CALIFORNIA LEGISLATURE—2005-2006 REGULAR SESSION

SENATE BILL No. 1235

Introduced by Senator Bowen

February 06, 2006

An act to amend Section 15360 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL’S DIGEST

SB 1235, as introduced, Bowen. Elections.

Existing law requires the Secretary of State to establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements.

Existing law requires, during the official canvas of every election in which a voting system is used, a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random by the elections official.

This bill would provide that the tallied ballots include the absent voter’s ballots, provisional ballots, and ballots cast at satellite location. The bill would also require the elections official to use either a random number generator or other method specified by the Secretary of State to randomly choose the initial precincts subject to the public manual tally. By increasing the duties of local elections officials, the 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 Local Program: yes

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

SECTION 1. Section 15360 of the Elections Code is amended to read:
15360. During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, including absent voter's ballots, provisional ballots, and ballots cast at satellite locations, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

In addition to the 1 percent count, 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.

Additional precincts for the manual tally may be selected at the discretion of the elections official.

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 subject to the public manual tally.

SEC. 2. 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.
Assembly Floor: Vote Not Relevant
Senate Elections, Reapportionment & Const. Amends.: x-x (xx/xx/xx)
(AYE.; NO.; ABS.)
Vote requirement: 27 (Urgency)
Version Date: 2/14/06

Quick Summary
This measure would authorize any county to hold an all-mail election for the June 6, 2006 primary. It would also mandate that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots, and that the Secretary of State use a random number generator to determine the initial precincts subject to the manually tally.

Analysis
Arguments in Support:
All-Mail Ballot Provision:
A State of Panic?: In order to be in compliance with recent state and federal election mandates and thus avoid post election litigation, some county elections officials believe that the only option for conducting the June primary is through an all-mail election. They argue that with only one election system certified by the Secretary of State (SOS) thus far, their options have been limited. They further argue that even if the SOS certified, relatively soon, all six of the systems that are currently in the process of state certification, they would not have the time and/or the resources to buy and implement a new voting system. It is important to note, however, that an all-mail election would also require additional resources including new staff and extensive training as recently noted by Elaine Ginnold, the acting registrar for Alameda County, and a primary proponent of this measure.

The All-Mail Advantage?: According to proponents, all-mail balloting has the following advantages over traditional polling place elections: 1) It is cost effective; 2) It helps to increase voter participation; 3) It is much easier for elections officials to conduct elections by mail; 4) Voter lists are easier to accurately maintain; and 5) It gives voters a longer opportunity to study the ballot issues and find answers to their questions.

1% Manual Tally Provisions:
The votes on absentee ballots are no less valid or important than the votes cast at the polling place, and the potential for a vote to be inaccurately tabulated on an absentee ballot is just as likely as a vote cast in a traditional polling booth. Therefore, it makes no sense to exclude absentee ballots, provisional ballots and ballots cast at satellite locations from the 1% manual tally. By excluding them from the manual tally, there is no way to verify that the votes cast on them are being recorded accurately. Moreover, in the event that counties are authorized to conduct an all-mail election, this provision would ensure that the manual tally is still conducted in those counties.

Additionally, there have been some reports of counties that have cherry picked the precincts in which they conduct the manual tally. This violates both the spirit and letter of the law requiring the manual tally in 1% of the precincts randomly selected.

**Arguments in Opposition:**

**All-Mail Ballot Provision**

**Ripe for Fraud:** While all-mail balloting is undoubtedly convenient, it is also flawed, and rife with potential hazards. Most troubling, it substantially increases the potential for voter fraud. Polling places are staffed by election workers who help maintain the integrity of each vote. Under an all-mail system, ballots are beyond the supervision of election officials before, during, and immediately after the actual voting process. A 1998 Florida Department of Law Enforcement report on voter fraud states: “The lack of in-person, at-the-polls accountability makes absentee ballots the tool of choice for those inclined to commit voter fraud.”

A faceless all-mail system presents far too many avenues for election tampering and voter fraud. This is especially true in California, which lacks a strict element of voter identification verification (ultimately the best means of ensuring a secure election), as well as a strong system of removing “deadwood” from the voter rolls. As a result, ballots will end up in the wrong hands. Blank ballots mailed to the wrong address or a large residential building can get intercepted. Dishonest people can register and vote multiple times, using either different names or numerous addresses. They could fill out the ballot for recently deceased relatives. Ballots also might be stolen from mail boxes, either before or after they have been voted. Out of the safe and private confines of a voting booth, individuals may be intimidated, coerced, or otherwise influenced (vote buying) to vote a certain way. Ballots left at unofficial drop sites or picked up by campaign workers and other volunteers could be altered or discarded. According to the recent Special Report by the Voter Integrity Project, which takes a critical look at Oregon’s all-mail voting system, Oregon voters reported that ballot boxes at post office locations were just sitting in the open, overflowing with ballots. The report further states that an elections worker would come to empty the box once or twice during the day, but nothing prevented tampering in the meantime.
Unwarranted/Premature Panic: The panic that is the driving force behind this bill is unwarranted and premature. First of all, the Secretary of State sent out a survey to all of the county elections officials as to what the drop dead deadline is for them to know all of the voting system options that will be available to them. The date that was given to the SOS was March 10th, a little over three weeks away. Secondly, there are six voting systems currently in the pipeline undergoing state certification. The SOS has stated that he is confident that the counties will have several voting system options to choose from for conducting the June primary. Thirdly, Pennsylvania Congressman Michael Fitzpatrick said he will introduce legislation to protect local governments from penalties arising from failing to meet the Help America Vote Act (HAVA) deadlines. Fourthly, the SOS has promised to stand with any county that is sued for not meeting the federal and state mandates. Fifthly, California is one of 25 states that have technically missed the HAVA voter accessibility requirement deadline. It seems unlikely that the Federal Department of Justice will sue any California county for violating the HAVA accessibility mandate when half of the nation is struggling to implement this component of HAVA. Finally, to meet this HAVA requirement, each county need only make available one voting machine per precinct to disabled voters. They do not have to purchase and implement all new voting equipment. This makes the task of complying with the HAVA accessibility mandate seem less daunting.

Cost Savings and Increased Voter Turnout?... It’s a Matter of Perspective: Proponents of all-mail balloting often argue that it will reduce the costs of conducting elections and improve voter turnout, but Melody Rose, an Oregon State University professor who has extensively researched Oregon’s vote-by-mail system, says that “Oregon’s vote by mail system has failed to deliver on its chief promise: significantly increase voter turnout.” While the percentages for voter participation in Oregon’s 2000 all-mail elections look impressive and are above the national average, they only take into account those that are registered. And those who register, vote. According to Professor Rose, political scientist measure turnout as the percentage of those eligible to vote. “Using this figure, we capture a more accurate picture of voting participation. Turnout in Oregon looks much like that of states with old-fashion voting booths.”

Professor Rose also states that, “[S]cholars are divided on whether mail-in voting increases turnout. But the most recent research suggests mail-in voting boosts turnout only among those demographic groups likely to vote anyway. Its success hangs largely on how well a state trains its citizens to use the system.”

On the issue of elections savings, Professor Rose states that “as for the often touted savings, we have no evidence [the system] saves money – that largely depends on how costs are defined. While the cost of conducting an election may decrease for elections officials, citizens are forced to cover the cost of
postage and candidates are forced to cover the cost of longer more expensive campaigns as campaigns must advertise sooner and sustain the advertising." Additionally, in a recent article regarding Alameda County's push for an all-mail election, political science professor Paul Gronke at Oregon's Reed College, a leading authority on all-mail and early voting systems, says the notion that mail elections boost turnout is a "myth" fostered by elections officials who like those elections for other reasons. "I think intuitively it feels right for people: One of the barriers to voting is the inconvenience of voting, and so, when you make it easier, you're supposedly ping that barrier," he said. But multiple recent studies have failed to find evidence that all-mail elections trigger more voter participation, he said.

**Increasing the Cost of Campaigns, Altering Campaign Practices... the Creation of Yet Another Cottage Industry:** Experts argue that mail-in elections drive up the cost of campaigns by requiring candidates to alter the way they campaign. They have to begin advertising earlier and sustain it longer, and they have hire expensive political consultant from a cottage industry of political operatives well versed in the art of running an campaign in an election environment of mail balloting. This means that new candidates and incumbents running for reelection have to raise more money to run for office.

**Encouraging an Uninformed Vote:** Mail voting encourages a voter to vote early before having studied all the issues and facts about the candidates. Further more, some facts about a candidate are not made public until the final days of an election. These facts might change the voters mind about the candidate either negatively or positively. If voters have already sent in their ballots they will not be able to change their vote.

**Devaluing the Privilege to Vote:** As noted in the recent Special Report cited above, all-mail voting, by prioritizing convenience above all, cheapens the voting process, fails to remind us of our civic duty, and could further alienate us from one another. The report further notes that Election Day in the United States should be a time when communities congregate at the polls and visit with neighbors bringing real political energy to the polls and facilitating personal contact. All-mail balloting discourages this from happening.

**Delayed Elections Results:** Mail ballots are accepted until the close of the polls on Election Day. As such, voters can wait until the very last minute to turn in their mail ballots. It takes longer to process a mail ballot than it does to process and tabulate regular ballots. This means that in an all-mail elections we will have to wait even longer for elections results as the mail ballots dropped off on Election Day are processed and tabulated. This could be a substantial amount of time especially if there is a close race in the election. In the era of fast food, fast internet and instant gratification, having to wait for election results will not sit well with the public, and may call into question the integrity of the results.
1% Manual Tally Provisions:
Too Burdensome: This provision would be too burdensome and time consuming for elections officials.

Other Issues:
The Big Picture: The bill appears to be part of an ongoing effort to force all Californians to vote by mail. An Oregon style all-mail election has long been a public policy goal for many of the election officials advocating on behalf of this measure. In their view, it would save money and time in conducting elections. While past efforts to move California towards all-mail elections have come up well short, what has been described as a “perfect storm” is brewing and is now being exploited to force policy makers in California into seriously considering allowing counties to conduct all-mail elections. This “perfect storm” is a result of the convergence of several factors including the HAVA mandate requiring that at least one voting machine per precinct be accessible to voters with disabilities, a state mandate requiring a paper trail for all direct electronic vote recording devices (DRE), the lack of state certified voting systems that meet these federal and state mandates, the rapidly approaching June primary, and that fact that some county elections officials failed to do anything about purchasing voting equipment that satisfies these mandates with the likely hope in mind that public policy makers would approve legislation allowing their counties to conduct all-mail elections. Rather than base a major shift in the way California counties administer elections on panic and urgency, which is almost never a good way to make policy, policy makers should consider the bigger picture and the long-term impact of such a shift.

Bottom line: Fair elections are central to every true democracy. Even the appearance of unreliability can shake voters’ trust, as evidenced by the outcry over confusing ballots and disputed vote-counting methods in Florida following the 2000 Presidential Election. Those events were a driving force behind HAVA and the move to electronic voting in the first place. Now, as California moves closer to modernizing its voting equipment, this is not the time to embrace a vote-by-mail system that is wholly paper-based. Certainly, barrel down the road to all-mail elections would be a knee-jerk overreaction to what can best be characterized at this point as a concern, not a crisis.

Digest
This Measure:
Authorizes, until January 1, 2007, any county in this state to conduct the June 6, 2006, direct primary election entirely by mail as specified.

Provides that the tallied ballots include the absent voter’s ballots, provisional ballots, and ballots cast at satellite location, and would require the elections official to use either a random number generator or other method specified by
the Secretary of State to randomly choose the initial precincts subject to the public manual tally

**Background**

**Existing Law:**
Authorizes a local, special, or consolidated election to be conducted wholly by mail if the governing body of the local agency authorizes the use of all mailed ballots for the election, the election is held on an established mailed ballot election date, and the election meets certain other specified requirements.

Requires the Secretary of State to establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements.

Requires elections officials, during the official canvass of the vote, to conduct a public manual tally of the ballot in 1% of the precincts in the election chosen at random by the elections official.

**All-Mail Elections in California and Other States:** All-mail ballot elections are elections where every voter in a given jurisdiction is provided with an absentee ballot. They are relatively new on our electoral landscape. This method of voting was first tried in our nation in a Monterey County flood control district election in 1977. Oregon is the only state that conducts all of its statewide elections on an all-mail basis. Other states, including Colorado, Florida, Kansas, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, and Washington, allow mail-in voting at one level or another, but may have restrictions on whether mail ballots can be used only for ballot questions, non-partisan races, etc. Two California counties—Alpine and Sierra—conduct all-mail ballot elections for all local, state, and federal elections because of a provision in state law that allows counties with precincts that have fewer than 250 voters in them to turn them into all-mail ballot precincts.

**Prior Legislation:**
AB 2325 (McPherson, 1996) would have permitted Monterey County to conduct vote-by-mail elections. It died on Assembly Inactive.

SB 2203 (McPherson, 1998) was identical to AB 2325. Governor Wilson vetoed that measure stating: “Although Monterey County has taken aggressive steps to remove duplicate and other deadwood registrations from their voter file, voter fraud continues to exist. Moreover, ‘Motor Voter’ has added approximately 3.2 million voters on voter files statewide and will continue to add voters to those files. Until a system is implemented that can identify each voter through a ‘unique identifier’, the voter rolls will not be secure and reliable. Until they are, alternative ways of voting should not be considered.”
(AYE: McPherson; NO: All other current Republican Senators except, ABS: Battin)

SB 682 (McPherson, 1999) was identical to SB 2203. It was held in Senate E.&R.

SB 1135 (Murray, 1999) would have allowed any jurisdiction in the state to conduct all-mail ballot elections. It was vetoed by Governor Davis who cited fraud concerns as reason for his veto. (NO: All current Republican Senators except, ABS: McPherson, Morrow.)

AB 319 (Salinas), Chapter 385, Statutes of 2001 created a pilot project for mailed ballot elections that allows jurisdictions within Monterey County to conduct elections wholly by mail until December 31, 2005 (Senate Floor Vote: NO: All Republicans; except, AYE: McPherson)

AB 867 (Liu, 2005), authorizes seven counties to participate in a vote-by-mail pilot project in which those counties would conduct all elections held in the county entirely by mail. It died on Assembly Suspense.

Related Legislation:
AB 591 (Salinas) would extend the sunset date on an all-mail ballot "pilot program" for Monterey County from 12/31/2005 to 12/31/2008. It is currently in Senate E.R.& C.A. (Assembly Republican Floor Vote: NO: All Republicans)

Support & Opposition Received
Support: According to the Majority Analysis, the following Counties: Alameda, Butte, El Dorado, Modoc, Plumas, Santa Cruz, Solano, Common Cause, Regional Council of Rural Counties.

Oppose: none

Senate Republican Office of Policy / Cory Botts
**DESCRIPTION**

**All-Mail Ballot Election**

Existing law permits an election to be conducted wholly by mail if the governing body authorizes the use of mailed ballots for the election, the election doesn’t occur on the same date as a statewide direct primary or statewide general election, and the election is one of the following:

- An election in which fewer than 1,000 registered voters are eligible to participate;

- A maximum property tax rate election;

- An election in a district with 5,000 or fewer registered voters that is restricted to the imposition of special taxes, expenditure limitation overrides, or both;

- An election on the issuance of a general obligation water bond;

- An election in one of four specifically enumerated water districts; or

- An election or assessment ballot proceeding required or authorized by the state constitution.

Existing law authorizes a school district, special district, or city with a population of 100,000 or less to conduct an all-mail ballot election to fill a vacancy in a special election.

Existing law provides that whenever there are 250 or fewer people registered to vote in any precinct, the elections official may deem the precinct as an all-mail ballot precinct and furnish each voter with an absentee ballot. However, no precinct may be divided solely in order to create an all-mail precinct. Two counties – Alpine and Sierra – conduct all-mail ballot elections for all local, state, and federal elections pursuant to this provision. Furthermore, AB 319 (Salinas), Chapter 385, Statutes of 2001, created a pilot project that permitted jurisdictions within Monterey County to conduct elections wholly by mail until December 31,
2005. AB 319 also required Monterey County to report to the Legislature and the SOS regarding the success of the election. Two elections were conducted in Monterey County pursuant to that legislation.

This bill, an urgency measure, would permit any county in California to conduct the June 6, 2006, direct primary election wholly by mailed ballots if the following conditions are met:

- Approval from the county board of supervisors.
- Each registered voter in the county is notified that voting will be by mail ballot only.
- The county provides for in-person voting opportunities at its central office and, if possible, in locations throughout the county on election day.
- At least one drop off site is available for returned mail ballots in each city and in the unincorporated area of the county on election day. The locations of the election day drop off sites must be published in the sample ballot or in a newspaper of general circulation in the county at least 10 days before the election.

One Percent Manual Tally

Existing law requires that during the official canvas of every election in which a voting system is used, the elections official must conduct a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random. For each race not included in that initial group of precincts, one additional precinct must be manually tallied but only for the race not previously counted. Additional precincts may be selected at the discretion of the elections official for the manual tally. "Voting system" is defined as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

This bill would clarify for all elections, not just the June 6, 2006 primary election, that the manually tallied ballots include the absent voter's ballots, provisional ballots, and ballots cast at satellite locations for the randomly chosen precincts.

This bill would also, for all elections, not just the June 6, 2006 primary election, require elections officials to use either a random number generator or other method specified in regulation by the Secretary of State to randomly choose the initial precincts subject to the public manual tally.
BACKGROUND

All Mail, Not All Male. All-mail ballot elections are elections where every voter in a given jurisdiction is provided with an absentee ballot. Oregon is the only state that conducts all of its statewide elections on an all-mail basis, though a number of other jurisdictions are exploring this option. In Washington State, 33 of the state’s 39 counties have adopted an all-mail system. Other states, including California, permit all mail ballot elections only under specific conditions – usually for local or special elections.

The Unharmonic Convergence of HAVA and AVVPATs. The federal Help America Vote Act (HAVA) requires every polling place used in an election for federal office to include at least one voting machine that’s accessible for people who are disabled, including blind and visually impaired voters, in a manner that provides the same opportunity for access, participation, privacy and independence as for other voters.

Additionally, any voting system that falls under California’s statutory definition of a Direct Recording Electronic (DRE) device must be equipped with an Accessible Voter Verified Paper Audit Trail (AVVPAT). The purpose of the AVVPAT is to allow voters to verify their votes were correctly recorded. Pursuant to SB 370 (Bowen), Chapter 724 of 2005, the AVVPATs must also be used for voter-requested recounts and the one percent manual audit of the results following each election.

The convergence of these federal and state requirements has left California counties with limited options for 2006. Prior to February 17, 2006, the only voting system certified for immediate use in California that complies with HAVA’s access requirements for disabled voters is the ES&S AutoMark. The AutoMark is not a DRE – it is an electronic device that uses a touch screen or audio interface to mark a paper ballot for the voter. The paper ballot is then fed into an optical scan tabulating device, along with the paper ballots that were manually marked by non-disabled voters. The AutoMark was used countywide in Sacramento and on a limited basis in Contra Costa County during the November 2005 statewide Special Election.

Last Friday, February 17, 2006, the Secretary of State announced certification for use of the Diebold TSx DRE voting system. Thirteen or more counties have indicated that they would use this system if it was certified in time for the primary election.

Two DREs equipped with an AVVPAT, the Sequoia AVC Edge and the Hart InterCivic eState, are awaiting California certification along with two other HAVA compliant systems that produce a paper ballot, the Populex Slate and the InkyVote PBC. The Secretary of State is scheduled to conduct a public hearing on these systems on March 1 as required by law prior to approval for use.
The intent of this bill is to give counties the option of conducting the June primary election as all-mail in order to more easily comply with the HAVA and AVVPAT requirements. Counties believe providing a relatively small number of HAVA-compliant voting systems for use in a central office and other locations will be much easier to accomplish than providing one in every polling place given the current status of available systems and pending certifications.

**Random Acts of Inclusivity.** The provision of this bill regarding the 1% manual tally stems from anecdotal evidence that some counties routinely exclude absent voter and provisional ballots from the process and may not be choosing the relevant precincts in a truly random manner. Over 40% of the votes cast in the last statewide election were absent voter ballots – a number that has steadily risen in recent years. Excluding these ballots from the manual tally severely lessens the value of this post-election audit.

**COMMENTS**

1. **Who Should Pay For That Stamp?** SB 117 (Murray) requires elections officials to provide voters who voluntarily ask for an absentee ballot with a postage-paid envelope for returning their voted ballots in federal elections. SB 117 was approved by this committee and is pending on the Assembly Appropriations Committee’s suspense file. Given that this measure would allow counties to effectively require people to vote by absentee ballot, the author and the committee may wish to consider requiring any county that exercises the all-mail ballot option provided for in this bill to provide voters with a postage-paid way to return their ballots.

2. **Letting Voters Know About The Change.** This bill requires counties that want to exercise the all-mail ballot option provided for in this bill to notify registered voters about the change prior to the election. However, the measure doesn’t specify how those notifications must occur. The author and committee may wish to consider requiring a more comprehensive voter education plan, especially in light of the fact that the June 6 primary election is just over three months away.

3. **Voting In-Person On Election Day.** For people who like to vote in-person on election day, this bill requires counties to provide voters with that opportunity at their central offices and, if possible, in locations throughout the county on election day. The author and committee may wish to consider whether providing perhaps as few as one location where a person could vote in-person is sufficient and whether it would be better to base the number of in-person voting sites on the number of registered voters who aren’t permanent absentee voters in a given area. The author and committee may also wish to consider clarifying the definition of “accessible voting.”
4. **Election Day Drop Off.** This bill requires that at least one drop off site is available for returned absentee ballots in each city and in the unincorporated area of the county on election day. The locations of the election day drop off sites must be published in the sample ballot or in a newspaper of general circulation in the county at least 10 days before the election. The author and committee may wish to consider clarifying the definition of “drop off site” and require the locations to be published in the sample ballot and the newspaper.

Furthermore, the author and the committee may wish to consider whether one “drop off site” in each city and in the unincorporated area of the county is sufficient. For example, in Oregon, the Secretary of State designated 24 drop-off sites in Multnomah County (home to Portland and 429,000 registered voters) for the 2004 general election. The author and committee may wish to consider amending this bill to base the number of drop off sites according to other specified criteria.

5. **Related Legislation** AB 867 (Liu), permits seven counties to participate in a pilot project in which those counties could conduct any election as all-mail prior to 2011. AB 867 was held in the Assembly Appropriations Committee. SB 1235 (Bowen), which is pending in this committee, contains the same language that's in this bill regarding the 1% manual tally of ballots and how elections officials are to randomly select precincts for audit.

**PRIOR ACTION**

Assembly Education Committee 8-3*
Assembly Floor 43-31*

* Prior version of the bill. The recent amendments completely rewrote the bill.

**POSITIONS**

**Sponsor:** Alameda County

**Support:** California Common Cause
California State Association of Counties
Regional Council of Rural Counties

**Oppose:** None received
One Percent Manual Tally Uniform Procedures

Sponsored by Secretary of State, Bruce McPherson

SUMMARY
The Secretary of State is sponsoring legislation that will set forth uniform procedures for all counties to follow when conducting the public one percent manual recount. These procedures require a county election official to provide public notice as to when and where the random drawing of precincts will be held. Additionally, the random selection will be open to the public. This proposal also requires a county election official to include all ballots cast in a precinct in the one percent manual tally. This means that a county will need to include any ballots cast at the polls, via absentee ballot, provisional voters, and any ballots cast on direct recording electronic (DRE) voting machines.

BACKGROUND
Current law requires elections officials to conduct a public manual tally of one percent of the votes cast in each election. The elections official randomly selects one percent of the precincts in which votes were cast in order to conduct the tally. Additionally, legislation that became effective January 1, 2006, requires an election official using a DRE voting system to conduct the tally using the state required voter verified paper audit trail.

While current law requires an election official to conduct a one percent manual tally, the Elections Code does not set forth guidelines on how this public tally should be conducted. Given the changing landscape of voting machines and elections administration, it is appropriate for the Legislature to provide parameters on how to conduct the manual tally.
PROPOSAL FOR LEGISLATION

1% MANUAL TALLY PROCEDURE

Repeal and add Section 15360

15360. Manual tally when using a voting system

During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random by the election official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the election official.

In addition to the 1 percent count, 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.

Additional precincts for the manual tally may be selected at the discretion of the elections official.

15360. One Percent Manual Tally

The election official shall, for each election conducted using a voting system that tabulates ballots by computer, machine, or any method other than a hand count, conduct a manual tally of ballots cast in that election according to all of the following:

(a) The manual tally shall be a public process. The elections official shall provide public notice of the time and place of the manual tally, as well as the time and place of the selection of the precincts to be tallied, a minimum of 5 days prior to conducting the manual tally and precinct selection process.

(b) The election official shall randomly select precincts to be included in the manual tally, in such a manner that each precinct in the election has an equal probability of being selected.

(c) The manual tally shall include ballots cast in 1% of the total number of voting precincts in the election. If 1% of the precincts is less than one whole precinct, the manual tally shall be conducted in one precinct. The elections official may select additional precincts to include in the manual tally.

(d) In addition to the 1% manual tally the elections official shall, for each contest that was voted on at the election but was not included on ballots in the initial selection
of voting precincts, randomly select and tally one additional precinct. Only those
contests not previously tallied shall be included in this additional process.

(e) The manual tally shall include all ballots cast by voters in each of the precincts
selected, including absentee, provisional, and special absentee ballots.

(f) If any ballots in a precinct selected for the manual tally were recorded by means
of a punchcard voting system or by electronic of electromechanical vote
tabulating devices, the voter verified paper audit trail shall be considered the
official paper audit record for purposes of the manual tally required by this
section.

(g) The elections official shall include a report on the results of the 1% 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 any
discrepancy involving a vote recorded by means of a punchcard voting system or
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.

(h) The Secretary of State shall establish uniform procedures for the manual tally
required by this section and these procedures shall be included in procedures
adopted for the use of each voting system certified by the Secretary of State.

NOTE: Other sections of the Elections Code that refer to the 1% manual tally include:

- 336.5 (Definition of 1% Manual Tally)
- 335.5 (Definition of Official Canvass)
- 15627 (Selection of Recount Method)
- 19253 (AVVPAT is the official record in a recount).

Leg/onepercent-016

CALIFORNIA LEGISLATURE— 2005-2006 REGULAR SESSION

ASSEMBLY BILL No. 2769

Introduced by Assembly Member Benoit

February 24, 2006

An act to repeal and add Section 15360 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL’S DIGEST

AB 2769, as introduced, Benoit. Elections: 1% manual tally.

Existing law requires the Secretary of State to study and adopt regulations governing the use of voting machines, voting devices, and vote tabulating devices. Existing law sets forth the procedures for the official canvass of every election in which a voting system is used and requires the elections official to conduct a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random.

This bill would define the procedure for conducting a 1% manual tally, as specified, by the elections official, and would direct the Secretary of State to establish uniform procedures. By increasing the duties of local elections officials, the 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 Local Program: yes

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

SECTION 1. Section 15360 of the Elections Code is repealed.

15360. During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

In addition to the 1 percent count, 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.
Additional precincts for the manual tally may be selected at the discretion of the elections official.

SEC. 2. Section 15360 is added to the Elections Code, to read:

15360. For each election conducted using a voting system that tabulates ballots by computer, machine, or any method other than a hand count, the official conducting the election shall conduct a manual tally of ballots cast in that election according to all of the following:

(a) The manual tally shall be a public process, with the official conducting the election providing at least five days public notice of the time and place of the manual tally and of the time and place of the selection of the precincts to be tallied prior to conducting the tally and selection.

(b) The official conducting the election shall select randomly precincts to be included in the manual tally, in such a manner that each precinct has an equal probability of being selected.

(c) The manual tally shall include ballots cast in 1 percent of the total number of voting precincts in the selection. If 1 percent of the precincts is less than one whole precinct, the manual tally shall be conducted in one precinct. The official conducting the election may select additional precincts to be included in the manual tally.

(d) In addition to the 1 percent manual tally, the official conducting the election shall randomly select and tally one additional precinct for each contest that was voted on at the election but was not included on ballots in the initial selection of voting precincts. Only those contests not previously tallied shall be included in this additional process.

(e) The manual tally shall include all ballots cast by voters in each of the precincts selected, including absentee, provisional, and special absentee ballots.

(f) If any ballots in a precinct selected for the manual tally were recorded by means of a punchcard voting system or by electronic or electromechanical vote tabulating devices, the voter verified audit trail shall be considered the official paper audit record for purposes of the manual tally required by this section.

(g) The official conducting the election 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 any discrepancy involving a vote recorded by means of a punchcard voting system or 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.

(h) The Secretary of State shall establish uniform procedures for the manual tally required by this section, and these procedures shall be included in the procedures adopted for the use of each voting system certified by the Secretary of State.

SEC. 3. 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.
Policy Question

Summary

1. Provides that, for elections tabulated by any method other than a hand count, the manual tally shall be a public process, with at least five days public notice of the time and place of the tally and of the time and place of the selection of the precincts to be tallied.

2. Requires elections officials to randomly select precincts to be included in the manual tally.

3. Requires the manual tally to include ballots cast in 1 percent of the voting precincts. If 1 percent of the precincts is less than one whole precinct, the manual tally shall be conducted in one precinct. The elections official may select additional precincts to be included in the manual tally.

4. Requires elections officials, in addition to the 1 percent manual tally, to randomly select and tally one additional precinct for each contest that was voted on but not included on ballots in the initial selection of voting precincts. Only those contests not previously tallied shall be included in this additional process.

5. Requires the manual tally to include all ballots cast by voters in each of the precincts selected, including absentee, provisional, and special absentee ballots.

6. Provides that, if any ballots selected for the manual tally were recorded by a punchcard or electronic or electromechanical vote tabulating devices, the voter verified audit trail shall be considered the official paper audit record for purposes of the manual tally.

7. Requires elections officials to include a report on the results of the 1 percent manual tally in the certification of the official canvass of the vote. This report must identify any discrepancies between the machine count and the manual tally and a description of how each of these discrepancies was resolved.

8. Provides that, in any discrepancy between votes counted by punchcard or by electronic or electromechanical vote tabulating devices and the voter verified paper audit trail, the paper audit trail shall govern.

9. Requires the Secretary of State to establish uniform procedures for the manual tally, and to include them in the procedures adopted for the use of each voting system certified by the Secretary of State.
1. **Paper Trails**: Beginning in 2006, all direct recording electronic (DRE) voting systems must provide a paper record copy of each electronic ballot. Also, each elections official must conduct a manual tally of the ballots cast in one percent or more of the precincts chosen at random, to check the accuracy of the electronic or mechanical vote tabulation systems.

2. This bill provides that, for DRE voting systems, the electronic count shall be considered the official record of the vote, except that the paper record copy must be used for conducting the one percent manual tally and any recount.

**Policy Consultant**: Daryl Thomas 4/5/06

**Fiscal Consultant**: 
SB 1235 (BOWEN)

Last year, we unanimously passed and the Governor signed SB 370 to require county elections officials to use the touch screen paper audit trails to conduct the post-election 1% percent manual recount.

This bill is the next logical step in our effort to ensure that our votes are being counted fairly and accurately.

SB 1235 clarifies that the 1% manual recount of automated election results must not only include votes cast at the polls, but also absentee ballots, provisional ballots, and ballots cast at any early voting sites.

The bill also guarantees that the precincts subject to this audit are chosen in a truly random manner, either by using a “random number generator” or through regulations adopted by the Secretary of State.

Some counties have been accused of routinely excluding absentee and provisional ballots from this process and “cherry picking” precincts in order to avoid discrepancies.

Over 40% of the votes cast in the last statewide election were from absent voter balls – a number that has steadily risen in recent years along with the use of provisional ballots.

Excluding these ballots from the manual tally undercuts the value and the accuracy of the audit.

SB 1235 is a common sense measure that has no opposition and I therefore respectfully ask for your AYE vote.

###
May 24, 2006

The Honorable Debra Bowen
Chair, Senate Elections, Reapportionment and Constitutional Amendments
State Capitol, Room 4040
Sacramento, CA 95814

RE: SB 1235 (Bowen) 1% Manual Tally – OPPOSE, UNLESS AMENDED

Dear Senator Bowen:

After reviewing Senate Bill 1235, which amends the current procedure for the 1% manual tally to specifically include absentee, provisional, and early vote ballots, and to specify a procedure for selection of precincts to be included in the 1% manual tally, I am opposed to this measure unless it is amended.

The Secretary of State respectfully proposes some additional clarification to the proposed measure as follows:

- This bill requires the Secretary of State to adopt regulations concerning the methods by which precincts shall be randomly selected for inclusion in the manual tally. It may be appropriate to specify that these regulations require that the selection process be a public process that is verifiably random. This amendment will result in greater uniformity and transparency in the manual tally process.

- For those counties that do not sort absentee ballots back to the precinct of the voter, it may be possible to specify a random sampling procedure that avoids potential costs while still providing the required check on the accuracy of the count of absentee ballots. It may be appropriate to amend this bill to specifically permit the Secretary of State to include such an alternate provision in the regulations that would be required by this statute.

- Further, it may also be appropriate for the elections official to include in the election certification information regarding the accuracy of the 1% manual tally, any difference found between the manual tally and the computer count, and how each of these differences were resolved.

- And, finally, it may also be appropriate to expand the scope of the regulations required to be adopted by the Secretary of State to address the entire process of the 1% manual tally instead of the current requirement that only addresses the process by which precincts are selected.
Additionally, I am sponsoring Assembly Bill 2769 (Benoit), which addresses the concerns stated herein.

If you or your staff have any further questions please contact me or my Assistant Secretary of State for Legislative and Constituent Affairs, Theresa Taylor Carroll at (916) 653-6774.

Sincerely,

BRUCE McPHERSON
Secretary of State

cc: Members, Senate Appropriations Committee
June 13, 2006

Senator Debra Bowen
State Capitol
Room 4040
Sacramento, CA 95814

Dear Senator Bowen:

The Election Legislative Committee of the California Association of Clerks and Election Officials (CACEO) has reviewed **SB 1235** as introduced February 6, 2006, defining the procedures for conducting the 1% manual tally. The Committee has voted to Support this bill if amended.

The purpose of the 1% manual tally is to check the accuracy of the tabulation of the vote counting equipment at the precinct level. The absentee ballots and the provisional ballots are not included in the Election Day precinct count so including these ballots does not verify the accuracy of the voting equipment used at the precincts.

Provisional ballots cannot be processed until all the voter's history is updated in the system, which takes up to ten days to complete. Provisional ballots are then verified for valid status and, if approved, are added to the precinct tally counts through the Central Count machines. They are not tabulated with precinct specific equipment.

Absentee ballots are tabulated on central count equipment and therefore are not included in the polling place total. Further, absentee ballots continue to be processed through the canvass period so that those ballots returned to the office on Election Day either through the mail or through polling place delivery are included in the final count. As with provisional ballots, it may take over two weeks to complete the processing of these ballots before a final tally is complete. The start of any 1% manual tally of these ballots will be delayed and force the registrars to be out of compliance with state law on the 28 day canvass period.

Many counties also utilize early voting central, or satellite, voting centers in which the voting units contain all the precinct styles for that election. Performing the 1% manual tally on these units will require that the votes be separated by precinct for each unit and will not accomplish the verification of the voting unit.
The CACEO supports the concept of your bill to include the Absentee and Provisional ballot in the 1% manual recount. However, it needs to be amended to provide that the SOS amend the voting system use procedures to address the inclusion of absentee ballots and provisional ballots in the manual tally of votes cast for each election in order to verify the accuracy of the votes tabulated by electronic or mechanical voting systems. This would better speak to the issue of verifying vote tabulations within the time restraints in current law.

The CACEO Election Legislative Committee would like to work with you and your staff to meet the goal of improving the audit process.

Should you or your staff have any questions, please do not hesitate to call me at the Sacramento County Registrar of Voters office, 916-875-6558.

Very truly yours,

[Signature]

Jill LaVine, Co-Chair
Election Legislative Committee

California Association of Clerks and Election Officials
c: Assembly Member Tom Umberg, Chair Assembly Elections and Reapportionment; Deborah Selzer, Co-Chair CACEO Elections Legislative Committee
Date of Hearing:  June 27, 2006

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Tom Umberg, Chair
SB 1235 (Bowen) – As Introduced:  February 6, 2006

SENATE VOTE:  38-0

SUBJECT:  Elections.

SUMMARY:  Expands the provisions for conducting the one percent manual tally, as required by law, for elections conducted using voting systems.  Specifically, this bill requires elections officials to conduct a manual tally of ballots cast in any election where any method other than a hand count is used to tabulate election results according to the following:

1) Requires the manual tally of one percent of all precincts to include absent voter’s ballots, provisional ballots, and ballots cast at satellite locations.

2) Requires the elections official to use either a random number generator or other method specified by the Secretary of State (SOS) to select the precincts where the manual tally will be conducted.

3) Requires the SOS to adopt regulations governing the random selection of the initial precincts subject to the manual tally.

EXISTING LAW

1) Requires that during the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in one percent of the precincts chosen at random by the elections official.  If one 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.

2) Provides that in addition to the one percent count, 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.

3) Provides that additional precincts for the manual tally may be selected at the discretion of the elections official.

4) Provides that the voter verified paper audit trail (VVPAT) shall be considered the official paper audit record, shall be used for the required one percent manual tally, and shall govern if there is any difference between it and the electronic record during a one percent manual tally or full recount.

FISCAL EFFECT:  State-mandated local program; contains reimbursement direction.  According to the Senate Appropriations Committee analysis, "SB 1235 could result in hundreds of thousands of dollars in reimbursable costs to county elections officials.  Although counties were not able to provide definitive cost estimates, they have indicated that the extra sorting would be
too overwhelming to be done manually and would most likely require new equipment, or programming changes to existing equipment."

COMMENTS:

1) **Purpose of the Bill:** According to the author, "SB 1325 clarifies that the 1% manual recount of automated election results must not only include votes cast at the polls, but also absentee ballots, provisional ballots, and ballots cast at any early voting sites. This bill also guarantees that the precincts subject to this audit are chosen in a truly random manner, either by using a 'random number generator' or through regulations adopted by the Secretary of State."

2) **What's Being Tallied?** Counties are already required to conduct a one percent tally of all ballots tabulated using an electronic voting system. Some counties aren't including ballots cast in early voting locations and absentee ballots in their tallies. The purpose of the one percent tally is to provide a check against the count generated by the voting machines. Failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

3) **Elections Officials Concerns:** The Election Legislative Committee of the California Association of Clerks and Election Officials (CACEO) has these concerns, "The absentee ballots and the provisional ballots are not included in the Election Day precinct count" they are also "not tabulated with precinct specific equipment." Instead "absentee ballots are tabulated on central count equipment" and "are not included in the polling place total." The time it takes to process absentee and provisional ballots could delay the start of the one percent tally by up to two weeks and "force the registrars to be out of compliance with state law on the 28 day canvass period."

   CACEO requests the bill to be amended to require the SOS to amend the voting system use procedures to address the inclusion of absentee ballots and provisional ballots in the manual tally of votes cast for each election in order to verify the accuracy of the votes tabulated by electronic or mechanical voting systems.

4) **Similar Legislation:** AB 2769 (Benoit) of 2006, requires uniform procedures to be established for each voting system for the one percent manual tally. AB 2769 is pending in Senate Elections, Reapportionment and Constitutional Amendments Committee.

   SB 370 (Bowen), Chapter 724, Statutes of 2005, enacted standards for the use of a VVPAT, including requiring the VVPAT of ballots cast on an electronic voting machine to be used to conduct the one percent manual tally for the official canvass.
REGISTERED SUPPORT / OPPOSITION:

Support
None on file.

Opposition
Secretary of State Bruce McPherson

Analysis Prepared by: Lori Barber / E. & R. / (916) 319-2094
AMENDMENTS TO SENATE BILL NO. 1235

Amendment 1
On page 2, line 3, after "15360." insert:

(a)

Amendment 2
On page 2, lines 6 and 7, strike out "provisional ballots, and ballots cast at satellite locations,"

Amendment 3
On page 2, between lines 17 and 18, insert:

(b) If absentee ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.

Amendment 4
On page 2, line 18, strike out "The" and insert:

(c) The

Amendment 5
On page 2, line 21, after "precincts" insert:

or direct recording electronic voting machines

- 0 -
THIRD READING

Bill No: SB 1235
Author: Bowen (D)
Amended: As introduced 8/21/06
Vote: 21

SENATE ELECTIONS, REAP. & CONST. AMEND. COM: 4-0, 4/19/06
AYES: Bowen, Battin, Murray, Romero
NO VOTE RECORDED: Poochigan

SENATE APPROPRIATIONS COMMITTEE: 11-0, 5/25/06
AYES: Murray, Aanestad, Alquist, Ashburn, Battin, Dutton, Escutia,
Florez, Poochigan, Romero, Torlakson
NO VOTE RECORDED: Alarcon, Ortiz

SUBJECT: Elections

SOURCE: Author

DIGEST: This bill clarifies that the manually tallied ballots include the absent voter’s ballots, provisional ballots, and ballots cast at satellite locations for the randomly chosen precincts. This bill also requires elections officials to use either a random number generator or other method specified in regulation by the Secretary of State to randomly choose the initial precincts subject to the public manual tally. poj a 5-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and would require the elections official to include a specified report on the results of the public manual conduct tally. For each race included in one percent of the precincts chosen at random. For each race not included in that initial group of precincts, one additional precinct must be manually tallied, but only for the race not previously counted. Additional precincts may be

CONTINUED
selected at the discretion of the elections official for the manual tally. “Voting system” is defined as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

Existing law specifically states that the one percent manual tally is conducted during the official canvass to verify the accuracy of the automated count.

Background

This bill stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the one percent manual tally process and may not be choosing the relevant precincts in a truly “random” manner. Over 40 percent of the votes cast in the last statewide election were from absent voter ballots, a number that has steadily risen in recent years. The use of provisional ballots has also increased in recent years. Excluding these ballots from the manual tally severely lessens the value and the accuracy of this post-election audit.

A random number generator is a device designed to generate a sequence of numbers that does not have any discernable pattern. A random number generator can be as sophisticated as a computer program or as simple as rolling dice. Software and websites that will randomly generate numbers can be accessed free on the Internet and are also available for purchase. This bill requires elections officials to use either a random number generator or other method specified in regulation by the Secretary of State to randomly choose the initial precincts subject to the manual tally.

The One Percent Solution

The requirement to audit one percent of the precincts has been law in California for over 40 years. Last year, New York enacted a requirement that the results from three percent of the voting machines within the jurisdiction of each board of elections be manually audited. Following the New York model and moving from a one percent to a three percent audit requirement here in California, which this bill doesn't propose to do, would obviously increase the value of the audit, but it would also likely increase the costs for county election elections officials.
Related legislation

SB 370 (Bowen), Chapter 724, Statutes of 2005, required the accessible voter-verified paper audit trail (AVVPAT) from direct recording electronic systems to be used for the one percent manual count.

SB 1760 (Bowen) precludes the Secretary of State from certifying any voting system unless the paper used for the AVVPAT can last for 22 months (the same requirement imposed on absentee ballots and ballots cast at the polls).

AB 707 (Hancock), which would have permitted counties to conduct the June 6, 2006 Primary Election as an all mail election also contains a provision identical to this bill. AB 707 was scheduled to be heard in this committee February 22, 2006, but was withdrawn by the author.

AB 2769 (Benoit), which is similar to this bill, is pending in the Assembly Appropriations Committee.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

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*Reimbursable local mandate

**SUPPORT:** (Verified 5/25/06)

California Election Protection Network

**OPPOSITION:** (Verified 5/25/06)

Secretary of State (unless amended)

**ARGUMENTS IN SUPPORT:** The California Election Protection Network supports this bill to do what they thought California’s Election Code 15360 was supposed to provide, an audit that is both genuinely random
and inclusive of all voting methods. However, because of the way Election Code 15360 has been interpreted by many counties over recent years they understand the necessity of this bill to clarify the Code so that there can no longer be any misunderstanding.

ARGUMENTS IN OPPOSITION: The Secretary of State would like clarifying amendments that require the selection process to be a public process that is verifiably random to give greater uniformity and transparency in the manual tally process. Also, to expand the scope of the regulations required to be adopted by the Secretary of State to address the entire process of the one percent manual tally, instead of the current requirement that only addresses the process by which precincts are selected. The Secretary of State is also sponsoring AB 2769 (Benoit), which addresses these concerns.

DLW:nl 5/25/06 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****
SB 1235 (BOWEN, D)

ELECTIONS.

Version: 8/21/06 Last Amended
Vote: Majority
Support

Clarifies that the one percent manual tally required by current law must include absentee ballots, including absentee ballots cast on direct electronic voting systems. Requires elections officials to use a random number generator to select the precincts subject to the one percent manual tally, and to open the manual tally process to the public. Provides that the voter verified audit trail shall govern in the event of discrepancies between it and the electronic record.

Aug. 21, 2006 amendments corrected several problems with the bill, including making the manual tally process open to the public, and to require elections officials to report on any discrepancies between the machine count and the manual tally, and how they are resolved. With those amendments we have upgraded our recommendation to "Support."

Policy Question

Should the existing one percent manual tally specifically include absentee and provisional ballots?

Summary

1. Clarifies that the one percent manual tally required by current law must include absentee ballots.
2. Provides that absentee ballots cast on a direct electronic (DRE) voting system at the election office or at a satellite location shall be included in the manual tally, or the election official shall conduct a manual tally of at least 1% of all DRE machines chosen at random.
3. Requires elections officials to use a random number generator to randomly select the precincts or the DRE machines subject to the one percent manual tally.
4. Requires that the manual tally process be open to the public.
5. Requires elections officials to report on the results of the 1% tally, including any discrepancies between the machine count and the manual tally.
6. Provides that the voter verified audit trail shall govern if there are discrepancies between it and the electronic record.

Support

None received.

Opposition

Prior version:
Secretary of State (unless amended).

Arguments In Support of the Bill

1. Will ensure that the manual tally is both genuinely random and inclusive of all voting methods.
2. Will prevent counties from “cherry picking” which precincts are subject to the manual tally.

Arguments In Opposition to the cherry picking

Fiscal Effect

As Amended in Assembly Appropriations Committee on August 17, 2006.

MINOR STATE COSTS. The Secretary of State’s Office (SOS) indicates that developing regulations and adopting a random generator for
Assembly Republican Bill Analysis

use by local elections officials would result in minor absorbable costs.

Fiscal Comment:
While this bill is flagged as a state-mandated local program, subject to reimbursement requests by local governments, SOS indicates that it is not likely that use of a random number generator would result in significant increased costs to local elections officials.

Comments

1. **Background:** Current law requires elections officials to conduct a public manual tally of one percent of the votes cast in each election. The elections official randomly selects one percent of the precincts in which votes were cast in order to conduct the tally. Additional precincts may be selected at the discretion of the elections official for the manual tally. Further, as of Jan. 1, 2006, election officials must use a DRE voting system to conduct the tally using the state required voter verified paper audit trail.

2. **Problem:** According to the author, some counties exclude absentee ballots and provisional ballots from the manual tally. This is a significant omission, as absentee ballots now comprise 40% of the votes cast in California.

3. **This Bill:** Clarifies that the one manual tally shall include absentee ballots, including those cast on DRE machines. Accordingly, a county will need to include any ballots cast at the polls, via absentee ballots and any ballots cast on DRE voting machines.

4. **Related Legislation:** AB 2769 (Benoit) would establish a uniform procedure for elections officials to conduct the 1% manual tally required by current law, and directs the Secretary of State to establish uniform procedures. AB 2769 passed the Assembly 80-0 and is pending on the Senate Third Reading file. AB 2769 is sponsored by the SOS.

5. **Prior Legislation:** SB 370 (Bowen) of 2005 requires elections officials to use the paper receipts produced by electronic voting equipment when performing a manual tally or a recount. SB 370 passed the Assembly 57-19 (AYE: Blakeslee, Bogh, Garcia, Shirley Horton, Houston, Keene, Leslie, Nakashish, Richman, Strickland, Villines, Wyland; NO: All other Reps-except; ABS: Sharon Runner) and was signed into law.

Policy Consultant: Daryl Thomas 8/22/06
Fiscal Consultant: Christopher Ryan 8/16/06
ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 1235  AUTHOR: Bowen
SENATE: 38-0  ASSEMBLY: 79-0
PRESENTED BY: Cynthia Bryant

DATE: 9/7/06  DUE: 9/30/06
CONCURRENCE: 40-0
RECOMMEND: Sign □ Veto □

SUMMARY
This bill establishes a uniform procedure for elections officials to conduct the 1% manual tally of the ballots including (1) the requirement that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the tally of ballots; (2) the requirement that elections officials use a random number generator to determine the initial precincts subject to the tally; and (3) the requirement that public notice of the public tally is provided at least five days in advance.

SPONSOR: Author

SUPPORT: Governor’s Office of Planning and Research
Department of Finance
Secretary of State Bruce McPherson

OPPOSITION: None Received

FISCAL IMPACT
This bill likely results in reimbursable state-mandated costs of an unknown amount by requiring elections officials to use a random number generator or other SOS approved method to randomly choose precincts for the one percent manually and to include absent voter ballots in the one-percent manual tally. SOS indicates no fiscal effect.

ARGUMENTS IN SUPPORT
Including absentee ballots in the 1% manual tally process would provide for a more thorough and meaningful audit of election results. Given the growing popularity of absentee voting, their inclusion in this process is particularly important. This bill ensures that the precincts subject to the 1% manual tally are truly chosen at random, as already required by law. The public notice and reporting provisions of this bill bring more transparency and openness to the process.

09/11/2006 11:13 AM
ARGUMENTS IN OPPOSITION
This bill imposes a costly and unfunded state-mandated local program and could create logistical and time-constraint problems for local elections officials.

BACKGROUND INFORMATION
Current law requires that during the official canvas of every election in which a voting system is used, the elections official must conduct a public manual tally of the ballots tabulated by those devices cast in one percent of the precincts chosen at random. For each race not included in that initial group of precincts, one additional precinct must be manually tallied, but only for the race not previously counted. Additional precincts may be selected at the discretion of the elections official for the manual tally. "Voting system" is defined as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

Existing law specifically states that the one percent manual tally is conducted during the official canvass to verify the accuracy of the automated count. This bill stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the one percent manual tally process and may not be choosing the relevant precincts in a truly "random" manner. Over 40 percent of the votes cast in the last statewide election were from absent voter ballots, a number that has steadily risen in recent years. The use of provisional ballots has also increased in recent years. Excluding these ballots from the manual tally severely lessens the value and the accuracy of this post-election audit. A random number generator is a device designed to generate a sequence of numbers that does not have any discernable pattern. A random number generator can be as sophisticated as a computer program or as simple as rolling dice. Software and websites that will randomly generate numbers can be accessed free on the Internet and are also available for purchase. This bill requires elections officials to use either a random number generator or other method specified in regulation by the Secretary of State to randomly choose the initial precincts subject to the manual tally.

Prepared by: pko

09/11/2006 11:13 AM
**CONFIDENTIAL - GOVERNMENT CODE §6254(L)**

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**SUBJECT:**
ELECTIONS: 1% MANUAL TALLY

**SUMMARY**
This bill would clarify and expand the procedures used by elections officials for conducting the 1% percent manual tally, as required by existing law.

**PURPOSE OF THE BILL**
The author is the sponsor of this bill.

Under California law, elections officials are required to conduct a public manual tally of the ballots cast in at least 1% of the precincts in order to check the accuracy of the votes tabulated by the electronic or mechanical voting systems. The law also requires the precincts subject to the audit to be randomly selected by elections officials.

Some counties allegedly exclude absentee ballots and ballots cast at early voting sites from the 1% manual tally process. The author finds this objectionable, as stated below:

Nearly half of California's voters use an absentee ballot to vote and thousands of others take advantage of in-person early voting opportunities before every election, so the fact that some counties don't include nearly half of the ballots cast in any given election in the auditing process undermines the integrity of the audit and the election itself. The 1% manual audit is designed to ensure the electronic voting machines and the
ballot counters tallied the results correctly, but there’s no way to conduct a meaningful review if more than half of the ballots cast aren’t subject to the 1% audit requirement.

In addition, the author is concerned that elections officials may not be choosing precincts for the 1% manual tally in a truly random fashion. “Random” is ultimately left to the discretion of each elections official, as it is not defined in the law.

This bill has been proposed to improve California’s 1% manual tally law by:
1. clarifying that elections officials must include absentee ballots and early vote ballots in the 1% manual tally;
2. requiring elections officials to use a “random number generator” to select the precincts;
3. requiring a five-day public notice to be given before the precincts are selected and before the audit itself will be done, and ensuring that both events are open to the public; and
4. requiring the results of the audit to be made public, complete with an explanation of how discrepancies between the machine count and the hand count were resolved.

RECOMMENDATION AND SUPPORTING ARGUMENTS
The Office of Planning and Research recommends that the Governor SIGN SB 1235.

This bill would clarify and expand the procedures used by elections officials for conducting the 1% percent manual tally, as required by existing law.

Including absentee ballots in the 1% manual tally process would provide for a more thorough and meaningful audit of election results. Given the growing popularity of absentee voting, their inclusion in this process is particularly important. In addition, this bill would ensure that the precincts subject to the 1% manual tally are truly chosen at random, as already required by law. The public notice and reporting provisions of this bill would bring more transparency and openness to the process. Furthermore, this bill would better ensure that California voters can have confidence in the accuracy and integrity of software vote counts.

Chaptering Order – #1 SB 1235 (Bowen) and #2 AB 2769 (Benoit)
The Legislature has enrolled two bills that aim to improve the 1% manual tally law. The provisions of this bill, authored by Senator Bowen, and the provisions of AB 2769 (Benoit), sponsored by SOS Bruce McPheron, are nearly identical. Assembly Bill 2769 contains just two technical, stylistic differences. However, it also contains language stating that its enactment is contingent upon the enactment of this bill. To show goodwill to both authors, both bills should be signed.

Regardless of the fact that AB 2769 is contingent upon the enactment of this bill, this bill should be signed first, and AB 2769 should be signed second. According to the Legislative Counsel (via Asm. Benoit’s staff), once a bill is signed, it is considered enacted. Therefore, if this bill is signed first and AB 2769 is signed second, this bill would still be considered enacted, even though it would be chaptered out. The SOS-sponsored bill would then make the ultimate changes to the law.

ANALYSIS
Existing law provides that during the official canvass of every election (the 28-day period following an election) in which a voting system is used, the elections official must conduct a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random. For each race not included in that initial group of precincts, one additional precinct must be manually tallied, but only for the race not previously counted. Additional precincts may be selected at the discretion of the elections official for the manual tally.
Existing law provides the following definition for the required 1% manual tally:

"One percent manual tally" is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count.

Existing law requires elections officials to use the paper produced by the voter-verified paper audit trail (VVPAT) that all direct recording electronic (DRE) voting systems are required to have as of January 1, 2006, to conduct the 1% manual tally. Further, existing law provides that the VVPAT shall govern if there is any difference between it and the electronic record during the manual tally.

Aside from the aforementioned provisions, existing law does not set forth any other guidelines on how the 1% manual tally should be conducted.

This bill would expand the provisions for conducting the 1% manual tally by:

1. clarifying that the 1% manual tally must not only include votes cast at the polls, but also absentee ballots, ballots cast at the registrar's office, and ballots cast at early voting sites;
2. requiring elections officials to use a random number generator or other method specified in regulation that shall be adopted by the SOS to randomly choose the precincts subject to the 1% manual tally;
3. requiring elections officials to provide a five-day notice to the public of the time and place of the 1% manual tally and of the time and place of the selection of the precincts to be tallied; and
4. requiring elections officials to report the results of the manual tally in the certification of the official canvass of the vote. This report would have to identify any discrepancies between the machine count and the tally and a description of how discrepancies were resolved.

LEGISLATIVE HISTORY
In 1965, the Legislature enacted the 1% manual tally law, requiring that a subset of paper ballots be selected at random and counted publicly, by hand, in order to verify that the software used to count all the ballots is accurate and reliable. The law has not been substantively updated since that time. According to Kim Alexander, President of the California Voter Foundation:

Up until 2004, only four states, including California, had laws requiring public verification of vote counts, despite the fact that software has been used throughout the nation to count ballots for decades. The widespread adoption of paperless, electronic voting machines greatly increased awareness of the risks involved in using computers and private software to cast and count votes. Many state legislatures have responded to the growing concern about the security risks associated with electronic voting by enacting laws that require there be a [VVPAT] to back up each electronic ballot, and that these paper audit trails be used to publicly verify software vote counts.

In 2004, Governor Schwarzenegger put California at the forefront of the electronic voting reform movement when he signed SB 1438 (Johnson, Ch. 814) to require all DRE voting systems in the state to include a VVPAT by January 1, 2006.

In 2005, the Governor signed SB 370 (Bowen, Ch. 724) to strengthen the 1% manual tally process by requiring election officials to use the paper produced by the VVPAT to perform the manual tally.

Senate Bill 1235 is a follow-up to last year's SB 370 (Bowen).
DISCUSSION
The 1% manual tally is an important aspect of the voting process. It provides the public with an opportunity to see for themselves that the equipment used to count ballots is accurate and reliable. Earlier this session, the Governor signed legislation designed to improve the manual tally process. In his signing message for SB 370 (Bowen, Ch. 81, 2005), the Governor stressed the importance of having an accurate vote count: "I am signing this measure because I believe that using the voter verified paper audit trails to audit the accuracy of overall election results will provide confidence in the accuracy and integrity of votes cast on these machines to California voters." The current bill, SB 1235, is consistent with the Governor's commitment to ensuring the accuracy and integrity of elections, and is another step in the direction of improving the 1% manual tally process.

Inclusion of Absentee Ballots in 1% Manual Tally
Specifically, this bill would improve the process by clearing up a gray area regarding what types of ballots must be included in the 1% manual tally. The law currently states that, "During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official." The law is silent as to whether absentee ballots and ballots cast at early voting sites must be included in the manual tally. This lack of specificity has led some elections officials to interpret the law to mean that they are not required to include such ballots in the tally, and that the tally applies only to those ballots cast at polling places on Election Day. This interpretation seriously undermines the integrity of the 1% manual tally.

The purpose of the 1% manual tally is to verify the accuracy of the vote-counting equipment. Failure to include all of the ballots in a precinct that is subject to the 1% manual tally, including absentee and early vote ballots, results in an incomplete check on the accuracy of such equipment. If absentee ballots and early vote ballots are excluded from the manual tally, no check is provided on the accuracy of the vote-counting equipment that is used to tabulate them—equipment that is different from what is used at polling places. Thus, under the elections officials' interpretation of the law, the only equipment verified for accuracy during the 1% manual tally is the equipment used to tabulate regular ballots cast at the precinct level.

Forty-seven percent of the people who voted in the June 2006 primary election did so by absentee ballot. Their ballots are no less valid or important than the regular ballots cast at polling places. Further, those who vote by mail and at early voting central or satellite sites deserve to know that their votes have been counted accurately just as much as those who cast their ballots at the polls. Excluding almost half the ballots cast from the 1% manual tally translates to a less meaningful audit of the automated count. The audit will lose more meaning as the popularity of absentee and early voting rises. Therefore, clarifying that elections officials are in fact required to include absentee ballots and early vote ballots in the 1% manual tally is appropriate.

Other Provisions
The other provisions of this bill also have merit. The law already states that the precincts subject to the 1% manual tally must be "chosen at random by the elections official." This bill would merely ensure that precincts subject to this audit are chosen in a truly random manner, either by using a "random number generator" or through a method set forth in regulation by the Secretary of State. According to Darren Chesin with the Senate Elections Committee, a random number generator is any device designed to generate a sequence of numbers that does not have any discernible pattern (e.g. computer program, cards, dice, roulette wheel, etc).
Additionally, the law already states that the 1% manual tally must be a "public manual tally." Specifically stating that the manual tally shall be a public process and requiring elections officials to provide a five-day public notice in advance would ensure that interested parties are provided an opportunity to observe the process. Requiring the results of the manual tally to be made public is also appropriate. The more transparency in the elections process, the better.

OTHER STATES' INFORMATION
No information has been obtained.

FISCAL IMPACT
No appropriation is provided. This bill would create a reimbursable state-mandated local program by imposing additional duties on elections officials—i.e. by requiring them to, among other things, include absentee and early vote ballots in the 1% manual tally. According to the Assembly Appropriations Committee, there are eight counties that currently do not sort or report absentee ballots by precinct. There are additional counties that can report absentee ballots by precinct, but lack the automation needed to sort those ballots in order to perform the 1% manual tally. The Committee estimates this bill could result in reimbursable costs of more than $2 million for all counties to purchase sorting equipment.

In addition to the cost factor, this bill could put elections officials in a time crunch to conduct the 1% manual tally. Absentee ballots continue to be processed through the 28-day canvass period so that those ballots returned to the registrar’s office on Election Day either through the mail or through polling place delivery are included in the final count. According to the California Association of Clerks and Election Officials, it may take over two weeks to complete the processing of these ballots before a final count is complete. Therefore, including absentee ballots in the 1% manual tally could delay the tally and possibly force the registrars to be out of compliance with state law on the 28-day canvass period.

ECONOMIC IMPACT
This bill would not appear to adversely impact the state’s economic or business climate.

LEGAL IMPACT
This bill would not appear to result in any increased liability for the state or conflict with any state or federal laws.

APPOINTMENTS
This bill would not impact a governor’s appointment authority or make any appointments.

SUPPORT/OPPosition
This bill is supported by the California Association of Clerks and Election Officials (“Support, If Amended”) and the California Election Protection Network.

The California Association of Clerks and Election Officials states that it supports the concept in this bill to include absentee ballots in the 1% manual tally, but believes the approach taken in this bill is not the best way to go about implementing it and would create too many logistical problems.

This bill has no known opposition.
ARGUMENTS

Pro: Requiring absentee and early vote ballots, not just those ballots cast at the polling place on Election Day, in a given precinct to be a part of the 1% manual tally should increase the thoroughness and reliability of the tally. As a result, this bill would better ensure that California voters can have confidence in the accuracy and integrity of software vote counts.

Con: This bill would impose a costly and unfunded state-mandated local program and could create logistical and time-constraint problems for local elections officials.

VOTES:

Senate -- May 30, 2006
Ayes – 38
Noes – 0

Assembly – August 24, 2006
Ayes – 79
Noes – 0

Concurrence – August 30, 2006
Ayes – 40
Noes – 0

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August 30, 2006

The Honorable Arnold Schwarzenegger  
State Capitol  
Sacramento, CA  95814  

RE: SB 1235 (Bowen) 1% Manual Tally – Support  

Dear Governor Schwarzenegger:  

I respectfully request your signature on Senate Bill 1235, which amends the current procedure for the 1% manual tally to specifically include absentee, provisional, and early vote ballots, and to specify a procedure for selection of precincts to be included in the 1% manual tally. 

While current law requires an election official to conduct a one percent manual tally, the Elections Code does not set forth guidelines on how this public tally should be conducted. Given the changing landscape of voting machines and elections administration, it is appropriate for the Legislature to provide parameters to provide consistency in conducting the manual tally. 

I am pleased with recent amendments that would require the county elections officials to provide public notice as to when and where the random drawing of precincts would be held, to ensure the one percent is chosen by a method that is verifiably random, and to make the selection of the one percent open to the public, as well as require that a report on the 1% manual tally be included in the Official Canvas. These amendments help reconcile the differences between this measure and AB 2769 (Benoit), which I am sponsoring. 

Thank you for your consideration of this measure. If you or your staff have any further questions please contact me or my Assistant Secretary of State for Legislative and Constituent Affairs, Theresa Taylor Carroll at (916) 653-6774. 

Sincerely,  

[Signature]  

BRUCE McPHERSON  
Secretary of State
September 25, 2006

Honorable Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

REPORT ON ENROLLED BILL

S.B. 1235

BOWEN. ELECTIONS.

SUMMARY:
See Legislative Counsel's Digest on the bill as adopted.

FORM:
Approved.

CONSTITUTIONALITY:
Approved.

TITLE:
Approved.

CONFLICTS:

This bill and Assembly Bill No. 2769, which is also before the Governor, would both amend Section 15360 of the Elections Code.

The changes in Section 15360 proposed by each bill are identical except that A.B. 2769 makes a technical, clarifying change that strikes out "coun" in the first sentence of the second paragraph of subdivision (a) of Section 15360 and substitutes the phrase "manual tally."

Neither bill contains provisions that would make all of the changes in the section proposed by both bills if both bills are chaptered.
Thus, if this bill and A.B. 2769 are chaptered, the substantive changes in Section 15360 proposed by each bill will be given effect, regardless of the order of chaptering (Sec. 9605, Gov. C.).

On the other hand, if this bill and A.B. 2769 are chaptered and this bill is chaptered last, while all of the substantive changes in Section 15360 of the Elections Code proposed by both bills will be given effect, the technical, clarifying change made by A.B. 2769 will not be given effect (Sec. 9605, Gov. C.).

Diane F. Boyer-Vine
Legislative Counsel

By Anthony P. Márquez
Deputy Legislative Counsel

Two copies to Honorable Debra Bowen and Honorable John J. Benoit, pursuant to Joint Rule 34.
The Honorable Arnold Schwarzenegger  
Governor of California  
State Capitol  
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I am writing to request your signature on SB 1235 (Bowen), which was approved by both houses of the Legislature on unanimous, bipartisan votes, and was enrolled to you on September 7th.

Last year, you signed SB 370 (Bowen) to require county elections officials to use the touch screen paper audit trails to conduct the post-election 1% percent manual recount. This bill is the next logical step in our effort to ensure that our votes are being counted fairly and accurately.

SB 1235 clarifies that the 1% manual recount of automated election results must not only include votes cast at the polls, but also absentee ballots and ballots cast at any early voting sites.

The bill also guarantees that the precincts subject to this audit are chosen in a truly random manner, either by using a “random number generator” or through regulations adopted by the Secretary of State. Some counties have been accused of routinely excluding absentee and provisional ballots from this process and “cherry picking” precincts in order to avoid discrepancies.

Equally important, SB 1235 ensures that the 1% manual audit is a public process. It requires local elections officials to provide a five-day notice to the public prior to selecting the precincts that will be subject to the 1% manual audit, requires a five-day notice of the audit itself, and requires a report to be done on the results of the audit. While many counties already do this, there are a number of others that don’t make this a public process, which is why I introduced this measure.

Thank you for taking the time to review SB 1235. If you or a member of your staff has any questions on this measure, please feel free to contact me at (916) 651-4028.

Sincerely,

Debra Bowen, Chairwoman  
Senate Elections, Reapportionment & Constitutional Amendments Committee
Senate Bill No. 1235

CHAPTER 893

An act to amend Section 15360 of the Elections Code, relating to elections.

[ Approved by Governor September 30, 2006. Filed with Secretary of State September 30, 2006. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 1235, Bowen. Elections.

Existing law requires the Secretary of State to establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements.

Existing law requires, during the official canvass of every election in which a voting system is used, a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random by the elections official.

This bill would provide that the tallied ballots include the absent voters’ ballots and would also require the elections official to use either a random number generator or other method specified by the Secretary of State to randomly choose the initial precincts subject to the public manual tally. By increasing the duties of local elections officials, the bill would impose a state-mandated local program.

The bill would also require a 5-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and would require the elections official to include a specified report on the results of the public manual tally.

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  Local Program: yes

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

SECTION 1. 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 official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, including absent voters’ ballots, cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.
In addition to the 1 percent count, 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.

Additional precincts for the manual tally may be selected at the discretion of the elections official.

(b) If absentee ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.

(c) 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 or direct recording electronic voting machines subject to the public manual tally.

(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 to be tallied prior to conducting the tally and selection.

(e) The official conducting the election 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 any discrepancy involving a vote recorded by means of a punchcard voting system or 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. 2. 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.
Assembly Bill No. 2769

CHAPTER 894

An act to amend Section 15360 of the Elections Code, relating to elections.

[ Approved by Governor September 30, 2006. Filed with Secretary of State September 30, 2006. ]

LEGISLATIVE COUNSEL’S DIGEST

AB 2769, Benoit. Elections: 1% manual tally.

Existing law requires the Secretary of State to establish the specifications and the regulations governing voting machines, voting devices, and any software used, including the programs and procedures for vote tabulating and testing. The Secretary of State may not approve any voting system that does not fulfill statutory and regulatory requirements.

Existing law requires, during the official canvass of every election in which a voting system is used, a public manual tally of the ballots tabulated by those devices cast in 1% of the precincts chosen at random by the elections official.

This bill would provide that the tallied ballots include the absent voters’ ballots and would also require the elections official to use either a random number generator or other method specified by the Secretary of State to randomly choose the initial precincts subject to the public manual tally. By increasing the duties of local elections officials, the bill would impose a state-mandated local program.

The bill would also require a 5-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and would require the elections official to include a specified report on the results of the public manual tally.

This bill would become operative only if SB 1235 of the 2005-06 Regular Session is enacted and becomes effective on or before January 1, 2007.

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 Local Program: yes

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

SECTION 1. 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 official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices, including absent
voters' 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.

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.

Additional precincts for the manual tally may be selected at the discretion of the elections official.

(b) If absentee ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.

(c) 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 or direct recording electronic voting machines subject to the public manual tally.

(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 to be tallied prior to conducting the tally and selection.

(e) The official conducting the election 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 any discrepancy involving a vote recorded by means of a punchcard voting system or 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. 2. This bill shall become operative only if Senate Bill 1235 of the 2005–06 Regular Session is enacted and becomes effective on or before January 1, 2007.

SEC. 3. 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.
Assembly Bill No. 985

CHAPTER 52

An act to amend Section 15360 of the Elections Code, relating to elections.

[ Approved by Governor June 29, 2011. Filed with Secretary of State July 01, 2011. ]

LEGISLATIVE COUNSEL’S DIGEST


Existing law requires, during the official canvass of an election in which a voting system is used, the elections official conducting the election to conduct a public manual tally of the ballots tabulated by those devices, including vote by mail voters’ ballots, cast in 1% of the precincts chosen at random by the elections official.

This bill would, during the official canvass of an election in which a voting system is used, authorize the elections official conducting the election to conduct a public manual tally by alternative means than those described above. Specifically, this bill would permit the elections official conducting the election to conduct a manual tally of the ballots cast in 1% of the precincts chosen at random by the elections official and a separate manual tally of not less than 1% of the vote by mail ballots cast in the election.

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

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

SECTION 1. 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 official conducting the election 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, including vote by mail 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) Additional precincts for the manual tally may be selected at the discretion of the elections official.

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

(A) A public manual tally of the ballots, not including vote by mail 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 cast in the election. Batches of vote by mail ballots shall be chosen at random by the elections official.

(ii) For the 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) Additional batches for the manual tally may be selected at the discretion of the elections official.

(b) If vote by mail ballots are cast on a direct recording electronic voting system at the office of an elections official or at a satellite location of the office of an elections official pursuant to Section 3018, the official conducting the election shall either include those ballots in the manual tally conducted pursuant to paragraph (1) or (2) of subdivision (a) or conduct a public manual tally of those ballots cast on no fewer than 1 percent of all the direct recording electronic voting machines used in that election chosen at random by the elections official.

(c) 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.

(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 prior to conducting the selection and tally.

(e) The official conducting the election 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 any discrepancy involving a vote recorded by means of a punchcard voting system or 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.