Assembly Bill No. 44

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Passed the Assembly September 9, 2015

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Chief Clerk of the Assembly

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Passed the Senate September 3, 2015

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Secretary of the Senate

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This bill was received by the Governor this _____ day of _____, 2015, at _____ o'clock ___м.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 15601, 15620, 15621, 15626, 15627, and 15632, of, to add Sections 15621.5 and 19204.5 to, and to add Article 5 (commencing with Section 15645) to Chapter 9 of Division 15 of, the Elections Code, relating to elections.

AB 44, Mullin. Elections: statewide recounts.

(1) Existing law requires the Secretary of State to adopt regulations relating to the use of voting systems in recounting ballots.

This bill would also require the Secretary of State to revise and adopt regulations relating to procedures for recounting ballots, including regulations establishing guidelines for the charges a county elections official may impose when conducting a manual recount.

(2) Existing law establishes procedures by which a voter may request a recount of the votes cast in an election following completion of the official canvass. Existing law requires a voter to make this request within 5 days beginning on the 29th day after the election.

This bill would instead permit a voter to file a request for a recount within 5 days beginning on the 30th day after the election.

(3) Any time during the conduct of a recount and for 24 hours thereafter, existing law permits any other voter to request a recount of any precincts in an election for the same office, slate of presidential electors, or measure not recounted as a result of the original request. Existing law also provides that, where applicable, a voter requesting a recount may select whether the recount shall be conducted manually, or by means of the voting system used originally, or both.

This bill would instead require a voter to select, for each type of voting system used, whether the recount is to be conducted manually, or by means of the voting system used originally, but not both. This bill would also specify that if more than one voter requests a recount of the same office or measure, and at least one request is for a manual recount, then the county elections official

of any county subject to multiple requests is only obligated to conduct one manual recount of the ballots subject to the request, and that those results will control.

(4) Under existing law, a voter seeking a recount is required, before the recount is commenced and at the beginning of each subsequent day, to deposit with the elections official the amount of money required by the elections official to cover the cost of the recount for that day.

This bill would permit the Governor or Secretary of State, as specified, to order a state-funded manual recount of all votes cast for a statewide office or a state ballot measure if the difference in the number of votes received is less than or equal to the lesser of 1,000 votes or 0.00015 of the number of all votes cast, as specified. This bill would also require a county elections official to review rejected ballots as part of a state-funded recount.

(5) Under existing law, upon completion of a recount showing that a different candidate was nominated or elected, that a different presidential slate of electors received a plurality of the votes, or that a measure was defeated instead of approved or approved instead of defeated, the result of the recount in each affected precinct is entered and is thereafter considered the official return of the affected precincts. Existing law provides that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and void unless each vote cast for the office, slates, or measure in any county specified in the request for recount is recounted.

This bill would instead provide that if an office, slates of presidential electors, or measure is voted on statewide, the results of any recount are null and void unless each vote cast statewide for the office, slates, or measure is recounted.

(6) Existing law requires the Secretary of State to certify or conditionally approve a voting system prior to any election at which it is to be used, as specified. Existing law prohibits the Secretary of State from certifying or conditionally approving a voting system or part of a voting system that does not have certain technical capabilities.

This bill would also prohibit the Secretary of State from certifying or conditionally approving a voting system that cannot facilitate the conduct of a ballot level comparison risk-limiting audit; however, it would expressly permit the Secretary of State

to approve a proposed change or modification to a noncompliant voting system even if the voting system would be unable to facilitate the conduct of a ballot level comparison risk-limiting audit after the change or modification.

By imposing new duties on local elections officials, this 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.

The people of the State of California do enact as follows:

SECTION 1. Section 15601 of the Elections Code is amended to read:

15601. (a) The Secretary of State, within the Secretary of State's existing budget, shall adopt regulations no later than January 1, 2008, for each voting system approved for use in the state and specify the procedures for recounting ballots, including vote by mail and provisional ballots, using those voting systems.

(b) No later than January 1, 2018, the Secretary of State shall revise and adopt regulations specifying procedures for recounting ballots, including regulations establishing guidelines for charges a county elections official may impose when conducting a manual recount pursuant to this chapter.

SEC. 2. Section 15620 of the Elections Code is amended to read:

15620. (a) Following completion of the official canvass and again following completion of any postcanvass risk-limiting audit conducted pursuant to Section 15560, any voter may, within five days thereafter, file with the elections official responsible for conducting an election in the county wherein the recount is sought a written request for a recount of the votes cast for candidates for any office, for slates of presidential electors, or for or against any measure, provided the office, slate, or measure is not voted on statewide. The request shall specify on behalf of which candidate,

slate of electors, or position on a measure (affirmative or negative) it is filed.

(b) If an election is conducted in more than one county, the request for the recount may be filed by any voter within five days, beginning on the 31st day after the election, with the elections official of, and the recount may be conducted within, any or all of the affected counties.

(c) For the purposes of this section, "completion of the canvass" shall be presumed to be that time when the elections official signs the certified statement of the results of the election except that, in the case of a city election, if a city council canvasses the returns itself and does not order the elections official to conduct the canvass, "completion of the canvass" shall be presumed to be that time when the governing body declares the persons elected or the measures approved or defeated.

SEC. 3. Section 15621 of the Elections Code is amended to read:

15621. (a) Following completion of the official canvass any voter may, within five days beginning on the 31st day after a statewide election, file with the Secretary of State a written request for a recount of the votes cast for candidates for any statewide office or for or against any measure voted on statewide. Additionally, any voter may file with the Secretary of State a written request for a recount of the votes cast for candidates for any statewide office or for or against any measure voted on statewide within five days following completion of any postcanvass risk-limiting audit conducted pursuant to Section 15560. A request filed pursuant to this section shall specify in which county or counties the recount is sought and shall specify on behalf of which candidate, slate of electors, or position on a measure (affirmative or negative) it is filed.

(b) The Secretary of State shall forthwith send by registered mail one copy of the request to the elections official of each county in which a recount of the votes is sought.

(c) All the other provisions of this article shall apply to recounts conducted under this section.

SEC. 4. Section 15621.5 is added to the Elections Code, to read:

15621.5. If more than one voter requests a recount of the same office or measure pursuant to Section 15620 or 15621, and at least

one request is for a manual recount, the county elections official of a county subject to multiple requests as described in this section shall conduct only one manual recount of the ballots subject to recount, the result of which shall be controlling.

SEC. 5. Section 15626 of the Elections Code is amended to read:

15626. The recount shall be commenced not more than seven days following the receipt by the elections official of the request or order for the recount under Section 15620, 15621, or 15645 and shall be continued daily, Saturdays, Sundays, and holidays excepted, for not less than six hours each day until completed. The recount shall not be commenced until the first day following notification of the individuals specified in Section 15628.

SEC. 6. Section 15627 of the Elections Code is amended to read:

15627. (a) If the votes subject to recount were cast or tabulated by a voting system, the voter requesting the recount shall, for each set of ballots cast or tabulated by a type of voting system, select whether the recount shall be conducted manually, or by means of the voting system used originally. Only one method of recount may be used for all ballots cast or tabulated by the same type of voting system.

(b) For purposes of direct recording electronic voting systems, "conducted manually" means that the voter verified paper audit trail of the electronically recorded vote is counted manually, as selected by the voter who requests the recount.

SEC. 7. Section 15632 of the Elections Code is amended to read:

15632. In lieu of the returns as reported in the official canvass, upon completion of the recount showing that a different candidate was nominated or elected, that a different presidential slate of electors received a plurality of the votes, or that a measure was defeated instead of approved or approved instead of defeated, there shall be entered the result of the recount in each precinct affected, which result shall, for all purposes thereafter, be the official returns of those precincts for the office, slates of presidential electors, or measure involved in the recount. If the office, slates of presidential electors, or measure are not voted on statewide, the results of any recount which is not completed by counting the votes in each and every precinct in the jurisdiction within which votes were cast on

the candidates for the office, on the slates of electors, or on the measure in question shall be declared null and void. If the office, slates of presidential electors, or measure are voted on statewide, the results of any recount will be declared null and void where there is not recounted each vote cast statewide for the office, slates, or measure.

SEC. 8.   Article 5 (commencing with Section 15645) is added to Chapter 9 of Division 15 of the Elections Code, to read:

Article 5. State-Funded Recounts

15645.   (a) (1) Within five days after the Secretary of State files a statement of the vote, as required by subdivision (b) of Section 15501, the Governor may order a state-funded manual recount of all votes cast for a statewide office or state ballot measure if any of the following occurs, except as provided in paragraph (3):

(A) The official canvass of returns in a statewide primary election shows that the difference in the number of votes received by the second and third place candidates for a statewide office is less than or equal to the lesser of 1,000 votes or 0.00015 of the number of all votes cast for that office except as provided in paragraph (2).

(B) The official canvass of returns in a statewide general election shows that the difference in the number of votes received by the two candidates receiving the greatest number of votes for a statewide office is less than or equal to the lesser of 1,000 votes or 0.00015 of the number of all votes cast for that office.

(C) The official canvass of returns in a statewide election shows that the difference in the number of votes cast for and against a state ballot measure is less than or equal to the lesser of 1,000 votes or 0.00015 of the number of all votes cast on the measure.

(2) The Governor shall not order a state-funded manual recount of all votes cast for the office of Superintendent of Public Instruction pursuant to this section unless the official canvass of returns in a statewide primary election shows either of the following:

(A) The number of votes received by the candidate receiving the greatest number of votes was either of the following:

(i) Between 0.49985 and 0.50015, inclusive, of the number of all votes cast.

(ii) Within 1,000 votes of 50 percent of the number of all votes cast.

(B) No candidate for the office of Superintendent of Public Instruction received votes on a majority of all the ballots cast for candidates for that office and the difference in the number of votes received by the second and third place candidates for that office was less than or equal to the lesser of 1,000 votes or 0.00015 of the number of all votes cast for that office.

(3) If the conditions set forth in paragraph (1) are satisfied with respect to the number of votes cast for the office of Governor, the Secretary of State, but not the Governor, may order a state-funded manual recount pursuant to this section.

(4) For purposes of this subdivision, "statewide office" means the office of Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, Superintendent of Public Instruction, Treasurer, or Member of the United States Senate.

(b) If a state-funded recount is conducted pursuant to this section, no other recount shall be conducted.

(c) The State shall reimburse counties for costs resulting from conducting a manual recount pursuant to this section in an expeditious manner upon certification of those costs.

15646. (a) Upon the Governor or Secretary of State ordering a recount pursuant to subdivision (a) of Section 15645, the Secretary of State shall notify the elections official of each county and shall direct the county elections officials to recount all the votes cast for the office or for and against the state ballot measure.

(b) (1) While conducting a recount pursuant to Section 15645, a county elections official shall also review ballots rejected pursuant to Section 15154 to ensure that no ballots were improperly discarded during the initial canvass.

(2) The process of reviewing rejected ballots pursuant to subdivision (a) shall be open to members of the public, including persons associated with a campaign or measure.

(c) The elections official in each county shall complete a recount pursuant to this section as follows:

(1) In a primary election, by three business days before the Secretary of State issues the certified list of candidates for the associated general election pursuant to Section 8120.

(2) In a general election, within 60 days of the Governor or Secretary of State ordering the recount.

15647. All the provisions of Article 3 (commencing with Section 15620), except Sections 15620, 15621, 15622, 15623, 15624, and 15627, shall apply to this article unless otherwise provided herein.

15648. The Secretary of State may adopt, amend, and repeal rules and regulations necessary for the administration of this article.

15649. A county elections official shall only be required to conduct a recount pursuant to this article to the extent funds are appropriated for purposes of this article in the annual Budget Act or other statute.

SEC. 9. Section 19204.5 is added to the Elections Code, to read:

19204.5. (a) The Secretary of State shall not certify or conditionally approve a voting system that cannot facilitate the conduct of a ballot level comparison risk-limiting audit.

(b) (1) For purposes of this subdivision, a voting system that is "noncompliant" is a voting system that cannot facilitate the conduct of a ballot level comparison risk-limiting audit.

(2) Notwithstanding subdivision (a), the Secretary of State may, until January 1, 2021, approve a proposed change or modification to a noncompliant voting system even if the voting system will remain noncompliant after the change or modification. This paragraph shall become inoperative on January 1, 2021.

SEC. 10. 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.

Approved _____, 2015

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                                        Governor