



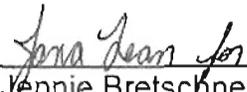
DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

1500 11th Street, 5th Floor | Sacramento, CA 95814 | Tel (916) 657-2166 | Fax (916) 653-3214 | www.sos.ca.gov

August 17, 2009

County Clerk/Registrar of Voters (CC/ROV) Memorandum #09141

TO: All County Clerks/Registrars of Voters

FROM: 
Jennie Bretschneider
Assistant Chief Deputy Secretary of State

RE: Proposed Legislation: Post Canvass Audit Bill Fact Sheet

We would like to thank the PEMT Revision Working Group and those counties who provided their comments regarding the proposed Post Canvass Audit bill. Attached for your review is the fact sheet and additional background information on the Post Canvass Audit bill. The Secretary intends to introduce the bill this month and it is our goal to have this new law in effect for the June 8, 2010, Statewide Primary Election.

If you have any questions, please feel free to contact me via e-mail at jennie.bretschneider@sos.ca.gov or you may call me directly at (916) 651-8297. Thank you.

Attachments

Post Canvass Audit Fact Sheet

Moves the Post Election Manual Tally (PEMT) audits that counties have conducted in prior elections *during* the canvass period to immediately *after* the canvass period. Additionally, it contains four elections cost savings measures unrelated to the PEMT.

Background

Machine tallied election results can be inaccurate for various reasons, including voting system malfunction, tampering, or voter error in marking the ballot. In very close contests even slight inaccuracies in the machine tally can result in the wrong winner being called. For any contest with an apparent margin of victory of less than one-half of one percent (0.5%), current law requires elections officials to conduct a manual tally of 1% of randomly selected precincts during the canvas period.

Based on their experiences, the Secretary of State and county elections officials believe it would be more efficient to conduct post election audits after all ballots have been machine counted once, rather than using election night results to trigger a PEMT audit. In addition, county elections officials believe moving the PEMT audit to after the canvass period to reduce costs and ease the burden on staffing and facilities resources during the 28-day canvass period.

However, moving the audit to after the canvass cannot be done through regulation, it can only be done through a statutory change.

In addition, elections officials have identified four election cost savings measures unrelated to the PEMT. The measures will more than offset any costs a county may incur from having to do a PEMT audit. The cost savings measures are ongoing in every election cycle and will occur regardless of whether a contest is so close that a PEMT is required.

This Proposal

Codifies the PEMT audit into statute but moves it to after the canvass period, and renames it the "Post Canvass Audit."

Requires elections officials to amend their certified results if the audit escalates to 100% and the audit results show a different winner.

Contains four unrelated cost savings measures to streamline and reduce the cost of administering elections on an ongoing basis:

1. Current law (EC 13300) requires counties to mail a sample ballot to each registered voter in advance of each election. This proposal allows counties not to send a sample ballot to permanent vote-by-mail (PVBM) voters, and voters in mailed ballot precincts and mail ballot elections, provided voters receive the *actual* ballot and the Voter Information Pamphlet. The sample ballot contains candidate statements and information about local ballot measures, which would still be mailed to PVBM voters and voters in mailed ballot precincts and mail ballot elections as part of the Voter Information Pamphlet. However, the sample ballot also contains a copy of the ballot, a vote-by-mail (VBM) application, and other information that someone who is receiving a vote-by-mail ballot does not need to receive.

2. Current law (EC 13300) requires counties to mail a sample ballot to each registered voter in advance of each election. This proposal permits counties to allow voters to opt out of receiving the sample ballot. Any county that exercises this option is required to post the sample ballot on the county's official website. (Most, if not all, counties already do so.)
3. Current law (EC 8203) states counties do not have to place uncontested judicial nominees on the ballot. This proposal allows counties to opt out of placing uncontested nonpartisan, county-level races on the ballot as long as there is also no write-in candidate.
4. Current law (EC 8203) states counties do not have to place uncontested judicial nominees on the ballot. Current law (EC 10229) requires any uncontested city race to be listed on the ballot if there's another measure already going on the ballot. This proposal permits counties to opt out of placing uncontested nonpartisan, city-level races on the ballot as long as there is also no write-in candidate.

Contact

For more information please contact Ronda Paschal, Deputy Secretary of State, Legislative and Constituent Affairs, at (916) 653-6774 or e-mail ronda.paschal@sos.ca.gov

Post Canvass Audit Additional Background

Current Law:

Elections Code section 15360 requires elections officials to conduct a manual tally of 1% of randomly selected precincts for each contest on the ballot.

Under the PEMT requirements, which the Secretary of State established first as a condition re-approving voting systems and later promulgated as regulations, county elections officials have conducted manual tally audits in very close contests since 2007, as follows:

- For any contest with an apparent margin of victory of less than one-half of one percent (0.5%), elections officials select a percentage of randomly selected precincts (2%, 5% or 10%) to tally by hand to verify election results. The sample size is based on the size of the contest:
 - For statewide contests: 2%
 - For Legislative, Congressional, and contests with 100 precincts or more: 5%
 - All other contests: 10%
- If elections officials find a significant difference, or “variance rate,” between the machine tally and the manual tally results, the PEMT audit escalates in blocks of 5% until the variance rate drops significantly or all precincts are hand counted.

Elections officials complete audits before the close of the 28-day canvass period and report results to the public and the Secretary of State. Reports are posted on the Secretary of State website at www.sos.ca.gov/elections/voting_systems/pemtreports.htm

Why is it important to audit election results in close contests?

Machine tallied election results can be inaccurate for various reasons, including voting system malfunction, tampering, or voter error in marking the ballot. For example, stray marks on a ballot or light markings intended as votes can cause a tally machine to inaccurately record votes or record no votes on a ballot. In very close contests even slight inaccuracies in the machine tally can result in the wrong winner being called.

What about the existing 1% manual tally – isn't that enough?

In 2007, the Secretary of State convened the Post Election Audit Standards Working Group whose members included a city and a county elections official, a computer scientist, an election integrity advocate, an accountant familiar with financial auditing, and a statistics expert. After reviewing the scientific literature in the field and interviewing dozens of experts and elections officials, the Working Group found the 1% manual tally provided for in Elections Code § 15360 was inadequate to detect many errors or fraud that could alter the outcome in a close contest. As a result of the increasing sophistication of voting systems, the current flat 1% manual tally is no longer sufficient for confirming election results and checking voting system accuracy and reliability. For more information on the Working Group or to review the final report to the Secretary of State, please visit www.sos.ca.gov/elections/voting_systems/pemtgroup.htm

When did counties start doing PEMT audits?

In 2007, Secretary of State Debra Bowen initiated an in-depth scientific review of voting systems previously approved for use in California elections. For the review, the Secretary retained the University of California and a team of computer security experts who evaluated the security, reliability and accessibility of each voting system. The project came to be known as the Top-To-Bottom Review (TTBR). Upon completion of the TTBR, on August 3, 2007, the Secretary withdrew her approval of the voting systems reviewed, including certain Diebold (now known as Premier), Sequoia and Hart InterCivic voting systems. The Secretary simultaneously issued a conditional re-approval of each of the voting systems that set forth approximately 40 preconditions to their use, including post-election manual tally (PEMT) requirements. Later, the PEMT requirements were put into regulation.

The PEMT requirements were implemented successfully by seven counties in which close contests triggered their use following the June 3, 2008, Statewide Primary Election and by 41 counties following the November 4, 2008, Statewide General Election. No PEMT audits were required following the May 19, 2009, Statewide Special Election.

Why is it necessary to codify the PEMT audit?

Based on their experiences, the Secretary of State and county elections officials believe it would be more efficient to conduct post election audits after all ballots have been machine counted once, rather than using election night results to trigger a PEMT audit. In addition, county elections officials are virtually unanimous in their support of moving the PEMT audit to after the canvass period to reduce costs and ease the burden on staffing and facilities resources during the 28-day canvass period. Moving the audit to after the canvass cannot be done through regulation, it can only be done through a statutory change. Since recounts and election contests also happen after the canvass period, those statutes also must be amended to ensure candidates and interested parties have the opportunity to observe the audit, and then still request a recount or file an election contest if they choose.

What happens if the audit turns up a different winner?

If a post canvass audit conducted under this bill escalates to a 100% manual tally and the manual tally results show a different winner, then – as in a 100% recount – elections officials would amend their certified results to reflect the audit results. If the audit does not escalate to 100% – for example, if no significant variances are found in the initial 2%, 5% or 10% sample – or the audit does not show a different winner, then elections officials would publish and report audit results to the Secretary of State, but the certified election results would not change.

What about other post election auditing methods that may be more effective?

Experts in the field of post election auditing have developed and pilot tested a number of auditing methods that adjust sample size based on a number of factors, including margin of victory, number of ballots cast, number and size of precincts, and other factors. These methods set escalation triggers using statistical methods. This bill permits the Secretary of State to adopt in regulation an alternative auditing model to replace existing audit requirements in the future.