Phone Order

xxxxx5216
VISA

Amount: $58.25
Tax: $0.00

Total: $58.25

09/29/16 08:24:01
Inv #: 000000003  Appr Code: 082223

Approved: Online

AVS Code: ZIP MATCH Z
CVV2 Code: MATCH M

Customer Care
Thank you!

RECEIPT
May 2011

Under California Government Code section 6254.3, "the home addresses and home telephone numbers of state employees . . . shall not be deemed to be public records and shall not be open to public inspection."

Pursuant to section 6254.3, home and cellular telephone numbers of state employees have been redacted from enrolled bill reports contained in this file.
UNOFFICIAL BALLOT

2005-2006 Votes - ROLL CALL

MEASURE: SB 1235
TOPIC: Elections.
DATE: 06/30/06
LOCATION: SEN. FLOOR
MOTION: Unfinished Business SB1235 Bowen
(AYES 40, NOES 0) (PASS)

AYES
*****

Aannestad
Ashburn
Chesbro
Dunn
Flores
Kuehl
Maravett
Murray
Romero
Soto

Ackerman
Battin
Cox
Dutton
Harman
Lowenthal
McClintock
Ortiz
Runner
Speier

Alarcon
Bowen
Denham
Escutia
Hollingsworth
Machado
Midgen
Perata
Scott
Torlakson

Alquist
Cedillo
Ducheny
Figueroa
Kehoe
Maldonado
Morrow
Poochigian
Simitian
Vincent

NOES
*****

NO VOTE RECORDEDC

*******************************
UNOFFICIAL BALLOT

2005-2006 Votes - ROLL CALL

MEASURE: SB 1235
TOPIC: Elections.
DATE: 08/24/06
LOCATION: ASM. FLOOR
MOTION: SB 1235 Bowen Senate Third Reading By Benoit
(AYES 79, NOES 0.) (PASS)

AYES

Aghazarian
Benoit
Boga
Chavez
Cote
Dymally
Garcia
Jerome Horton
Jones
Koretz
Leno
Lieu
McCarty
Makanishi
Nielson
Plescia
Rusk

NOES

Abalone
Bass
Blakeslee
Chen
Cohn
DeVore
F-ROMMER
Haynes
Huff
Kehoe
Laird
Lieber
Mack
Mullin
Negrete McLeod
Pavley
Sharon Runner
Spitzer
Umberg
Wolk

ABSENT, ABSTAINING, OR NOT VOTING

Vacancy
UNOFFICIAL BALLOT

2005-2006 Votes - ROLL CALL

MEASURE: SB 1235
TOPIC: Elections.
DATE: 05/30/06
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB1235 Bowen
(AYES 38, NOES 0) (PASS)

AYES
****

Aanesstad
Ashburn
Chesbro
Dunn
Florez
Lowenthal
McCintock
Ortiz
Scott
Tolliaksen

Ackerman
Battin
Cox
Dutton
Hollingsworth
Machado
Migden
Perata
Simitian
Vincent

Alarcon
Bowen
Denham
Escutia
Fahos
Maldonado
Morrow
Peapichian
Soto

Aguilera
Cedillo
Ducheny
Figueroa
Kuehl
Margot
Murray
Romero
Speieres

NOES
****

NO VOTE RECORDED

Runner
Vacancy
BILL SUMMARY

This bill would require local elections officials to use a random number generator or other Secretary of State (SOS) approved method to randomly choose precincts for the one percent manual tally and require absent voter ballots be included in the one percent manual tally.

FISCAL SUMMARY

This bill would likely result 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 manual tally and to include absent voter ballots in the one-percent manual tally. Using a method determined by the SOS for selecting the one percent sample would not likely result in sufficient costs to create a reimbursable mandate. However, adding a requirement to manual tally absent voter ballots in addition to machine ballots could result in costs to a local government in excess of $1,000, depending on the number of absent voters within the selected sample. Should the costs exceed $1,000 the local government could submit a test claim to the state for consideration by the Commission on State Mandates for reimbursement.

The SOS office indicates this bill would have no fiscal effect upon the department.

COMMENTS

Finance recommends signature of this bill because it would require the precincts included in the one percent manual tally to include absent voter ballots providing clarification on the procedure for a public manual tally.

Current law requires one percent manual tallies to occur, but does not outline specific processes to conduct the tallies. According to the Senate Committee on Elections, Reapportionment, and Constitutional Amendments analysis, some counties have not included certain types of votes in the one percent manual tally.

This bill would require the precincts included in the one percent tally to be selected by specified methods and clarify the types of votes to be counted. This bill would also require a 5-day notice to the public of the time and place of the manual tally and require the elections official to include a report on the results of the public manual tally.

By specifying absent voter ballots must be included and by ensuring elections officials randomly choose precincts, this bill would provide a measure of credibility and statewide uniformity for the one percent manual tallies.
<table>
<thead>
<tr>
<th>Code/Department</th>
<th>Type</th>
<th>Fund Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>0895/Secy State</td>
<td>RV</td>
<td>0001</td>
</tr>
<tr>
<td>0998/Mandated-LJE</td>
<td>RV</td>
<td>0001</td>
</tr>
<tr>
<td>SO</td>
<td>No</td>
<td>2006-2007</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2007-2008</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2008-2009</td>
</tr>
<tr>
<td>PROP</td>
<td>No</td>
<td>See Fiscal Summary</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
UNFINISHED BUSINESS

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

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

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

SENATE FLOOR: 58-0, 5/30/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn,
      Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny,
      Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth,
      Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett,
      McClintock, Migden, Morrow, Murray, Ortiz, Perata,
      Poochigian, Romero, Scott, Simitian, Soto, Speier,
      Torlakson, Vincent
NO VOTE RECORDED: Runner

ASSEMBLY FLOOR: 79-0, 8/24/06 - See last page for vote

SUBJECT: Elections
This bill clarifies that the manually tallied ballots include the absent voters ballots 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.

Assembly Amendments require a five-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and require the elections official to include a specified report on the results of the public manual tally. This bill now conforms to AB 2769 (Benoit).

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 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 canvas 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.

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 379 (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 1750 (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). This bill is currently on the Governor's desk.

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. This bill is currently in Assembly Elections and Reapportionment Committee.

CONTINUED

SB 1235
Page

4

AB 2769 (Benoit), which is similar to this bill, and currently on the Senate Floor.

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

According to the Senate Appropriations Committee:

**Fiscal Impact (in thousands)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

**SUPPORT:** (Verified 5/25/06 - unable to reverify at time of this writing)

California Election Protection Network
California Association of Clerks and Elections Officials
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),

CONTINUED

which addresses these concerns.

ASSEMBLY FLOOR:
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dy-mally, Emerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Liu, Liu, Matthews, Maze, McCarthy, Montano, Mountjoy, Mullin, Nakanishi, Nation, Mava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Rustin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Vacancy

DLN:nl 8/26/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED
Assembly Floor: 79-0 (8/24/06)
(AYE: All Republicans)
Senate Floor Vote: 33-0 (5/30/06)
(AYE: All Republicans; except, ABS: Runner)
Vote requirement: 21
Version Date: 8/21/06

Quick Summary
Assembly Amendments: 1) Provide 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 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 (See Other Issues Section below for a discussion of these amendments)

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 the ballots; 2) The requirement that elections officials use a random number generator to determine the initial precincts subject to the tally; 2) The requirement that public notice of the public tally is provided, as specified, at least 5 days in advance.

Fiscal Effect

MINOR COSTS.
State:
The Secretary of State's office indicates that developing regulations and adopting a random generator for use by local elections officials would result in minor absorbable costs.

Local:
This bill is flagged as a state-mandated local program, subject to reimbursement requests by local governments. However, it is not likely that
use of a random number generator specified by the Secretary of State would result in significant increased costs to local elections officials.

Fiscal Consultant: Joseph Shinstock

Analysis

Arguments in Support:
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 unlikely event that counties are someday 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.

According to the Secretary of State (SOS): Arguing on behalf of a similar SOS sponsored measure in the Assembly, the SOS states that “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. This bill 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, to make the selection of the one percent open to the public, and to include all types of ballots cast (polling place, absentee and provisional) in the one percent manual tally. This bill would result in greater uniformity and transparency in the manual tally process.”

Arguments in Opposition:
Some local elections official might argue that complying with the provisions in SB 1235 would be too burdensome and time consuming, and as a result would divert precious resources away from essential election administration related activities.

Other Issues:
**Assembly Amendments:** These amendments add two provisions contained in AB 2769 that were not originally contained in SB 1235. This was done in order to conform these two measures and to prevent policy conflicts. These two measures are now virtually identical, except that AB 2769 has a contingent enactment clause that makes its passage contingent upon the passage of SB 1235.

**SOS Sponsorship:** While the SOS is not sponsoring this measure, he is sponsoring AB 2769 (Benoit) which now contains the same provisions as SB 1235.

**Digest**

This Measure:

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) Clarifies that public manual tally of the ballots tabulated by devices cast in 1% of the precincts chosen at random include absent voter’s ballots, provisional ballots, and ballots cast at satellite locations.

3) 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.

4) 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.

5) 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.

**Background**

**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.
2) 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.

3) Defines "Voting system" as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

Related Legislation:
AB 707 (Hancock) would have authorized any county to hold an all-mail election for the June 6, 2006 primary. It would also have required 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. This measure was schedule for hearing in the Senate ER&CA Committee on 2/22/06 but was not heard due to unofficial union opposition to the all-mail provision.

AB 2769 (Benoit) now contains the same provisions as SB 1235.

Prior Legislation:
SB 370 (Bowen, 2005) requires elections officials to use the paper ballots or the paper receipts produced by the voting equipment when doing the 1% manual tally of electronic voting machines and/or a recount. This measure was signed into law by the Governor in 2005 and received the unanimous support of the Senate Republican Caucus.

Support & Opposition Received
None

Senate Republican Office of Policy/Cory Botts
Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

SB 1235 (Bowen)

Hearing Date: 5/8/06  Amended: As Introduced
Consultant: Maureen Ortiz  Policy Vote: E. R. & C.A. 4-0

BILL SUMMARY:

SB 1235 requires elections officials to include absent voter's ballots, provisional ballots and ballots cast at satellite locations in the 1% manual tally of ballots that is conducted during the official canvass of every election.

<table>
<thead>
<tr>
<th>Fiscal Impact (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Major Provisions</strong></td>
</tr>
<tr>
<td>Ballot counting</td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

STAFF COMMENTS: This bill meets the criteria to be placed on the Suspense file.

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.

Existing law requires elections officials to conduct a public manual tally of the ballots tabulated by voting systems in 1% of the precincts chosen at random by the elections officials. SB 1235 requires that manual tally to also include absent ballots, provisional ballots and those that are cast at satellite locations. According to election officials, ballots that are currently cast at a polling precinct are returned to the counties as a bundle. However, absentee ballots are mailed and received at numerous intervals and are not currently sorted by precinct. This bill will result in elections officials have to sort absentee ballots, provisional ballots, and those cast at satellite locations by precinct, in order for those ballots to be counted in the 1% manual tally.

SB 1235 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.

During the last statewide election, over 40% of the votes cast were from absent voter ballots – a number that is steadily increasing each year.
Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

SB 1235 (Bowen)

Hearing Date: 5/25/06
Consultant: Maureen Ortiz
Amended: As Introduced
Policy Vote: E. R. & C.A. 4-0

BILL SUMMARY:

SB 1235 requires elections officials to include absent voter's ballots, provisional ballots and ballots cast at satellite locations in the 1% manual tally of ballots that is conducted during the official canvass of every election.

Fiscal Impact (in thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown</td>
<td>over $150</td>
<td></td>
<td>General*</td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

STAFF COMMENTS: SUSPENSE FILE.

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.

Existing law requires elections officials to conduct a public manual tally of the ballots tabulated by voting systems in 1% of the precincts chosen at random by the elections officials. SB 1235 requires that manual tally to also include absent ballots, provisional ballots and those that are cast at satellite locations. According to election officials, ballots that are currently cast at a polling precinct are returned to the counties as a bundle. However, absentee ballots are mailed and received at numerous intervals and are not currently sorted by precinct. This bill will result in elections officials have to sort absentee ballots, provisional ballots, and those cast at satellite locations by precinct, in order for those ballots to be counted in the 1% manual tally.

SB 1235 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.

During the last statewide election, over 40% of the votes cast were from absent voter ballots – a number that is steadily increasing each year.
3/21/2007

2005-2006 COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1235
AUTHOR : Bowen
TOPIC : Elections.
TYPE OF BILL :

INACTIVE BILL
NON-APPROPRIATION
STATE-MANDATED LOCAL PROGRAM
NON-TAX-LEVY
NON-URGENCY
MAJORITY VOTE
FISCAL

BILL HISTORY
2006
Sept. 30 Approved by Governor.
Sept. 7 Enrolled. To Governor at 3:30 p.m.
Aug. 30 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 5435.) To enrollment.
Aug. 28 In Senate. To unfinished business.
Aug. 22 Read second time. To third reading.
Aug. 9 Placed on APPR. suspense file.
Aug. 7 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 27 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 5. Noes 1.) Re-referred to Com. on APPR.
June 12 To Com. on E. & R.
May 31 In Assembly. Read first time. Held at Desk.
May 26 Read second time. To third reading.
May 25 From committee: Do pass. (Ayes 11. Noes 0. Page 4043.)
May 22 Set for hearing May 25.
May 8 Placed on APPR. suspense file.
Apr. 26 Hearing postponed by committee. Set for hearing May 8.
Apr. 25 Set for hearing May 1.
Apr. 20 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 4. Noes 0. Page 3582.) Re-referred to Com. on APPR.
Mar. 27 Set for hearing April 19.
Feb. 16 To Com. on E., R. & C.A.
Feb. 7 From print. May be acted upon on or after March 9.
Feb. 6 Introduced. Read first time. To Com. on RLS. for assignment. To print.
2005-2006 CURRENT STATUS REPORT

MEASURE : S.B. No. 1235
AUTHOR(S) : Bowen.
TOPIC : Elections.
31 DAYS IN PRINT : 03/09/2006
TITLE : An act to amend Section 15360 of the Elections Code, relating to elections.
LAST AMENDED DATE : 08/21/2006

INACTIVE BILL
NON-APPROPRIATION
STATE-MANDATED LOCAL PROGRAM
NON-TAX-LEVY

NON-URGENCY
MAJORITY VOTE
FISCAL

LAST 5 HISTORY ACTIONS:
09/30/06 Chaptered by Secretary of State. Chapter 893, Statutes of 2006.
09/30/06 Approved by Governor.
09/07/06 Enrolled. To Governor at 3:30 p.m.
08/30/06 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 5435.) To enrollment.
08/28/06 In Senate. To unfinished business.
BILL NUMBER : S.B. No. 1235  
AUTHOR : Bowen  
TOPIC : Elections.  
TYPE OF BILL :  
INACTIVE BILL  
NON-APPROPRIATION  
STATE-MANDATED LOCAL PROGRAM  
NON-TAX-LEVY  
NON-URGENCY  
MAJORITY VOTE  
FISCAL  

BILL HISTORY  
2006  
Sept. 30 Approved by Governor.  
Sept. 7 Enrolled. To Governor at 3:30 p.m.  
Aug. 30 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 5435.) To enrollment.  
Aug. 28 In Senate. To unfinished business.  
Aug. 22 Read second time. To third reading.  
Aug. 9 Placed on APPR. suspense file.  
Aug. 7 From committee with author's amendments. Read second time. Amended. Re-referred to committee.  
June 27 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 5. Noes 1.) Re-referred to Com. on APPR.  
June 12 To Com. on E. & R.  
May 31 In Assembly. Read first time. Held at desk.  
May 26 Read second time. To third reading.  
May 25 From committee: Do pass. (Ayes 11. Noes 0. Page 4043.)  
May 22 Set for hearing May 25.  
May 8 Placed on APPR. suspense file.  
Apr. 26 Hearing postponed by committee. Set for hearing May 8.  
Apr. 25 Set for hearing May 1.  
Apr. 20 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 4. Noes 0. Page 3582.) Re-referred to Com. on APPR.  
Mar. 27 Set for hearing April 19.  
Feb. 16 To Com. on E., R. & C.A.  
Feb. 7 From print. May be acted upon on or after March 9.  
Feb. 6 Introduced. Read first time. To Com. on RLS. for assignment. To print.
UNOFFICIAL BALLOT
MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 08/30/2006
LOCATION: SEN. FLOOR
MOTION: Unfinished Business SB1235 Bowen
(AYES 40. NOES 0.) (PASS)

AYES
****

Aanestad Ackerman Alarcon Alquist
Ashburn Battin Bowen Cedillo
Chesbro Cox Denham Ducheny
Dunn Dutton Escutia Figueroa
Florez Harman Hollingsworth Kehoe
Kuehl Lowenthal Machado Maldonado
Margett McClintock Migden Morrow
Murray Ortiz Perata Poochigian
Romero Runner Scott Simitian
Soto Speier Torlakson Vincent

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****************************
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 08/24/2006

LOCATION: ASM. FLOOR

MOTION: SB 1235 Bowen Senate Third Reading By Benoit

(AYES 79. NOES 0.) (PASS)

AYES

****

Aghazarian     Arambula     Baca     Bass
Benoit         Berg         Bermudez     Blakeslee
Bohig          Calderon     Canciamilla  Chan
Chavez          Chu          Cogdill     Cohn
Coto           Daucher      De La Torre  DeVore
Dymally        Emmerson    Evans        Frommer
Garcia         Goldberg     Hancock      Haynes
Jerome         Horton       Shirley      Horton    Houston    Huff
Jones          Karnette     Keene        Klehs
Koretz         La Malfa     La Suer      Laird
Leno           Leslie       Levine       Lieber
Lieu           Liu          Matthews     Maze
McCarthy       Montanez     Mountjoy     Mullin
Nakanishi      Nation       Nava         Negrete     McLeod
Niello Oropeza Parra        Pavley
Plescia        Richman      Ridley-Thomas Sharon Runner
Ruskin         Saldana      Salinas      Spitzer
Strickland     Torrico       Tran        Umberg
Vargas Villines Walters      Wolk
Wyland          Yee          Nunez

NOES

****

ABSENT, ABSTAINING, OR NOT VOTING

******************************

Vacancy
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 08/17/2006

LOCATION: ASM. APPR.

MOTION: Do pass as amended.

(AYES 18, NOES 0.) (PASS)

AYES

****

Chu  Sharon  Runner  Bass  Berg
Calderon  De La Torre  Emmerson  Haynes
Karnette  Klehs  Leno  Nakanishi
Nation  Laird  Ridley-Thomas  Saldana
Walters  Yee

NOES

****

ABSENT, ABSTAINING, OR NOT VOTING

**************************************************************************
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 06/27/2006

LOCATION: ASM. E. & R.

MOTION: Do pass and be re-referred to the Committee on Appropriations.

(AYES 5. NOES 1.) (PASS)

AYES

****

Umberg Wyland Karnette Klehs Leno

NOES

****

Villines

ABSENT, ABSTAINING, OR NOT VOTING

********************************************************************************

Levine
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 05/30/2006

LOCATION: SEN. FLOOR

MOTION: Senate 3rd Reading SB1235 Bowen

(AYES 38. NOES 0.) (PASS)

AYES
****

Aanestad Ackerman Alarcon Alquist
Ashburn Battin Bowen Cedillo
Chesbro Cox Denham Ducheny
Dunn Dutton Escutia Figueroa
Florez Hollingsworth Kehoe Kuehl
Lowenthal Machado Maldonado Margett
McClintock Migden Morrow Murray
Ortiz Perata Poochigian Romero
Scott Simitian Soto Speier
Torlakson Vincent

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
*******************************

Runner Vacancy
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 05/25/2006

LOCATION: SEN. APPR.

MOTION: Do pass.

(AYES 11. NOES 0.) (PASS)

AYES

****

Murray Aanestad Alquist Ashburn
Battle Dutton Escutia Florez
Poochigian Romero Torlakson

NOES

****

ABSENT, ABSTAINING, OR NOT VOTING

**************************************************************************

Alarcon Ortiz
UNOFFICIAL BALLOT
MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 05/08/2006
LOCATION: SEN. APPR.
MOTION: Placed on Appropriations Suspense file.
(AYES 13. NOES 0.) (PASS)

AYES
****

Murray Aanestad Alarcon Alquist
Ashburn Battin Dutton Escutia
Florez Ortiz Poochigian Romero
Torlakson

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
************************************************************************
UNOFFICIAL BALLOT
MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 04/19/2006
LOCATION: SEN. E., R. & C.A.
MOTION: Do pass, but re-refer to the Committee on Appropriations.
(AYES 4. NOES 0.) (PASS)

AYES
****
Bowen Battin Murray Romero

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
**************************************

Poochigian
June 23, 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, Assembly Elections and Redistricting Committee
SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520    Fax: (916) 327-4478

THIRD READING

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

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

SENATE APPROPRIATIONS COMMITTEE: 11-0, 5/25/06
AYES: Murray, Aanestad, Alquist, Ashburn, Battin, Dutton, Escutia,
Florez, Poochigian, 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.

ANALYSIS:    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 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)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
<td>General*</td>
</tr>
</tbody>
</table>

*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 ****
Assembly Floor: Vote Not Available
(AYE:; NO:; ABS:;)

Senate Floor Vote: 38-0 (5/30/06)
(AYE: All Republicans); except, ABS: Runner)
Vote requirement: 21
Version Date: 8/21/06

Quick Summary
Assembly Amendments: 1) Provide 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 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 (See Other Issues Section below for a discussion of these amendments)

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 the ballots; 2) The requirement that elections officials use a random number generator to determine the initial precincts subject to the tally; 2) The requirement that public notice of the public tally is provided, as specified, at least 5 days in advance.

Fiscal Effect

MINOR COSTS.
State:
The Secretary of State’s office indicates that developing regulations and adopting a random generator for use by local elections officials would result in minor absorbable costs.

Local:
This bill is flagged as a state-mandated local program, subject to reimbursement requests by local governments. However, it is not likely that
use of a random number generator specified by the Secretary of State would result in significant increased costs to local elections officials.

**Fiscal Consultant:** Joseph Shinstock

**Analysis**

**Arguments in Support:**
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 unlikely event that counties are someday 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.

**According to the Secretary of State (SOS):** Arguing on behalf of a similar SOS sponsored measure in the Assembly, the SOS states that “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. This bill 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, to make the selection of the one percent open to the public, and to include all types of ballots cast (polling place, absentee and provisional) in the one percent manual tally. This bill would result in greater uniformity and transparency in the manual tally process.”

**Arguments in Opposition:**
Some local elections official might argue that complying with the provisions in SB 1235 would be too burdensome and time consuming, and as a result would divert precious resources away from essential election administration related activities.

**Other Issues:**
Assembly Amendments: These amendments add two provisions contained in AB 2769 that were not originally contained in SB 1235. This was done in order to conform these two measures and to prevent policy conflicts. These two measures are now virtually identical, except that AB 2769 has a contingent enactment clause that makes its passage contingent upon the passage of SB 1235.

SOS Sponsorship?: While the SOS is not sponsoring this measure, he is sponsoring AB 2769 (Benoit) which now contains the same provisions as SB 1235.

Digest
This Measure:

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) Clarifies that public manual tally of the ballots tabulated by devices cast in 1% of the precincts chosen at random include absent voter's ballots, provisional ballots, and ballots cast at satellite locations.

3) 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.

4) 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.

5) 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.

Background
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.

2) 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.

3) Defines "Voting system" as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

Related Legislation:
AB 707 (Hancock) would have authorized any county to hold an all-mail election for the June 6, 2006 primary. It would also have required 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. This measure was schedule for hearing in the Senate ER&CA Committee on 2/22/06 but was not heard due to unofficial union opposition to the all-mail provision.

AB 2769 (Benoit) now contains the same provisions as SB 1235.

Prior Legislation:
SB 370 (Bowen, 2005) requires elections officials to use the paper ballots or the paper receipts produced by the voting equipment when doing the 1% manual tally of electronic voting machines and/or a recount. This measure was signed into law by the Governor in 2005 and received the unanimous support of the Senate Republican Caucus.

Support & Opposition Received
None

Senate Republican Office of Policy / Cory Botts
Quick Summary
This measure: 1) Requires that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots; and, 2) Requires the Secretary of State to use a random number generator to determine the initial precincts subject to the 1% manual tally.

Analysis
Arguments in Support:
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 unlikely event that counties are someday 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.

According to the Secretary of State (SOS): Arguing on behalf of a similar SOS sponsored measure in the Assembly, the SOS states that, “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 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.” This measure provides at least some parameters on how to conduct the manual tally.

Arguments in Opposition:
Some local elections official might argue that complying with the provisions in SB 1635 would be too burdensome and time consuming, and as a result would divert precious resources away from essential election administration related activities.

Other Issues:
SOS Sponsorship?: While the SOS is not sponsoring this measure, he is sponsoring AB 2769 (Benoit) which contains, among other things, the provision in SB 1635 requiring that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots.

Digest
This Measure:
1) Clarifies that public manual tally of the ballots tabulated by devices cast in 1% of the precincts chosen at random include absent voter's ballots, provisional ballots, and ballots cast at satellite locations.

2) 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.

Background
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.

2) 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.

3) Defines "Voting system" as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

Related Legislation:
AB 707 (Hancock) would have authorized any county to hold an all-mail election for the June 6, 2006 primary. It would also have required 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. This measure was schedule for hearing in the Senate ER&CA Committee on 2/22/06 but was not heard due to unofficial union opposition to the all-mail provision.

**AB 2769 (Benoit)** Sponsored by the SOS, this measure would define the procedure for conducting a 1% manual tally by elections officials, and would direct the Secretary of State to establish uniform procedures. It is scheduled to be heard in Assembly E&R on 4/18/05.

**Prior Legislation:**
**SB 370 (Bowen, 2005)** requires elections officials to use the paper ballots or the paper receipts produced by the voting equipment when doing the 1% manual tally of electronic voting machines and/or a recount. This measure was signed into law by the Governor in 2005 and received the unanimous support of the Senate Republican Caucus.

**Support & Opposition Received**
None

Senate Republican Office of Policy/Cory Botts
DESCRIPTION

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.

Existing law specifically states that the 1% manual tally is conducted during the official canvass to verify the accuracy of the automated count.

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.

BACKGROUND

What's the Problem? This bill stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the 1% manual tally 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 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.

Talkin' 'Bout My Random Generation. 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.

COMMENTS

1. **Auditing For Accuracy.** Requiring all of the ballots – not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1% audit should increase the thoroughness and the reliability of the audit. Absent a complete count of all of the ballots in a precinct that’s subject to the 1% audit, it’s difficult to see how elections officials can argue they’ve complied with the audit requirements under the law.

2. **The 1% Solution.** The requirement to audit 1% of the precincts has been law in California for over 40 years. Last year, New York enacted a requirement that the results from 3% of the voting machines within the jurisdiction of each board of elections be manually audited. Following the New York model and moving from a 1% to a 3% 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.

3. **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 1% 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). SB 1760 is scheduled to be heard by the Senate Elections, Reapportionment & Constitutional Amendments Committee today.

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 Elections and Redistricting Committee.
POSITIONS

Sponsor: Author

Support: California Election Protection Network

Oppose: None received
Message

Botts, Cory

From: Botts, Cory
Sent: Friday, February 17, 2006 3:01 PM
To: Tinney, Katie; Gonzalez, Deborah; Nystrom, Julie; Reeder, Mark
Subject: Senate Republican Commentaries for the Senate E.R.& C.A. Committee Hearing to Convene Wednesday, February 22, 2006 at 9:30 a.m. in room 3191

Attached please find the Senate Republican Commentaries for the Senate E.R. & C.A Committee Hearing to convene Wednesday, February 22, 2006 at 9:30 a.m. in room 3191

A hard copy of the packet will be delivered to your office no later than 1:00 pm Tuesday, February 21st.

If you have any questions or need any further information, please do not hesitate to call or email me.

-Cory

Policy Consultant
Senate Republican Caucus
(916) 651-1793
cory.botts@sen.ca.gov

02/17/2006
Senate Elections, Reapportionment & Constitutional Amendments
Wednesday, February 22, 2005
9:30 a.m. – Room 3191

<table>
<thead>
<tr>
<th>File #</th>
<th>Bill #</th>
<th>Author</th>
<th>Subject</th>
<th>Position</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>AB 707</td>
<td>Hancock</td>
<td>Elections: All-Mail Balloting</td>
<td>Oppose</td>
<td>1</td>
</tr>
</tbody>
</table>
September 15, 2006

The Honorable Arnold Schwarzenegger
Governor, State of California
Attr: Cynthia Bryant
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The California Association of Clerks and Election Officials (CACEO) is writing to inform you that it has removed its position of Support if Amended in regard to AB 2769 and SB 1235. The Association would like to express its concerns about these bills as written, and forwarded to your signature. Our Association met with the authors’ staffs to discuss our concerns while there was ample opportunity for amendment. In doing so, our representatives were under the impression that there was agreement for our requested amendments. Unfortunately, the amendments did not appear in the final copy of the bill.

Our concerns focus on the inclusion of Absentee and Provisional Ballots in the 1% Manual Tally The purpose of the 1% Manual Tally is to check the accuracy of the tabulation of the vote counting equipment. This is a requirement of the Official Canvass, and, as such, must be completed prior to certifying the vote and announcing winning candidates.

The 1% Manual Tally is generally performed shortly after Election Day, using the precinct results from the Official Semi-Final Canvass from Election Night for comparison to the manually tallied ballots. Absentee and Provisional Ballots require individual verification, and in the case of provisional ballots, significant research prior to counting. This labor-intensive task is taking place during the same time period as the 1% Manual Tally is being conducted. In larger counties, such as San Diego and Los Angeles, the verification of Absentee Ballots and research of Provisional Ballots is often not completed until the end of the canvass. If it is mandated that we include the Absentee and Provisional Ballots in the 1% Manual Tally, it will be necessary to wait until these tasks are complete, and will quite possibly delay the certified election results and exceed the statutory canvass period.

Election Officials have ongoing concerns in regard to the manner in which the 1% Manual Tally must be conducted, resulting from the passage of SB 370 last year. We would welcome the opportunity to revisit the issue next year in hopes of addressing the concerns of authors while continuing to meet the administrative and logistical confines of the canvass. Should you or your staff have any questions in this regard, please do not hesitate to contact me at the Sonoma County Registrar of Voters Office, 707-565-6814.

Very truly yours,

Janice Atkinson
Correspondence Secretary
Elections Legislative Committee
California Association of Clerks and Election Officials

cc: Senator Debra Bowen, Author, SB 1235
Assembly Member John Benoit, Author AB 2769
Jill Lavine, Co-Chair, CACEO Elections Legislative Committee
Deborah Seiler, Co-Chair, CACEO Elections Legislative Committee
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
DESCRIPTION

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.

Existing law specifically states that the 1% manual tally is conducted during the official canvass to verify the accuracy of the automated count.

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.

BACKGROUND

What's the Problem? This bill stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the 1% manual tally 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 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.

Talkin' 'Bout My Random Generation 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.

COMMENTS

1. Auditing For Accuracy. Requiring all of the ballots – not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1% audit should increase the thoroughness and the reliability of the audit. Absent a complete count of all of the ballots in a precinct that's subject to the 1% audit, it's difficult to see how elections officials can argue they've complied with the audit requirements under the law.

2. The 1% Solution. The requirement to audit 1% of the precincts has been law in California for over 40 years. Last year, New York enacted a requirement that the results from 3% of the voting machines within the jurisdiction of each board of elections be manually audited. Following the New York model and moving from a 1% to a 3% 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.

3. 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 1% 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). SB 1760 is scheduled to be heard by the Senate Elections, Reapportionment & Constitutional Amendments Committee today.

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 Elections and Redistricting Committee.
POSITIONS

Sponsor: Author

Support: California Election Protection Network

Oppose: None received
Senate Elections, Reapportionment & Const. Amends.: x-x (xx/xx/xx)
(AYE; NO; ABS)
Vote requirement: 21
Version Date: 2/06/06

Quick Summary
This measure: 1) Requires that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots; and, 2) Requires the Secretary of State to use a random number generator to determine the initial precincts subject to the 1% manual tally.

Analysis
Arguments in Support:
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 unlikely event that counties are someday 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.

According to the Secretary of State (SOS): Arguing on behalf of a similar SOS sponsored measure in the Assembly, the SOS states that, “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 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.” This measure provides at least some parameters on how to conduct the manual tally.

Arguments in Opposition:
Some local elections official might argue that complying with the provisions in SB 1635 would be too burdensome and time consuming, and as a result would divert precious resources away from essential election administration related activities.

**Other Issues:**
SOS Sponsorship?: While the SOS is not sponsoring this measure, he is sponsoring AB 2769 (Benoit) which contains, among other things, the provision in SB 1635 requiring that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots.

**Digest**
**This Measure:**
1) Clarifies that public manual tally of the ballots tabulated by devices cast in 1% of the precincts chosen at random include absent voter's ballots, provisional ballots, and ballots cast at satellite locations.

2) 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.

**Background**
**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.

2) 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.

3) Defines "Voting system" as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

**Related Legislation:**
**AB 707 (Hancock)** would have authorized any county to hold an all-mail election for the June 6, 2006 primary. It would also have required 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. This measure was schedule for hearing in the Senate ER&CA Committee on 2/22/06 but was not heard due to unofficial union opposition to the all-mail provision.

**AB 2769 (Benoit)** Sponsored by the SOS, this measure would define the procedure for conducting a 1% manual tally by elections officials, and would direct the Secretary of State to establish uniform procedures. It is scheduled to be heard in Assembly E&R on 4/18/05.

**Prior Legislation:**
**SB 370 (Bowen, 2005)** requires elections officials to use the paper ballots or the paper receipts produced by the voting equipment when doing the 1% manual tally of electronic voting machines and/or a recount. This measure was signed into law by the Governor in 2005 and received the unanimous support of the Senate Republican Caucus.

**Support & Opposition Received**
None

Senate Republican Office of Policy/ Cory Botts
SB 1235 (Bowen)

Hearing Date: 5/8/06
Consultant: Maureen Ortiz

Amended: As Introduced
Policy Vote: E. R. & C.A. 4-0

BILL SUMMARY:

SB 1235 requires elections officials to include absent voter's ballots, provisional ballots and ballots cast at satellite locations in the 1% manual tally of ballots that is conducted during the official canvass of every election.

Fiscal Impact (in thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
<td>General*</td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

STAFF COMMENTS: This bill meets the criteria to be placed on the Suspense file.

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.

Existing law requires elections officials to conduct a public manual tally of the ballots tabulated by voting systems in 1% of the precincts chosen at random by the elections officials. SB 1235 requires that manual tally to also include absent ballots, provisional ballots and those that are cast at satellite locations. According to election officials, ballots that are currently cast at a polling precinct are returned to the counties as a bundle. However, absentee ballots are mailed and received at numerous intervals and are not currently sorted by precinct. This bill will result in elections officials have to sort absentee ballots, provisional ballots, and those cast at satellite locations by precinct, in order for those ballots to be counted in the 1% manual tally.

SB 1235 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.

During the last statewide election, over 40% of the votes cast were from absent voter ballots – a number that is steadily increasing each year.
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.

ANALYSIS: 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 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.

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)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
<td>General*</td>
</tr>
</tbody>
</table>

*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
Page 1

Date of Hearing:  August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1235 (Bowen) - As Amended:  August 7, 2006

Policy Committee:  

Elections Vote: 5-1

Urgency:  No
Yes  Reimbursable:
Yes

State Mandated Local Program:
Yes

SUMMARY

This bill:

1) Requires, in elections where a voting system is used, that the manual tally of ballots in one percent of precincts include absent voter's ballots.

2) Requires the elections official, if absentee ballots are cast on a direct recording electronic (DRE) voting system at their office or a satellite location, to include those ballots in the manual tally per (1) or conduct a manual tally of ballots cast on no fewer than one percent of all DRE voting machines used in the election.

3) Requires the elections official to use a random number generator or other method, as specified in regulations to be adopted by the Secretary of State (SOS), to randomly choose the precincts subject to the manual tally in (1) or the DRE machines subject to the manual tally per (2).

FISCAL EFFECT

State reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.

There are eight counties who currently do not sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS

1)Background and Purpose. 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. Proponents of this bill contend that failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

2)Related Legislation. AB 2770 (Wyland), pending in the Senate Elections Committee, requires that absentee ballots and those cast at the polls be tabulated by precinct.

Analysis Prepared by: Chuck Nicol / APFR. / (916) 319-2081
Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS  
Judy Chu, Chair

SB 1235 (Bowen) - As Amended: August 7, 2006

Policy Committee:  
ElectionsVote: 5-1

Urgency:  
No

Yes  Reimbursable:  
Yes

STATE MANDATED LOCAL PROGRAM:

SUMMARY

This bill:

1) Requires, in elections where a voting system is used, that the manual tally of ballots in one percent of precincts include absent voter's ballots.

2) Requires the elections official, if absentee ballots are cast on a direct recording electronic (DRE) voting system at their office or a satellite location, to include those ballots in the manual tally per (1) or conduct a manual tally of ballots cast on no fewer than one percent of all DRE voting machines used in the election.

3) Requires the elections official to use a random number generator or other method, as specified in regulations to be adopted by the Secretary of State (SOS), to randomly choose the precincts subject to the manual tally in (1) or the DRE machines subject to the manual tally per (2).

FISCAL EFFECT

State reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.

There are eight counties who currently do not sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS

1) Background and Purpose. 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. Proponents of this bill contend that failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

2) Related Legislation. AB 2770 (Wyland), pending in the Senate Elections Committee, requires that absentee ballots and those cast at the polls be tabulated by precinct.

Analysis Prepared by: Chuck Nicol / APPR. / (916) 319-2081
SUMMARY: Expands the provisions for conducting the 1% manual tally, as required by law, for elections conducted using voting systems. Specifically, this bill requires elections officials to conduct a public 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 1% of all precincts to include absent voter's ballots.

2) Requires the elections official to include absentee ballots cast on a direct recording electronic voting system (DRE) at the office of the elections official or at satellite locations in the 1% manual tally. The elections official must either include the absentee ballots in the manual tally or conduct a public manual tally of those ballots cast on no fewer than 1% of all the DREs used in that election selected at random by the elections official.

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

4) Requires the elections official to report the results of the 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 discrepancy was resolved.

5) 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 1% of the precincts are 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 1% 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 1% manual tally, and shall govern if there is any difference between it and the electronic record during a 1% manual tally or full recount.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis, state reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.
There are eight counties who currently do not either sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS: This bill seeks to clarify the procedures used by elections officials for conducting the 1% manual tally and includes a requirement that absentee ballots and ballots cast at the office of the elections official and satellite locations are included in the tally. Counties are already required to conduct a tally of ballots cast in any election using an electronic voting system, but some counties are not including ballots cast in early voting locations and absentee ballots. The purpose of the 1% tally is to provide a check against the count generated by voting machines. Failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

AB 2769 (Benoit), pending on the Senate floor, requires elections officials to conduct a 1% public manual tally of ballots cast in any election where any method other than a hand count is used to tabulate election results and defines the procedures to be used for the conduct of the manual tally.

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 be used to conduct the 1% manual tally for the official canvass.

Analysis Prepared by: Lori Barber / E. & R. / (916) 319-2094

FN: 0016541
UNFINISHED BUSINESS

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

_SENATE ELECTIONS, REAP. & CONST. AMEND. COM_:  4-0, 4/19/06
AYES:  Bowen, Battin, Murray, Romero
NO VOTE RECORDED:  Poohigian

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

_SENATE FLOOR_:  38-0, 5/30/06
AYES:  Aanestad, Ackerman, Alarcon, Alquist, Ashburn,
       Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheney,
       Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth,
       Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett,
       McClintock, Migden, Morrow, Murray, Ortiz, Perata,
       Poohigian, Romero, Scott, Simitian, Soto, Speier,
       Torlakson, Vincent
NO VOTE RECORDED:  Runner

.Assembly Floor_:  79-0, 8/24/06 - See last page for vote

_SUBJECT_:  Elections
_SOURCE_:  Author

CONTINUED
DIGEST: This bill clarifies that the manually tallied ballots include the absent voters ballots 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.

Assembly Amendments require a five-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and require the elections official to include a specified report on the results of the public manual tally. This bill now conforms to AB 2769 (Benoit).

ANALYSIS: 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 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.

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). This bill is currently on the Governor's desk.

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. This bill is currently in Assembly Elections and Reapportionment Committee.

AB 2769 (Benoit), which is similar to this bill, and currently on the Senate Floor.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes
According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

SUPPORT: (Verified 5/25/06 - unable to reverify at time of this writing)

California Election Protection Network
California Association of Clerks and Elections Officials

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.

ASSEMBLY FLOOR:
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy,
Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Flescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez

NO VOTE RECORDED: Vacancy

DLW:nl 8/26/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****
UNFINISHED BUSINESS

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

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

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

SENATE FLOOR : 38-0, 5/30/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Runner

ASSEMBLY FLOOR : 79-0, 8/24/06 - See last page for vote

SUBJECT : Elections
SOURCE : Author

CONTINUED
DIGEST: This bill clarifies that the manually tallied ballots include the absent voters ballots 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.

Assembly Amendments require a five-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and require the elections official to include a specified report on the results of the public manual tally. This bill now conforms to AB 2769 (Benoit).

ANALYSIS: 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 one percent of the precincts chosen at random. For each race not included in that initial group of precincts, an 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.

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 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). This bill is currently on the Governor's desk.

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. This bill is currently in Assembly Elections and Reapportionment Committee.

CONTINUED

AB 2769 (Benoit), which is similar to this bill, and currently on the Senate Floor.

**FISCAL EFFECT**: Appropriation: No Fiscal Com.: Yes
Local: Yes
According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

**SUPPORT: (Verified 5/25/06 - unable to reverify at time of this writing)**

California Election Protection Network
California Association of Clerks and Elections Officials

**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.

ASSEMBLY FLOOR:
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy,
Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Vacancy

DLW:nl 8/26/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED
AMENDMENTS TO SENATE BILL NO. 1235
AS AMENDED IN ASSEMBLY AUGUST 7, 2006

Amendment 1
On page 2, line 6, strike out "voter's" and insert:

voters'

Amendment 2
On page 3, between lines 3 and 4, insert:

(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.

- 0 -
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.

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

APM:mkn

Two copies to Honorable Debra Bowen and Honorable John J. Benoit, pursuant to Joint Rule 34.
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 "count" 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

APM:mkn

Two copies to Honorable Debra Bowen and Honorable John J. Benoit, pursuant to Joint Rule 34.
CONFLICT NOTIFICATION
March 28, 2006

S.B. 1235

The above measure, introduced by Senator Bowen, which was set for hearing in the

Senate Elections, Reapportionment and Constitutional Amendments Committee

appears to be in conflict with

A.B. 707 - Hancock
A.B. 2769 - Benoit

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@legislativecounsel.ca.gov or 916-341-8230 at your earliest convenience.
June 2, 2006

To: County Clerks/Registrars of Voters (06226)
From: Caren Daniels-Meade, Chief of Elections

Subject: 1% Manual Tally

Pursuant to Elections Code Section 15360, a public manual tally of the ballots in one-percent of the precincts chosen at random by the elections official must be conducted after every election. Elections Code Section 19253 further states the voter verified paper audit trail shall be considered the official paper audit record and shall be used for the required one-percent manual tally described in Section 15360 and any full recount.

As you may or may not be aware, AB2769, if passed, would make the manual recount process much more public, open and transparent, which the Secretary of State believes is essential for conducting fair and accurate elections. The Secretary is recommending that the following procedures for the one-percent manual tally be followed for the June 6, 2006, Primary Election:

♦ The official conducting the manual tally should publicly notice, at least five days prior, the time and place of the precinct selection and the manual tally;
♦ The selection of the precincts should be conducted in a verifiably random manner; and
♦ The precinct selection process should be open to the public.

If you have any questions, comments, or concerns please do not hesitate to contact me at (916) 657-2133 or cdaniels@ss.ca.gov.
336.5. "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.
Senator Debra Bowen
State Capitol
Room 4040
Sacramento, CA 95814

Re: Support of SB 1235

Dear Ms. Bowen:

The California Election Protection Network adamantly supports your efforts in passing legislation to do what we thought California's Election Code 15360 was supposed to provide us--an audit that is both genuinely random and inclusive of all voting methods.

However, because of the way the Election Code 15360 has been interpreted by many counties over recent years, we do understand the necessity of SB 1235 to clarify the Code so that there can no longer be any misunderstanding.

Further, the recent revelations about our voting system failures in testing bring a new urgency to the passage of this bill as soon as possible.

Sincerely,

CALIFORNIA ELECTION PROTECTION NETWORK

Mimi Kennedy on behalf of CEPN Steering Committee
May 8, 2006
Senate Appropriations Committee

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 ballots – 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 only a minor fiscal impact.

I therefore respectfully ask for your AYE vote.
Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1235 (Bowen) – As Amended: August 7, 2006

Policy Committee: Elections
Urgency: No
State Mandated Local Program: Yes
Reimbursable: Yes

Vote: 5-1

SUMMARY

This bill:

1) Requires, in elections where a voting system is used, that the manual tally of ballots in one percent of precincts include absent voter’s ballots.

2) Requires the elections official, if absentee ballots are cast on a direct recording electronic (DRE) voting system at their office or a satellite location, to include those ballots in the manual tally per (1) or conduct a manual tally of ballots cast on no fewer than one percent of all DRE voting machines used in the election.

3) Requires the elections official to use a random number generator or other method, as specified in regulations to be adopted by the Secretary of State (SOS), to randomly choose the precincts subject to the manual tally in (1) or the DRE machines subject to the manual tally per (2).

FISCAL EFFECT

State reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.

There are eight counties who currently do not sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS

1) Background and Purpose. 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. Proponents of this bill contend that failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.
2) **Related Legislation.** AB 2770 (Wyland), pending in the Senate Elections Committee, requires that absentee ballots and those cast at the polls be tabulated by precinct.

**Analysis Prepared by:** Chuck Nicol / APPR. / (916) 319-2081
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
BILL SUMMARY

This bill would require local elections officials to use a random number generator or other Secretary of State (SOS) approved method to randomly choose precincts for the one percent manual tally and require absent voter ballots be included in the one percent manual tally.

FISCAL SUMMARY

This bill would likely result 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 manual tally and to include absent voter ballots in the one-percent manual tally. Using a method determined by the SOS for selecting the one percent sample would not likely result in sufficient costs to create a reimbursable mandate. However, adding a requirement to manually tally absent voter ballots in addition to machine ballots could result in costs to a local government in excess of $1,000, depending on the number of absent voters within the selected sample. Should the costs exceed $1,000 the local government could submit a test claim to the state for consideration by the Commission on State Mandates for reimbursement.

The SOS office indicates this bill would have no fiscal effect upon the department.

COMMENTS

Current law requires one percent manual tallies to occur, but does not outline specific processes to conduct the tallies. According to the Senate Committee on Elections, Reapportionment, and Constitutional Amendments analysis, informal reports indicate some counties have not included certain types of votes in the one percent recount.

This bill would require the precincts included in the one percent tally to be selected by specified methods and clarify the types of votes to be counted.

By specifying absent voter ballots must be included and by ensuring elections officials randomly choose precincts, this bill would provide a measure of credibility and statewide uniformity for the one percent manual tallies.
<table>
<thead>
<tr>
<th>Code/Department</th>
<th>Agency or Revenue</th>
<th>Type</th>
<th>Yrs.</th>
<th>Fund Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>0890/Secy State</td>
<td>LA</td>
<td>CO</td>
<td>RV</td>
<td>SO</td>
</tr>
<tr>
<td>0998/Mandated-LJE</td>
<td></td>
<td></td>
<td></td>
<td>SO</td>
</tr>
</tbody>
</table>

(Fiscal Impact by Fiscal Year)

(Dollars in Thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0890/Secy State</td>
<td>No</td>
<td>No</td>
<td>No/Minor Fiscal Impact</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0998/Mandated-LJE</td>
<td>No</td>
<td>No</td>
<td>See Fiscal Summary</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
BILL SUMMARY

This analysis is based on RN 06 18803 which will amend the bill August 9, 2006. This bill would require a random number generator or other Secretary of State (SOS) approved precincts for the one percent manual tally and require absent voter ballots be included in the one percent manual tally.

FISCAL SUMMARY

This bill would likely result in local elections officials to use a random number generator or other SOS approved method to randomly choose precincts for the one percent manual tally and to include absent voter ballots in the one-percent manual tally. The SOS for selecting the one percent sample would not likely result in reimbursable mandates. However, adding a requirement to manual tally absent voter ballots could result in costs to a local government in excess of $1,000, absent voters within the selected sample. Should the costs exceed $1,000 the test claim to the state for consideration by the Commission on State Mandates for reimbursement.

The SOS office indicates this bill would have no fiscal effect upon the department.

COMMENTS

Current law requires one percent manual tallies to occur, but does not outline specific processes to conduct the tallies. According to the Senate Committee on Elections, Reapportionment, and Constitutional Amendments analysis, informal reports indicate some counties have not included certain types of votes in the one percent recount.

This bill would require the precincts included in the one percent tally to be selected by specified methods and clarify the types of votes to be counted.

By specifying absent voter ballots must be included and by ensuring elections officials randomly choose precincts, this bill would provide a measure of credibility and statewide uniformity for the one percent manual tallies.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0890/Secy State</td>
<td>RV</td>
<td>98</td>
<td>No</td>
<td>No</td>
<td>0001</td>
<td>0001</td>
<td>No/Minor Fiscal Impact</td>
<td>See Fiscal Summary</td>
<td>0001</td>
<td></td>
</tr>
<tr>
<td>0998/Mandated-LJE</td>
<td>RV</td>
<td>98</td>
<td>No</td>
<td>No</td>
<td>0001</td>
<td>0001</td>
<td>No/Minor Fiscal Impact</td>
<td>See Fiscal Summary</td>
<td>0001</td>
<td></td>
</tr>
</tbody>
</table>
Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1235 (Bowen) - As Amended: August 7, 2006

Policy Committee: Elections: 5-1
Urgency: No
Yes Reimbursable: Yes
State Mandated Local Program:

SUMMARY

This bill:

1) Requires, in elections where a voting system is used, that the manual tally of ballots in one percent of precincts include absent voter's ballots.

2) Requires the elections official, if absentee ballots are cast on a direct recording electronic (DRE) voting system at their office or a satellite location, to include those ballots in the manual tally per (1) or conduct a manual tally of ballots cast on no fewer than one percent of all DRE voting machines used in the election.

3) Requires the elections official to use a random number generator or other method, as specified in regulations to be adopted by the Secretary of State (SOS), to randomly choose the precincts subject to the manual tally in (1) or the DRE machines subject to the manual tally per (2).

FISCAL EFFECT

State reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.

There are eight counties who currently do not sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS

1) Background and Purpose. 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. Proponents of this bill contend that failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

2) Related Legislation: AB 2770 (Wyland), pending in the Senate Elections Committee, requires that absentee ballots and those cast at the polls be tabulated by precinct.

Analysis Prepared by: Chuck Nicol / APPR. / (916) 319-2081
THIRD READING

BILL NO: SB 1235
Author: Bowen (D)
Amended: As introduced
Vote: 21

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

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.

ANALYSIS: 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 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.

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 discernible 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

**Support:** (Verified >) S 25/06

California Election Protection Network

**Opposition:** (Verified >) S 25/06

> [Signature] (Unlegi currency)

**Arguments in Support:**

**Arguments in Opposition:**

Dr. Wm. S 24/06 Senate Floor Analyses

[Handwritten notes]

"I felt some clarity of understanding that the selection process is a roll process that is open and transparent in the manual tabulating process and this setup applied transparency in the manual tabulating process. The process applied the scope of the regulations required to be fulfilled. I felt that in addressing the intent of the language, regulations that are not explicitly stated in the regulations are not implied."

[Handwritten notes]
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
Senator Debra Bowen  
State Capitol  
Room 4040  
Sacramento, CA 95814

Re: Support of SB 1235

Dear Ms. Bowen:

The California Election Protection Network adamantly supports your efforts in passing legislation to do what we thought California's Election Code 15360 was supposed to provide us—an audit that is both genuinely random and inclusive of all voting methods. However, because of the way the Election Code 15360 has been interpreted by many counties over recent years, we do understand the necessity of SB 1235 to clarify the Code so that there can no longer be any misunderstanding.

Further, the recent revelations about our voting system failures in testing bring a new urgency to the passage of this bill as soon as possible.

Sincerely,

CALIFORNIA ELECTION PROTECTION NETWORK

Mimi Kennedy on behalf of CEPN Steering Committee
BILL SUMMARY

This analysis is based on RN 06 18803 which will amend the bill August 9, 2006. This bill would require local elections officials to use a random number generator or other Secretary of State (SOS) approved method to randomly choose precincts for the one percent manual tally and require absent voter ballots be included in the one percent manual tally.

FISCAL SUMMARY

This bill would likely result 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 manual tally and to include absent voter ballots in the one-percent manual tally. Using a method determined by the SOS for selecting the one percent sample would not likely result in sufficient costs to create a reimbursable mandate. However, adding a requirement to manual tally absent voter ballots in addition to machine ballots could result in costs to a local government in excess of $1,000, depending on the number of absent voters within the selected sample. Should the costs exceed $1,000 the local government could submit a test claim to the state for consideration by the Commission on State Mandates for reimbursement.

The SOS office indicates this bill would have no fiscal effect upon the department.

COMMENTS

Current law requires one percent manual tallies to occur, but does not outline specific processes to conduct the tallies. According to the Senate Committee on Elections, Reapportionment, and Constitutional Amendments analysis, informal reports indicate some counties have not included certain types of votes in the one percent recount.

This bill would require the precincts included in the one percent tally to be selected by specified methods and clarify the types of votes to be counted.

By specifying absent voter ballots must be included and by ensuring elections officials randomly choose precincts, this bill would provide a measure of credibility and statewide uniformity for the one percent manual tallies.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>0890/Secty State</td>
<td>SO</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0001</td>
</tr>
<tr>
<td>0998/Mandated-LJE</td>
<td>SO</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0001</td>
</tr>
</tbody>
</table>

(Fiscal Impact by Fiscal Year)

(Dollars in Thousands)
Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

SB 1235 (Bowen)

Hearing Date: 5/25/06  Amended: As Introduced
Consultant: Maureen Ortiz  Policy Vote: E. R. & C.A. 4-0

BILL SUMMARY:

SB 1235 requires elections officials to include absent voter's ballots, provisional ballots and ballots cast at satellite locations in the 1% manual tally of ballots that is conducted during the official canvass of every election.

<table>
<thead>
<tr>
<th>Fiscal Impact (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

STAFF COMMENTS: SUSPENSE FILE.

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.

Existing law requires elections officials to conduct a public manual tally of the ballots tabulated by voting systems in 1% of the precincts chosen at random by the elections officials. SB 1235 requires that manual tally to also include absent ballots, provisional ballots and those that are cast at satellite locations. According to election officials, ballots that are currently cast at a polling precinct are returned to the counties as a bundle. However, absentee ballots are mailed and received at numerous intervals and are not currently sorted by precinct. This bill will result in elections officials have to sort absentee ballots, provisional ballots, and those cast at satellite locations by precinct, in order for those ballots to be counted in the 1% manual tally.

SB 1235 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.

During the last statewide election, over 40% of the votes cast were from absent voter ballots – a number that is steadily increasing each year.
DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: August 7, 2006
POSITION: Neutral
BILL NUMBER: SB 1235
AUTHOR: D. Bowen

BILL SUMMARY

This bill would require local elections officials to use a random number generator or other Secretary of State (SOS) approved method to randomly choose precincts for the one percent manual tally and require absent voter ballots be included in the one percent manual tally.

FISCAL SUMMARY

This bill would likely result 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 manual tally and to include absent voter ballots in the one-percent manual tally. Using a method determined by the SOS for selecting the one percent sample would not likely result in sufficient costs to create a reimbursable mandate. However, adding a requirement to manual tally absent voter ballots in addition to machine ballots could result in costs to a local government in excess of $1,000, depending on the number of absent voters within the selected sample. Should the costs exceed $1,000 the local government could submit a test claim to the state for consideration by the Commission on State Mandates for reimbursement.

The SOS office indicates this bill would have no fiscal effect upon the department.

COMMENTS

Current law requires one percent manual tallies to occur, but does not outline specific processes to conduct the tallies. According to the Senate Committee on Elections, Reapportionment, and Constitutional Amendments analysis, informal reports indicate some counties have not included certain types of votes in the one percent recount.

This bill would require the precincts included in the one percent tally to be selected by specified methods and clarify the types of votes to be counted.

By specifying absent voter ballots must be included and by ensuring elections officials randomly choose precincts, this bill would provide a measure of credibility and statewide uniformity for the one percent manual tallies.
<table>
<thead>
<tr>
<th>Code/Department</th>
<th>Agency or Revenue</th>
<th>Type</th>
<th>Fund Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>0890/Secy State</td>
<td>SO</td>
<td>No</td>
<td>0001</td>
</tr>
<tr>
<td>0998/Mandated-LJE</td>
<td>SO</td>
<td>No</td>
<td>0001</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SO</th>
<th>(Fiscal Impact by Fiscal Year)</th>
<th>(Dollars in Thousands)</th>
</tr>
</thead>
</table>

- 0890/Secy State: No/Minor Fiscal Impact
- 0998/Mandated-LJE: See Fiscal Summary
Senate Appropriations Committee Fiscal Summary
Senator Kevin Murray, Chairman

SB 1235 (Bowen)

Hearing Date: 5/8/06
Consultant: Maureen Ortiz
Amended: As Introduced
Policy Vote: E. R. & C.A. 4-0

BILL SUMMARY:

SB 1235 requires elections officials to include absent voter's ballots, provisional ballots and ballots cast at satellite locations in the 1% manual tally of ballots that is conducted during the official canvass of every election.

Fiscal Impact (in thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown</td>
<td>unknown</td>
<td>$150</td>
<td>General*</td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

STAFF COMMENTS: This bill meets the criteria to be placed on the Suspense file.

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.

Existing law requires elections officials to conduct a public manual tally of the ballots tabulated by voting systems in 1% of the precincts chosen at random by the elections officials. SB 1235 requires that manual tally to also include absent ballots, provisional ballots and those that are cast at satellite locations. According to election officials, ballots that are currently cast at a polling precinct are returned to the counties as a bundle. However, absentee ballots are mailed and received at numerous intervals and are not currently sorted by precinct. This bill will result in elections officials have to sort absentee ballots, provisional ballots, and those cast at satellite locations by precinct, in order for those ballots to be counted in the 1% manual tally.

SB 1235 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.

During the last statewide election, over 40% of the votes cast were from absent voter ballots – a number that is steadily increasing each year.
SENATE FLOOR ANALYSES WORKSHEET

CONSULTANT: _______________________

THIRD READING / CONSENT / (DO AHEAD)

Bill No.: SB 123
Author: George (D)
Amended: _______________________
Vote Required: 21

SEN. URCA COM.: Vote 4-0, Date 4/19/06
SEN. APPROP. COM.: Vote ______, Date ______ / 28.8 / NONFISCAL
SEN. FLOOR: Vote ______, Date ______ / ASSY FLOOR: Vote ______, Date ______

SUBJECT: Electricity
SOURCE: [Signature]

DIGEST:

[Signature]

ANALYSIS:

FISCAL EFFECT: Appropriation: Fiscal Committee: Local:

SUPPORT: Verification Date _______________________

OPPOSITION: Verification Date _______________________

ARGUMENTS IN SUPPORT:

ARGUMENTS IN OPPOSITION:
DESCRIPTION

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.

Existing law specifically states that the 1% manual tally is conducted during the official canvass to verify the accuracy of the automated count.

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.

BACKGROUND

What's the Problem? This bill stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the 1% manual tally 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 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.

Talkin' 'Bout My Random Generation. 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.

**COMMENTS**

1. **Auditing For Accuracy.** Requiring all of the ballots – not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1% audit should increase the thoroughness and the reliability of the audit. Absent a complete count of all of the ballots in a precinct that’s subject to the 1% audit, it’s difficult to see how elections officials can argue they’ve complied with the audit requirements under the law.

2. **The 1% Solution.** The requirement to audit 1% of the precincts has been law in California for over 40 years. Last year, New York enacted a requirement that the results from 3% of the voting machines within the jurisdiction of each board of elections be manually audited. Following the New York model and moving from a 1% to a 3% 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.

3. **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 1% 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). SB 1760 is scheduled to be heard by the Senate Elections, Reapportionment & Constitutional Amendments Committee today.

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 Elections and Redistricting Committee.
POSITIONS

Sponsor: Author

Support: California Election Protection Network

Oppose: None received
MEASURE : S.B. No. 1235
AUTHOR(S) : Bowen.
TOPIC : Elections.
31 DAYS IN PRINT : 03/09/2006
TITLE : An act to amend Section 15360 of the Elections Code, relating to elections.
LAST AMENDED DATE : 08/21/2006

LAST 5 HISTORY ACTIONS:
09/30/06 Chaptered by Secretary of State. Chapter 893, Statutes of 2006.
09/30/06 Approved by Governor.
09/07/06 Enrolled. To Governor at 3:30 p.m.
08/30/06 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 5435.) To enrollment.
08/28/06 In Senate. To unfinished business.
2005-2006
COMPLETE BILL HISTORY

BILL NUMBER: S.B. No. 1235
AUTHOR: Bowen
TOPIC: Elections.
TYPE OF BILL:
- INACTIVE BILL
- NON-APPROPRIATION
- STATE-MANDATED LOCAL PROGRAM
- NON-TAX-LEVY

BILL HISTORY

2006
Sept. 30 Approved by Governor.
Sept. 7 Enrolled. To Governor at 3:30 p.m.
Aug. 30 Senate concurs in Assembly amendments. (Ayes 40. Noes 0. Page 5435.) To enrollment.
Aug. 28 In Senate. To unfinished business.
Aug. 22 Read second time. To third reading.
Aug. 9 Placed on APPR. suspense file.
Aug. 7 From committee with author's amendments. Read second time. Amended. Re-referred to committee.
June 27 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 5. Noes 1.) Re-referred to Com. on APPR.
June 12 To Com. on E. & R.
May 31 In Assembly. Read first time. Held at Desk.
May 26 Read second time. To third reading.
May 25 From committee: Do pass. (Ayes 11. Noes 0. Page 4043.)
May 22 Set for hearing May 25.
May 8 Placed on APPR. suspense file.
Apr. 26 Hearing postponed by committee. Set for hearing May 8.
Apr. 25 Set for hearing May 1.
Apr. 20 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 4. Noes 0. Page 3582.) Re-referred to Com. on APPR.
Mar. 27 Set for hearing April 19.
Feb. 16 To Com. on E., R. & C.A.
Feb. 7 From print. May be acted upon on or after March 9.
Feb. 6 Introduced. Read first time. To Com. on RL8. for assignment. To print.
UNOFFICIAL BALLOT

MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 08/30/2006
LOCATION: SEN. FLOOR
MOTION: Unfinished Business SB1235 Bowen
(AYES 40. NOES 0.) (PASS)

AYES
****

Aanestad Ackerman Alarcon Alquist
Ashburn Battin Bowen Cedillo
Chesbro Cox Denham Ducheny
Dunn Dutton Escutia Figueroa
Florez Harman Hollingsworth Kehoe
Kuehl Lowenthal Machado Maldonado
Margrett McClintock Migden Morrow
Murray Ortiz Perata Poochigian
Romero Runner Scott Simitian
Soto Speier Torlakson Vincent

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
*******************************
UNOFFICIAL BALLOT

MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 08/24/2006
LOCATION: ASM. FLOOR
MOTION: SB 1235 Bowen Senate Third Reading By Benoit
(AYES 79. NOES 0.) (PASS)

AYES
****

Aghazarian Arambula Baca Bass
Benoit Berg Bermudez Blakeslee
Bohig Calderon Canciamilla Chan
Chavez Chu Cogdill Cohn
Coto Daucher De La Torre DeVore
Dymally Emmerson Evans Frommer
Garcia Goldberg Hancock Haynes
Jerome Horton Shirley Horton Houston Huff
Jones Karnette Keene Klehs
Koretz La Malfa La Suer Laird
Leno Leslie Levine Lieber
Lieu Liu Matthews Maze
McCarthy Montanez Mountjoy Mullin
Nakanishi Nation Nava Negrete McLeod
Niello Oropeza Parra Pavley
Plescia Richman Ridley-Thomas Sharon Runner
Ruskin Saldana Salinas Spitzer
Strickland Torrico Tran Umberg
Vargas Villines Walters Wolk
Wyland Yee Nunez

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
****************************************

Vacancy
UNOFFICIAL BALLOT
MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 08/17/2006
LOCATION: ASM. APPR.
MOTION: Do pass as amended.
(AYES 18. NOES 0.) (PASS)

AYES
****
Chu Sharon Runner Bass Berg
Calderon De La Torre Emmerson Haynes
Karnette Klehs Leno Nakanishi
Nation Laird Ridley-Thomas Saldana
Walters Yee

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
********************************************************
UNOFFICIAL BALLOT

MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 06/27/2006
LOCATION: ASM. E. & R.
MOTION: Do pass and be re-referred to the Committee on Appropriations.
(AYES 5. NOES 1.) (PASSE)

AYES
****

Umberg Wyland Karnette Klehs
Leno

NOES
****

Villines

ABSENT, ABSTAINING, OR NOT VOTING
******************************************************************************

Levine
UNOFFICIAL BALLOT

MEASURE: SB 1235
AUTHOR: Bowen
TOPIC: Elections.
DATE: 05/30/2006
LOCATION: SEN. FLOOR
MOTION: Senate 3rd Reading SB1235 Bowen
(AYES 38, NOES 0.) (PASS)

AYES
****

Aanestad  Ackerman   Alarcon Alquist
Ashburn Battin  Bowen  Cedillo
Chesbro Cox  Denham  Ducheny
Dunn  Dutton  Escutia Figueroa
Florez  Hollingsworth  Kehoe  Kuehl
Lowenthal  Machado  Maldonado  Margett
McClintock  Migden  Morrow  Murray
Ortiz  Perata  Poochigian  Romero
Scott  Simitian  Soto  Speier
Torlakson  Vincent

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING
******************************

Runner Vacancy
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 05/25/2006

LOCATION: SEN. APPR.

MOTION: Do pass.

(AYES 11. NOES 0.) (PASS)

AYES

****

Murray Aanestad Alquist Ashburn
Battin Dutton Escutia Florez
Poochigian Romero Torlakson

NOES

****.

ABSENT, ABSTAINING, OR NOT VOTING

**************************************************

Alarcon Ortiz
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 05/08/2006

LOCATION: SEN. APPR.

MOTION: Placed on Appropriations Suspense file.

(AYES 13. NOES 0.) (PASS)

AYES

****

Murray Aanestad Alarcon Alquist
Ashburn Battin Dutton Escutia
Florez Ortiz Poochigian Romero
Torlakson

NOES

****

ABSENT, ABSTAINING, OR NOT VOTING

********************************************************************************
UNOFFICIAL BALLOT

MEASURE: SB 1235

AUTHOR: Bowen

TOPIC: Elections.

DATE: 04/19/2006

LOCATION: SEN. E., R. & C.A.

MOTION: Do pass, but re-refer to the Committee on Appropriations.

(AYES 4. NOES 0.) (PASS)

AYES
****

Bowen  Battin  Murray  Romero

NOES
****

ABSENT, ABSTAINING, OR NOT VOTING

*******************************

Poochigian
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
April 19, 2006
Senate Elections, Reapportionment and Constitutional Amendments

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 ballots – 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 8, 2006
Senate Appropriations Committee

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 ballots – 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 only a minor fiscal impact.

I therefore respectfully ask for your AYE vote.
Senator Debra Bowen  
State Capitol  
Room 4040  
Sacramento, CA 95814

Re: Support of SB 1235

Dear Ms. Bowen:

The California Election Protection Network adamantly supports your efforts in passing legislation to do what we thought California's Election Code 15360 was supposed to provide us--an audit that is both genuinely random and inclusive of all voting methods.

However, because of the way the Election Code 15360 has been interpreted by many counties over recent years, we do understand the necessity of SB 1235 to clarify the Code so that there can no longer be any misunderstanding.

Further, the recent revelations about our voting system failures in testing bring a new urgency to the passage of this bill as soon as possible.

Sincerely,

CALIFORNIA ELECTION PROTECTION NETWORK

Mimi Kennedy on behalf of CEPN Steering 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,

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 Seiler,
Co-Chair CACEO Elections Legislative Committee
September 15, 2006

The Honorable Arnold Schwarzenegger
Governor, State of California
Attn: Cynthia Bryant
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The California Association of Clerks and Election Officials (CACEO) is writing to inform you that it has removed its position of Support if Amended in regard to AB 2769 and SB 1235. The Association would like to express its concerns about these bills as written, and forward to your signature. Our Association met with the authors' staffs to discuss our concerns while there was ample opportunity for amendment. In doing so, our representatives were under the impression that there was agreement for our requested amendments. Unfortunately, the amendments did not appear in the final copy of the bill.

Our concerns focus on the inclusion of Absentee and Provisional Ballots in the 1% Manual Tally. The purpose of the 1% Manual Tally is to check the accuracy of the tabulation of the vote counting equipment. This is a requirement of the Official Canvass, and, as such, must be completed prior to certifying the vote and announcing winning candidates.

The 1% Manual Tally is generally performed shortly after Election Day, using the precinct results from the Official Semi-Final Canvass from Election Night for comparison to the manually tallied ballots. Absentee and Provisional Ballots require individual verification, and in the case of provisional ballots, significant research prior to counting. This labor-intensive task is taking place during the same time period as the 1% Manual Tally is being conducted. In larger counties, such as San Diego and Los Angeles, the verification of Absentee Ballots and research of Provisional Ballots is often not completed until the end of the canvass. If it is mandated that we include the Absentee and Provisional Ballots in the 1% Manual Tally, it will be necessary to wait until these tasks are complete, and will quite possibly delay the certified election results and exceed the statutory canvass period.

Electoral Officials have ongoing concerns in regard to the manner in which the 1% Manual Tally must be conducted, resulting from the passage of SB 370 last year. We would welcome the opportunity to revisit the issue next year in hopes of addressing the concerns of authors while continuing to meet the administrative and logistical confines of the canvass. Should you or your staff have any questions in this regard, please do not hesitate to contact me at the Sonoma County Registrar of Voters Office, 707-565-6814.

Very truly yours,

[Signature]

Jenice Atkinson
Correspondence Secretary
Elections Legislative Committee
California Association of Clerks and Election Officials

c: Senator Debra Bowen, Author, SB 1235
Assembly Member John Bancit, Author AB 2769
Jill Lavine, Co-Chair, CACEO Elections Legislative Committee
Deborah Seiler, Co-Chair, CACEO Elections Legislative Committee
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 23, 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, Assembly Elections and Redistricting Committee.
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.

Existing law specifically states that the 1% manual tally is conducted during the official canvass to verify the accuracy of the automated count.

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.

**BACKGROUND**

What's the Problem? This bill stems from anecdotal reports that some counties routinely exclude absent voter and provisional ballots from the 1% manual tally 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 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.

Talkin' 'Bout My Random Generation 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.

COMMENTS

1. **Auditing For Accuracy.** Requiring all of the ballots – not just those cast at the polling place on Election Day – in a given precinct to be a part of the 1% audit should increase the thoroughness and the reliability of the audit. Absent a complete count of all of the ballots in a precinct that’s subject to the 1% audit, it’s difficult to see how elections officials can argue they’ve complied with the audit requirements under the law.

2. **The 1% Solution.** The requirement to audit 1% of the precincts has been law in California for over 40 years. Last year, New York enacted a requirement that the results from 3% of the voting machines within the jurisdiction of each board of elections be manually audited. Following the New York model and moving from a 1% to a 3% 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.

3. **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 1% 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). SB 1760 is scheduled to be heard by the Senate Elections, Reapportionment & Constitutional Amendments Committee today.

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 Elections and Redistricting Committee.
POSITIONS

Sponsor: Author

Support: California Election Protection Network

Oppose: None received
Quick Summary
This measure: 1) Requires that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots; and, 2) Requires the Secretary of State to use a random number generator to determine the initial precincts subject to the 1% manual tally.

Analysis
Arguments in Support:
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 unlikely event that counties are someday 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.

According to the Secretary of State (SOS): Arguing on behalf of a similar SOS sponsored measure in the Assembly, the SOS states that, “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 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.” This measure provides at least some parameters on how to conduct the manual tally.

Arguments in Opposition:
Some local elections official might argue that complying with the provisions in SB 1635 would be too burdensome and time consuming, and as a result would divert precious resources away from essential election administration related activities.

**Other Issues:**

**SOS Sponsorship ?**: While the SOS is not sponsoring this measure, he is sponsoring AB 2769 (Benoit) which contains, among other things, the provision in SB 1635 requiring that absentee ballots, provisional ballots, and ballots cast at satellite locations be included in the 1% manual tally of the ballots.

**Digest**

**This Measure:**

1) Clarifies that public manual tally of the ballots tabulated by devices cast in 1% of the precincts chosen at random include absent voter’s ballots, provisional ballots, and ballots cast at satellite locations.

2) 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.

**Background**

**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.

2) 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.

3) Defines “Voting system” as any mechanical, electromechanical, or electronic system and its software, or any combination of these used to cast and/or tabulate votes.

**Related Legislation:**

**AB 707 (Hancock)** would have authorized any county to hold an all-mail election for the June 6, 2006 primary. It would also have required 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. This measure was schedule for hearing in the Senate ER&CA Committee on 2/22/06 but was not heard due to unofficial union opposition to the all-mail provision.

**AB 2769 (Benoit)** Sponsored by the SOS, this measure would define the procedure for conducting a 1% manual tally by elections officials, and would direct the Secretary of State to establish uniform procedures. It is scheduled to be heard in Assembly E&R on 4/18/05.

**Prior Legislation:**
**SB 370 (Bowen, 2005)** requires elections officials to use the paper ballots or the paper receipts produced by the voting equipment when doing the 1% manual tally of electronic voting machines and/or a recount. This measure was signed into law by the Governor in 2005 and received the unanimous support of the Senate Republican Caucus.

**Support & Opposition Received**
None

Senate Republican Office of Policy / Cory Botts
Senate Appropriations Committee Fiscal Summary  
Senator Kevin Murray, Chairman

SB 1235 (Bowen)

**Hearing Date:** 5/8/06  
**Consultant:** Maureen Ortiz  
**Amended:** As Introduced  
**Policy Vote:** E. R. & C.A. 4-0

---

**BILL SUMMARY:**

SB 1235 requires elections officials to include absent voter’s ballots, provisional ballots and ballots cast at satellite locations in the 1% manual tally of ballots that is conducted during the official canvass of every election.

---

**Fiscal Impact (in thousands)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
<td>General*</td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

---

**STAFF COMMENTS:** This bill meets the criteria to be placed on the Suspense file.

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.

Existing law requires elections officials to conduct a public manual tally of the ballots tabulated by voting systems in 1% of the precincts chosen at random by the elections officials. SB 1235 requires that manual tally to also include absent ballots, provisional ballots and those that are cast at satellite locations. According to election officials, ballots that are currently cast at a polling precinct are returned to the counties as a bundle. However, absentee ballots are mailed and received at numerous intervals and are not currently sorted by precinct. This bill will result in elections officials have to sort absentee ballots, provisional ballots, and those cast at satellite locations by precinct, in order for those ballots to be counted in the 1% manual tally.

SB 1235 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.

During the last statewide election, over 40% of the votes cast were from absent voter ballots – a number that is steadily increasing each year.
SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

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

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

SENATE APPROPRIATIONS COMMITTEE: 11-0, 5/25/06
AYES: Murray, Aanestad, Alquist, Ashburn, Battin, Dutton, Escutia,
      Florez, Poochigian, 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.

ANALYSIS: 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 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

CONTINUED
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)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown</td>
<td>probably over $150</td>
<td>General*</td>
<td></td>
</tr>
</tbody>
</table>

*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 ****
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
Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1235 (Bowen) - As Amended: August 7, 2006

Policy Committee: Elections Vote: 5-1

Urgency: No
Yes Reimbursable: State Mandated Local Program: Yes

SUMMARY

This bill:

1) Requires, in elections where a voting system is used, that the manual tally of ballots in one percent of precincts include absent voter's ballots.

2) Requires the elections official, if absentee ballots are cast on a direct recording electronic (DRE) voting system at their office or a satellite location, to include those ballots in the manual tally per (1) or conduct a manual tally of ballots cast on no fewer than one percent of all DRE voting machines used in the election.

3) Requires the elections official to use a random number generator or other method, as specified in regulations to be adopted by the Secretary of State (SOS), to randomly choose the precincts subject to the manual tally in (1) or the DRE machines subject to the manual tally per (2).

FISCAL EFFECT

State reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.

There are eight counties who currently do not sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS

1) Background and Purpose. 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. Proponents of this bill contend that failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

2) Related Legislation. AB 2770 (Wyland), pending in the Senate Elections Committee, requires that absentee ballots and those cast at the polls be tabulated by precinct.

Analysis Prepared by: Chuck Nicol / APPR. / (916) 319-2081
Date of Hearing: August 9, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

SB 1235 (Bowen) - As Amended: August 7, 2006

Policy Committee: Elections

Urgency: No
Yes Reimbursable: State Mandated Local Program:
Yes

SUMMARY

This bill:

1) Requires, in elections where a voting system is used, that the manual tally of ballots in one percent of precincts include absent voter's ballots.

2) Requires the elections official, if absentee ballots are cast on a direct recording electronic (DRE) voting system at their office or a satellite location, to include those ballots in the manual tally per (1) or conduct a manual tally of ballots cast on no fewer than one percent of all DRE voting machines used in the election.

3) Requires the elections official to use a random number generator or other method, as specified in regulations to be adopted by the Secretary of State (SOS), to randomly choose the precincts subject to the manual tally in (1) or the DRE machines subject to the manual tally per (2).

FISCAL EFFECT

State reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.

There are eight counties who currently do not sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

COMMENTS

1) Background and Purpose: 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. Proponents of this bill contend that failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

2) Related Legislation: AB 2770 (Wyland), pending in the Senate Elections Committee, requires that absentee ballots and those cast at the polls be tabulated by precinct.

Analysis Prepared by: Chuck Nicol / APPR. / (916) 319-2081
SENATE THIRD READING
SB 1235 (Bowen)
As Amended August 21, 2006
Majority vote

SENATE VOTE: 38-0

<table>
<thead>
<tr>
<th>ELECTIONS</th>
<th>5-1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ayes:</td>
<td></td>
</tr>
<tr>
<td>Umberg, Wyland, Karnette, Klehs, Leno</td>
<td></td>
</tr>
<tr>
<td>Nays:</td>
<td></td>
</tr>
<tr>
<td>Villines</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>APPROPRIATIONS</th>
<th>18-0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ayes:</td>
<td></td>
</tr>
<tr>
<td>Chu, Sharon Runner, Bass, Berg, Calderon, De La Torre, Emmerson, Haynes, Karnette, Klehs, Leno, Nakanishi, Nation, Laird, Ridley-Thomas, Saldana, Walters, Yee</td>
<td></td>
</tr>
</tbody>
</table>

SUMMARY: Expands the provisions for conducting the 1% manual tally, as required by law, for elections conducted using voting systems. Specifically, this bill requires elections officials to conduct a public 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 1% of all precincts to include absent voter’s ballots.

2) Requires the elections official to include absentee ballots cast on a direct recording electronic voting system (DRE) at the office of the elections official or at satellite locations in the 1% manual tally. The elections official must either include the absentee ballots in the manual tally or conduct a public manual tally of those ballots cast on no fewer than 1% of all the DREs used in that election selected at random by the elections official.

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

4) Requires the elections official to report the results of the 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 discrepancy was resolved.

5) 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 1% of the precincts are 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 1% 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 1% manual tally, and shall govern if there is any difference between it and the electronic record during a 1% manual tally or full recount.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis, state reimbursable costs for some counties, who currently cannot sort absentee ballots by precinct, to either purchase sorting equipment or sort manually for purposes of including absentee ballots in the 1% tally. The number of counties without such capability is unknown.
There are eight counties who currently do not either sort or report absentee ballots by precinct, but 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% tally. Costs would probably exceed $2 million for all counties to purchase sorting equipment (costing between $100,000 and $500,000 per machine).

**COMMENTS**: This bill seeks to clarify the procedures used by elections officials for conducting the 1% manual tally and includes a requirement that absentee ballots and ballots cast at the office of the elections official and satellite locations are included in the tally. Counties are already required to conduct a tally of ballots cast in any election using an electronic voting system, but some counties are not including ballots cast in early voting locations and absentee ballots. The purpose of the 1% tally is to provide a check against the count generated by voting machines. Failure to use all types of ballots in the manual tally results in an incomplete check on the voting machines.

**AB 2769** (Benoit), pending on the Senate floor, requires elections officials to conduct a 1% public manual tally of ballots cast in any election where any method other than a hand count is used to tabulate election results and defines the procedures to be used for the conduct of the manual tally.

**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 be used to conduct the 1% manual tally for the official canvass.

**Analysis Prepared by**: Lori Barber / E. & R. / (916) 319-2094

FN: 0016541
SB 1235 Senate Bill - Bill Analysis

UNFINISHED BUSINESS

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

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

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

SENATE FLOOR: 38-0, 5/30/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Runner

ASSEMBLY FLOOR: 79-0, 8/24/06 - See last page for vote

SUBJECT: Elections
SOURCE: Author

CONTINUED

DIGEST: This bill clarifies that the manually tallied ballots include the absent voters ballots 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.

Assembly Amendments require a five-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and require the elections official to include a specified report on the results of the public manual tally. This bill now conforms to AB 2769 (Benoit).

ANALYSIS: 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 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.

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 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). This bill is currently on the Governor's desk.

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. This bill is currently in Assembly Elections and Reapportionment Committee.

AB 2769 (Benoit), which is similar to this bill, and currently on the Senate Floor.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes
According to the Senate Appropriations Committee:

**Fiscal Impact (in thousands)**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

**SUPPORT:** (Verified 5/25/06 - unable to reverify at time of this writing)

California Election Protection Network
California Association of Clerks and Elections Officials

**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.

**ASSEMBLY FLOOR:**
AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy,
Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Vacancy

DLW:n1 8/26/06 Senate Floor Analyses

SUPPORT/OPPosition: SEE ABOVE

**** END ****
UNFINISHED BUSINESS

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

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

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

SENATE FLOOR : 38-0, 5/30/06
AYES: Aanestad, Ackerman, Alarcon, Alquist, Ashburn, Battin, Bowen, Cedillo, Chesbro, Cox, Denham, Ducheny, Dunn, Dutton, Escutia, Figueroa, Florez, Hollingsworth, Kehoe, Kuehl, Lowenthal, Machado, Maldonado, Margett, McClintock, Migden, Morrow, Murray, Ortiz, Perata, Poochigian, Romero, Scott, Simitian, Soto, Speier, Torlakson, Vincent
NO VOTE RECORDED: Runner

ASSEMBLY FLOOR : 79-0, 8/24/06 - See last page for vote

SUBJECT : Elections
SOURCE : Author

CONTINUED
DIGEST: This bill clarifies that the manually tallied ballots include the absent voters ballots 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.

Assembly Amendments require a five-day notice to the public of the time and place of the manual tally and the selection of the initial precincts and require the elections official to include a specified report on the results of the public manual tally. This bill now conforms to AB 2769 (Benoit).

ANALYSIS: 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 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.

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.

CONTINUED

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). This bill is currently on the Governor's desk.

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. This bill is currently in Assembly Elections and Reapportionment Committee.

CONTINUED

AB 2769 (Benoit), which is similar to this bill, and currently on the Senate Floor.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes
According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ballot counting</td>
<td>unknown, probably over $150</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Reimbursable local mandate

_SUPPORT:_ (Verified 5/25/06 - unable to reverify at time of this writing)

California Election Protection Network
California Association of Clerks and Elections Officials

_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.

**ASSEMBLY FLOOR:**

AYES: Aghazarian, Arambula, Baca, Bass, Benoit, Berg, Bermudez, Blakeslee, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cogdill, Cohn, Coto, Daucher, De La Torre, DeVore, Dymally, Emmerson, Evans, Frommer, Garcia, Goldberg, Hancock, Haynes, Jerome Horton, Shirley Horton, Houston, Huff, Jones, Karnette, Keene, Klehs, Koretz, La Malfa, La Suer, Laird, Leno, Leslie, Levine, Lieber, Lieu, Liu, Matthews, Maze, McCarthy, Montanez, Mountjoy,
Mullin, Nakanishi, Nation, Nava, Negrete McLeod, Niello, Oropeza, Parra, Pavley, Plescia, Richman, Ridley-Thomas, Sharon Runner, Ruskin, Saldana, Salinas, Spitzer, Strickland, Torrico, Tran, Umberg, Vargas, Villines, Walters, Wolk, Wyland, Yee, Nunez
NO VOTE RECORDED: Vacancy

DLW:nl 8/26/06 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CONTINUED
AMENDMENTS TO SENATE BILL NO. 1235
AS AMENDED IN ASSEMBLY AUGUST 7, 2006

Amendment 1

On page 2, line 6, strike out “voter’s” and insert:

voters'

Amendment 2

On page 3, between lines 3 and 4, insert:

(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.

- 0 -
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 -
LEGISLATIVE COUNSEL'S DIGEST

Bill No. 1235

as introduced, Bowen.

General Subject: 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.

AUTHOR'S CODE

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

- 0 -
REPORT ON ENROLLED BILL

S.B. 1235

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 "count" 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

APM:mkn

Two copies to Honorable Debra Bowen and Honorable John J. Benoit, pursuant to Joint Rule 34.
September 25, 2006

Honorabale Arnold Schwarzenegger
Governor of California
Sacramento, CA 95814

REPORT ON ENROLLED BILL

S.B. 1235

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 "count" 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

APM:mkn

Two copies to Honorable Debra Bowen and Honorable John J. Benoit, pursuant to Joint Rule 34.
CONFLICT NOTIFICATION
March 28, 2006

S.B. 1235

The above measure, introduced by Senator Bowen, which was set for hearing in the

Senate Elections, Reapportionment and Constitutional Amendments Committee

appears to be in conflict with

A.B. 707 - Hancock
A.B. 2769 - Benoit

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@legislativecounsel.ca.gov or 916-341-8230 at your earliest convenience.
June 2, 2006

To: County Clerks/Registrars of Voters (06226)

From: Caren Daniels-Meade, Chief of Elections

Subject: 1% Manual Tally

Pursuant to Elections Code Section 15360, a public manual tally of the ballots in one-percent of the precincts chosen at random by the elections official must be conducted after every election. Elections Code Section 19253 further states the voter verified paper audit trail shall be considered the official paper audit record and shall be used for the required one-percent manual tally described in Section 15360 and any full recount.

As you may or may not be aware, AB2769, if passed, would make the manual recount process much more public, open and transparent, which the Secretary of State believes is essential for conducting fair and accurate elections. The Secretary is recommending that the following procedures for the one-percent manual tally be followed for the June 6, 2006, Primary Election:

- The official conducting the manual tally should publicly notice, at least five days prior, the time and place of the precinct selection and the manual tally;
- The selection of the precincts should be conducted in a verifiably random manner; and
- The precinct selection process should be open to the public.

If you have any questions, comments, or concerns please do not hesitate to contact me at (916) 657-2133 or cdaniels@ss.ca.gov.
Chesin, Darren

From: Lisa & Darren Chesin [chesin@frontiernet.net]
Sent: Sunday, April 02, 2006 8:55 PM
To: Chesin, Darren
Subject: 336.5

336.5. "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.