 13212, 13213, 13214, 13233, 14286, 14443, 15210, and 15360 of, to add Section 11322.5 to, to repeal Sections 13216.5, 13260, 13261, 13262, 13263, 13264, 13265, 13266, 13267, and 15211 of, and to repeal and add Sections 301, 303, 13204, 13206, 13216, 14284, and 14285 of, the Elections Code, relating to elections.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, Berman. Elections: ballots.

(1) Existing law imposes ballot layout specifications, including specific requirements relating to the placement of certain contests, the size and font of text, and the instructions provided to voters.

This bill would revise and recast these provisions. The bill would specify the font and location of certain text and would revise the ballot instructions provided to voters. The bill would require those instructions to communicate to voters, in plain language, how to cast a vote in a contest, how to write in a candidate, and what to do if a mistake is made.

(2) Existing law requires a ballot for a recall election for a state officer to include the names of the candidates nominated to succeed the officer sought to be recalled and a space to enter the name of a write-in candidate.

This bill would additionally require a ballot for a recall election for a state officer to include instructions explaining that the recall election includes two contests, one for whether to recall the officer and the other for the officer's successor if the recall is successful, and that voters may cast a vote in either or both of those contests.

(3) Existing law prohibits casting or counting in any election ballots not printed in accordance with the ballot layout specifications prescribed in state law.

This bill would instead prohibit casting or counting ballots not printed in substantial compliance with the ballot layout specifications.

(4) To the extent the bill would impose additional duties on county elections officials relating to the preparation of ballots, this bill would create 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 the statutory provisions noted above.

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

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

SECTION 1. Section 301 of the Elections Code is repealed.

SEC. 2. Section 301 is added to the Elections Code, to read:

301. (a) A "ballot" is the presentation of the contests consisting of offices and measures, and the candidates and choices to be voted on.

(b) The ballot presentations shall include either of the following:

(1) One or more ballot cards, as defined in Section 302, upon which are printed the names of candidates for each contest and the ballot titles of measures to be voted on by marking the designated area and that are tabulated manually or by optical scanning equipment. The ballot card may include visual graphics and instructions.

(2) An electronic voting system, certified or conditionally approved by the Secretary of State, upon which the names of the candidates for each contest and the ballot titles of measures to be voted on are selected by touching the screen or using other physical controls. The electronic voting system shall print the selections made by the voter, which may be in the form of a list or facsimile of a marked preprinted ballot.

SEC. 3. Section 302 of the Elections Code is amended to read:

302. "Ballot card" means a card or a number of cards upon which are printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. The ballot card shall also contain blank spaces to allow the voter to write in names not printed on the ballot.

SEC. 4. Section 303 of the Elections Code is repealed.

SEC. 5. Section 303 is added to the Elections Code, to read:

303. "Ballot label" means:

(a) For a candidate, the combination of candidate name and candidate designation.

(b) For a statewide measure, a condensed version of the ballot title and summary, including the fiscal impact summary prepared pursuant to Section 9087 of this code and Section 88003 of the Government Code, that is no more than 75 words, followed by a listing of the names of supporters and opponents in the ballot arguments printed in the state voter information guide as described in Section 9051.

(c) For all other measures, the question and statements specified in Section 13119 or the question specified in Section 13120, as applicable.

(d) For an advisory vote, the description as indicated in Section 9603.

SEC. 6. Section 303.3 of the Elections Code is amended to read:

303.3. "Remote accessible vote by mail system" means a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking an electronic vote by mail ballot for a voter who shall print the paper cast vote record to be submitted to the elections official. A remote accessible vote by mail system shall not be connected to a voting system at any time.

SEC. 7. Section 305 of the Elections Code is amended to read:

305. (a) "Candidate," for purposes of Section 2184, includes any person who declares in writing, under penalty of perjury, that the person is a candidate, naming the office.

(b) "Candidate," as used in Article 1 (commencing with Section 20200) of Chapter 3 of Division 20, means an individual listed on the ballot, or who has qualified to have write-in votes on the individual's behalf counted by elections officials, for nomination or for

election to any elective state or local office, or who receives a contribution or makes an expenditure or gives the individual's consent for any other person to receive a contribution or makes an expenditure with a view to bringing about the individual's nomination or election to any elective state or local office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made. The term "candidate" includes any officeholder who is subject to a recall election.

(c) "Candidate for public office," as used in Chapter 5 (commencing with Section 20400) of Division 20, means an individual who has qualified to have the individual's name listed on the ballot of any election, or who has qualified to have written votes on the individual's behalf counted by election officials, for nomination for, or election to, any state, regional, county, municipal, or district office which is filled at an election.

SEC. 8. Section 6821 of the Elections Code is amended to read:

6821. For the presidential primary election, the format of the Peace and Freedom Party ballot shall be governed by Chapter 2 (commencing with Section 13100) of Division 13, with the following exceptions:

(a) In place of the heading "Delegates to National Convention, vote for one group only" shall appear the heading "Presidential Preference, vote for one."

(b) Selected and unselected presidential candidates shall be listed below the heading specified in subdivision (a).

(c) Below the presidential candidates shall appear in the same column, or in the next column if there is not sufficient space in the first column, the heading "Delegates to National Convention, vote for one group."

(d) Presidential candidates who have qualified for the ballot and to whom delegations are pledged, and the chairpersons of unpledged delegations which have qualified for the ballot, shall be listed below the heading specified in subdivision (c).

(e) The instructions to voters shall be the same as provided for in Chapter 2 (commencing with Section 13100) of Division 13, except that they shall begin with the words, "To express your preference for a candidate for nomination for President, completely fill in the [voting target] next to the candidate's name. Your vote in this portion of the ballot is advisory only. Delegates to the national convention will be elected in the delegate selection portion of the ballot."

SEC. 9. Section 10704 of the Elections Code is amended to read:

10704. (a) Except as provided in subdivision (b), a special primary election shall be held in the district in which the vacancy occurred on the 9th Tuesday or, if the 9th Tuesday is the day of or the day following a state holiday, the 10th Tuesday preceding the day of the special general election at which the vacancy is to be filled. Candidates at the primary election shall be nominated in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 73 days before the primary election, shall be left with the county elections official for examination not less than 53 days before the primary election, and shall be filed with the Secretary of State not less than 53 days before the primary election.

(b) A special primary election shall be held in the district in which the vacancy occurred on the 10th Tuesday preceding the day of the special general election at which the vacancy is to be filled if both of the following conditions apply:

(1) The 10th Tuesday preceding the day of the special general election is an established election date pursuant to Section 1000.

(2) A statewide or local election occurring wholly or partially within the same territory in which the vacancy exists is scheduled for the 10th Tuesday preceding the day of the special general election.

(c) The sample ballot for a special election shall contain a written explanation of the election procedure for voter-nominated office as specified in subdivision (b) of Section 9083.5. Immediately after the explanation shall be printed the following: "If one candidate receives more than 50% of the votes cast at the special primary election, the candidate will be elected to fill the vacancy and no special general election will be held."

(d) On the ballot for a special election, immediately before or above the first contest for a voter-nominated office, the following words shall be printed:

"Voter-Nominated Offices

All voters may vote in these contests.

Candidates display a party preference (or None) for the information of voters. This is not a party endorsement or approval."

SEC. 10. Section 11320 of the Elections Code is amended to read:

11320. The following shall appear on the ballots at every recall election, except in the case of a landowner voting district, with respect to each officer sought to be recalled:

(a) The question “Shall [name of officer sought to be recalled] be recalled (removed) from the office of [title of office]?”

(b) Next to the foregoing question, the words “Yes” and “No” on separate lines with a voting target next to each.

(c) If the officer sought to be recalled holds a voter-nominated office, the officer may elect to have the officer’s party preference identified on the ballot. The officer shall inform the Secretary of State whether the officer elects to have a party preference identified on the ballot by the deadline for the officer to file an answer with the Secretary of State pursuant to Section 11023. The Secretary of State shall disseminate this information to all appropriate county elections officials. The statement of party preference shall appear immediately to the right of and on the same line as the officer’s name, or immediately below the officer’s name if there is not sufficient space to the right of the officer’s name, and shall appear in substantially the following form:

(1) If the officer stated a political party preference on the officer’s affidavit of registration, the statement shall read: “Party Preference:_____” (inserting the name of the qualified political party stated on the affidavit of registration.) The listed political party preference shall be the political party preference stated on the officer’s affidavit of registration at the time the notice of intention is filed with the elections official pursuant to Section 11021.

(2) If the officer did not state a political party preference on the officer’s affidavit of registration, the statement shall read: “Party Preference: None.”

(3) If the officer elects not to have the officer’s political party preference identified on the ballot, or if the officer fails to inform the Secretary of State whether the officer elects to have a party preference identified on the ballot by the deadline for the officer to file an answer with the Secretary of State, the statement of party preference shall not appear on the ballot.

SEC. 11. Section 11322 of the Elections Code is amended to read:

11322. In addition to the material contained in Section 11320, the following shall appear on ballots at all recall elections for state officers:

(a) The names of the candidates nominated to succeed the officer sought to be recalled shall appear under each recall question.

(b) Following each list of candidates, the ballot shall provide one blank line with a voting target next to it.

SEC. 12. Section 11322.5 is added to the Elections Code, to read:

11322.5. (a) (1) In a recall election for a state officer, additional instructions shall be added to the ballot to communicate the following information:

(A) That there are two contests on the ballot.

(B) That the two contests are separate and can be voted on independently.

(2) For purposes of subparagraph (B) of paragraph (1), the following instructions are recommended:

“You can vote for the recall question regardless of whether you vote for a replacement candidate.

You can vote for a replacement candidate regardless of whether or how you vote on the recall question.”

(b) The exact wording of the instructions shall be written by the elections official to conform to the actions required by the layout of the ballot.

SEC. 13. Section 11323 of the Elections Code is amended to read:

11323. A voter shall indicate, by completely selecting the voting target next to either “Yes” or “No,” their vote for or against the recall proposal, respectively.

SEC. 14. Section 13105 of the Elections Code is amended to read:

13105. (a) In the case of a candidate for a voter-nominated office in a primary election, a general election, or a special election to fill a vacancy in the office of United States Senator, Member of the United States House of Representatives, State Senator, or

Member of the Assembly, immediately to the right of and following the name of the candidate, or immediately below the name if there is not sufficient space on the same line to the right of the name, there shall be identified in at least 8-point type, as specified by the Secretary of State, the designation made by the candidate pursuant to Section 8002.5. The identification shall be in substantially the following form:

(1) In the case of a candidate who designated a political party preference pursuant to Section 8002.5, "Party Preference: _____."

(2) In the case of a candidate who did not state a preference for a political party pursuant to Section 8002.5, "Party Preference: None."

(b) In the case of candidates for President and Vice President, the name of the party shall appear to the right of and equidistant from the pair of names of these candidates and on the same line as the name of the candidate for President, or immediately below the name of the vice presidential candidate if there is not sufficient space to the right of the name.

(c) If for a general election any candidate for President of the United States or Vice President of the United States has received the nomination of any additional party or parties, the name(s) shall be printed to the right of the name of the candidate's own party, or immediately below the name if there is not sufficient space to the right of the name. Party names of a candidate shall be separated by commas. If a candidate has qualified for the ballot by virtue of an independent nomination, the word "Independent" shall be printed instead of the name of a political party in accordance with the above rules.

SEC. 15. Section 13200 of the Elections Code is amended to read:

13200. Ballots not printed in substantial compliance with this chapter shall not be cast nor counted at any election.

SEC. 16. Section 13202 of the Elections Code is amended to read:

13202. (a) All ballots of the same sort prepared by any county elections official, clerk or secretary of a legislative body, or other person having charge of preparing ballots for the same polling place, shall be precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed with ink of the same tint, so that without the numbers on the stubs it is impossible to distinguish any one of the ballots from the other ballots of the same sort.

(b) The names of all candidates printed upon the ballot shall be in type of the same size and character. If there is not sufficient space for a candidate name, the size may be adjusted as close as possible to the size and character of all the other candidate names printed upon the ballot.

(c) For multilingual ballots, if there is not sufficient space to print candidate names in at least 10-point bold type, as required by Section 13211, the size of candidate names shall be uniformly adjusted to a size that is no less than 8-point type.

SEC. 17. Section 13203 of the Elections Code is amended to read:

13203. At the top of the first page of the ballot shall be printed in at least 16-point bold type the words "Official Ballot." Beneath this heading, the name of the election shall be printed in at least 12-point bold type and, in the case of a partisan primary election, the official party designation or the words "Nonpartisan Ballot" shall be printed, as applicable. After the heading line or lines, there shall be printed, in at least 12-point type, the date of the election and, in at least 8-point type, the name of the county in which the ballot is to be voted. The county name may alternatively be displayed in the county seal or logo. In addition, the ballot shall have printed, at the top or bottom of each card, a ballot style identifier or some other means of identifying the number of the congressional, Senate, and Assembly district.

SEC. 18. Section 13204 of the Elections Code is repealed.

SEC. 19. Section 13204 is added to the Elections Code, to read:

13204. (a) The instructions to voters shall be printed below the ballot identification and above the contests to be voted on, or in the first column of the ballot as long as no contest is placed below the instructions in that column. The instructions shall be in at least 10-point type and in an area clearly separated from the ballot contests.

(b) (1) The instructions shall be written in plain language to communicate the following information:

(A) How to vote for a candidate or in a contest with "Yes" and "No" options.

(B) How to write in a candidate.

(C) What to do if a mistake is made.

(2) The instructions may also include warnings and checks to help voters mark their ballot correctly and avoid errors. Instructions for specific types of contests are required only if a contest of that type appears on the ballot.

(c) (1) For purposes of the instructions described in this section, the following text is recommended:

“Instructions for voting

To vote for a candidate, completely fill in the [voting target] next to the candidate's name or the word “Yes” or “No.”

To vote for a qualified write-in candidate, write the name in the blank space provided and fill in the [voting target].

If you make a mistake, [instructions for making a correction] [or ask for a new ballot].

Make sure your vote counts.

Use a [blue or black ballpoint pen].

Do not select more candidates than the number to be elected. You may vote in as many or as few contests as you want.

A mistake in one contest does not affect the rest of the ballot.”

(2) The recommended instructions in paragraph (1) may be modified to apply to the voting system and ballot format in each county, and the administration of elections in that county.

(d) The instructions may be accompanied by illustrations, customized to the ballot design in each county, that show the correct way of marking a selection on the ballot, writing in a candidate name, or correcting a mistake.

SEC. 20. Section 13206 of the Elections Code is repealed.

SEC. 21. Section 13206 is added to the Elections Code, to read:

13206. (a) (1) On the partisan ballot used in a direct primary election, immediately before or above the contest for President, the following words shall be printed on ballots of parties that require registration as a member of the party to vote in the party's primary election:

“Party-Nominated Offices

Only voters registered as a member of the [name of party] may vote in this primary election for President and party committee.”

(2) In the same location, the following words shall be printed on ballots of parties that permit voters who have not disclosed a party preference to vote in the party's primary:

“Party-Nominated Offices

Voters registered as a member of the [name of party] may vote in this primary election for President and party committee. Some parties may allow voters with no party preference to vote in the party's primary election for President.”

(3) For voting systems that do not allow variance in instructions, the following words shall be printed:

“Party-Nominated Offices

Voters registered as a member of the same party as the candidates may vote in this primary election for President and party committee. Some parties may allow voters with no party preference to vote in the party's primary election for President.”

(b) Before or above the first voter-nominated contest, the following words shall be printed:

“Voter-Nominated Offices

All voters may vote in these contests.

Candidates display a party preference (or None) for the information of voters. This is not a party endorsement or approval.”

(c) Before or above the first nonpartisan contest, or in the same area as the notice for voter-nominated offices, the following words shall be printed:

“Nonpartisan Offices

All voters may vote in these contests.

Candidates for these offices do not display a party preference.”

SEC. 22. Section 13206.5 of the Elections Code is amended to read:

13206.5. (a) (1) On the ballot used in a statewide general election in each year evenly divisible by the number four, immediately before or above the contest for President, the following words shall be printed:

“Party-Nominated Offices

Candidates for these offices are the official nominee of the party displayed with their name.”

(2) On the ballot used in a statewide general election in each year evenly divisible by the number four, following the portion of the ballot for party-nominated offices, the following words shall be printed:

“Voter-Nominated and Nonpartisan Offices

Candidates display a party preference (or None) for the information of voters. This is not a party endorsement or approval.”

(b) On the ballot used in a statewide general election in each even-numbered year that is not evenly divisible by the number four, immediately below the instructions to voters, the following words shall be printed:

“Voter-Nominated and Nonpartisan Offices

Candidates display a party preference (or None) for the information of voters. This is not a party endorsement or approval.”

SEC. 23. Section 13208 of the Elections Code is amended to read:

13208. (a) A voting target shall be printed next to the name of each voting option. The voting targets shall be used by the voters to express their choices as provided for in the instruction to voters.

(b) The standard voting target shall be at least 0.12 inches across in either dimension.

(c) As used in this section, “target” means an object designated as the aim for a voter to make a vote selection.

SEC. 24. Section 13209 of the Elections Code is amended to read:

13209. Whenever a foreign translation of the ballot is required by the federal Voting Rights Act of 1965, as amended by Public Law 94-73, to appear on the ballot as well as the English language version, the ballot may be so designed as to place the foreign translation next to the voting target.

SEC. 25. Section 13210 of the Elections Code is amended to read:

13210. (a) In the case of candidates for delegate to national convention, there shall be printed in at least 10-point bold type, the words, “President of the United States” and “Vote for one group only.”

(b) In the case of candidates for President and Vice President, the words “Vote for One Party” shall appear just below the heading “President and Vice President” and shall be printed so as to appear above the voting targets for that office. The heading “President and Vice President” shall be printed in at least 10-point bold type.

(c) In that section of the ballot designated for judicial offices, next to the heading “judicial” shall appear the instruction: “Vote yes or no for each office.”

(d) In the case of candidates for Justice of the Supreme Court and court of appeal, within the rectangle provided for each candidate, and immediately above each candidate’s name, there shall appear the following: “For (designation of judicial office).” There shall be as many of these headings as there are candidates for these judicial offices. No heading shall apply to more than one judicial office. Underneath each heading shall appear the words “Shall (title and name of Justice) be elected to the office for the term provided by law?”

(e) In the case of all other candidates, each group of candidates to be voted on shall be preceded by the designation of the office for which they are running, and the words “vote for one” or “vote for no more than two,” or more, according to the number to be nominated or elected. The designation of the office and the words “vote for” shall be printed in at least 9-point bold type. The designation of the office and the directions for voting shall be separated from the candidates by a light line. There shall be no line between the headings for federal or legislative offices and the designation of the office and the directions for voting.

SEC. 26. Section 13211 of the Elections Code is amended to read:

13211. The names of the candidates shall be printed on the ballot, without indentation, in at least 10-point bold type.

SEC. 27. Section 13211.5 of the Elections Code is amended to read:

13211.5. (a) Each group of names of candidates for a particular office shall be printed in immediate succession to another group of names of candidates for a particular office so as to avoid unnecessary spacing or gaps in the sequence in which each series of groups of names are listed on the ballot.

(b) Spaces may be left on the ballot in order to keep an entire contest together in a single column or page, or to manage the arrangement of contests on the ballot.

(c) When a ballot has multiple pages or cards, an instruction shall be printed to direct the voter to continue to the next page or card.

SEC. 28. Section 13212 of the Elections Code is amended to read:

13212. Except for a voter-nominated office at a general election, under the designation of each office shall be printed as many blank spaces, defined by light lines, as there are candidates to be nominated or elected to the office.

SEC. 29. Section 13213 of the Elections Code is amended to read:

13213. Each group of names of candidates for a particular office shall be separated from the succeeding group. Each series of groups shall be headed by a caption that reads "President of the United States," "President and Vice President," "State," "United States Senator," "United States Representative," "State Senator," "Member of the State Assembly," "County," or "City" or other proper general classification, as the case may be, printed in at least 10-point bold type. Each caption shall be separated from the names of the candidates beneath.

SEC. 30. Section 13214 of the Elections Code is amended to read:

13214. All sides of the columns on the ballot shall be bordered. The binding or stitching of each package of ballots shall be along the top or head of the ballot. If ballots are to be used on a ballot on demand system or another system that prints content onto ballots, ballots are not required to be bound or stitched.

SEC. 31. Section 13216 of the Elections Code is repealed.

SEC. 32. Section 13216 is added to the Elections Code, to read:

13216. A ballot stub may be used for a ballot. The ballots may contain printed and distinguishing marks if secrecy in voting is protected.

SEC. 33. Section 13216.5 of the Elections Code is repealed.

SEC. 34. Section 13233 of the Elections Code is amended to read:

13233. In a municipal election, if the number of candidates for an office is such that all of the names will not fit in one column of reasonable length, a double column may be used, and all of the following provisions shall apply:

(a) The space between the two halves of the double column shall be less than that between the double column and any other columns on the ballot, and the lines separating the columns and the two halves of the double column shall be printed so as to emphasize the fact that the candidates in the double column are running for the same office.

(b) The designation of the office and any other words required to be at the top of the contest shall be printed across the top of the entire double column with no dividing line. The words "Vote for one," "Vote for two," or more, as the case may be, shall be centered over the entire double column and shall be printed below any other words at the top of the double column.

(c) The names of the candidates, including the blank space or spaces necessary to permit the voter to write in the names of persons not printed on the ballot, shall be apportioned as equally as possible between the two columns. The odd space, if any, shall be included in the left-hand column.

(d) The double column shall be used for no more than one office and for no more than one term for any office.

(e) The order of names and blank spaces in the double column shall be the same as would apply to a single column with the left-hand side of the double column taken first.

SEC. 35. Section 13260 of the Elections Code is repealed.

SEC. 36. Section 13261 of the Elections Code is repealed.

SEC. 37. Section 13262 of the Elections Code is repealed.

SEC. 38. Section 13263 of the Elections Code is repealed.

SEC. 39. Section 13264 of the Elections Code is repealed.

SEC. 40. Section 13265 of the Elections Code is repealed.

SEC. 41. Section 13266 of the Elections Code is repealed.

SEC. 42. Section 13267 of the Elections Code is repealed.

SEC. 43. Section 14284 of the Elections Code is repealed.

SEC. 44. Section 14284 is added to the Elections Code, to read:

14284. (a) All ballots shall be marked only with the marking device provided by the elections official or, for vote by mail ballots, recommended by the elections official.

(b) If a ballot cannot be tabulated because of the marking device used, it shall be processed as specified in Section 15210.

SEC. 45. Section 14285 of the Elections Code is repealed.

SEC. 46. Section 14285 is added to the Elections Code, to read:

14285. To vote in a contest where two or more candidates for the same office are to be elected, a voter shall mark the voting targets next to the names of the candidates of the voter's choice, up to the number of candidates to be elected.

SEC. 47. Section 14286 of the Elections Code is amended to read:

14286. When a measure is submitted to the voters, the voter shall place a mark on the ballot in the appropriate space next to the answer the voter desires to give as to that measure. The voter, in marking the ballot, shall use the marking device provided.

SEC. 48. Section 14443 of the Elections Code is amended to read:

14443. If ballots are counted by electronic or electromechanical means, the elections official may provide for early tabulation and announcement of the returns in a manner consistent with the use of the tabulating devices.

SEC. 49. Section 15210 of the Elections Code is amended to read:

15210. In preparing the voted ballots for processing, any ballot that is torn, bent, or otherwise defective shall be corrected so that every vote cast by the voter shall be counted by the automatic tabulating equipment. If necessary, a true duplicate copy of the defective ballot shall be made and substituted therefor, following the intention of the voter insofar as it can be ascertained from the defective ballot. All duplicate ballots shall be clearly labeled as a duplicate and shall bear a serial number that shall be recorded on the damaged or defective ballot.

SEC. 50. Section 15211 of the Elections Code is repealed.

SEC. 51. Section 15360 of the Elections Code is amended to read:

15360. (a) During the official canvass of every election in which a voting system is used, the elections official shall conduct a public manual tally of the ballots tabulated by those devices, including vote by mail ballots, using either of the following methods:

(1) (A) A public manual tally of the ballots canvassed in the semifinal official canvass, including vote by mail ballots but not including provisional ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts is less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

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

(ii) The elections official may, at the elections official's discretion, select additional precincts for the manual tally, which may include vote by mail and provisional ballots.

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

(A) A public manual tally of the ballots canvassed in the semifinal official canvass, not including vote by mail or provisional ballots, cast in 1 percent of the precincts chosen at random by the elections official and conducted pursuant to paragraph (1).

(B) (i) A public manual tally of not less than 1 percent of the vote by mail ballots canvassed in the semifinal official canvass. Batches of vote by mail ballots shall be chosen at random by the elections official.

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

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

(II) The elections official may, at the elections official's discretion, select additional batches for the manual tally, which may include vote by mail and provisional ballots.

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

(c) The elections official shall not randomly choose the initial precincts or select an additional precinct for the manual tally until after the close of the polls on election day.

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

(e) The elections official shall include a report on the results of the 1 percent manual tally in the certification of the official canvass of the vote. This report shall identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved. In resolving a discrepancy involving a vote recorded by electronic or electromechanical vote tabulating devices, the voter verified paper audit trail shall govern if there is a discrepancy between it and the electronic record.

SEC. 52. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.