

Date of Hearing: April 27, 2016

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Shirley Weber, Chair

AB 1921 (Gonzalez) – As Amended April 11, 2016

**SUBJECT:** Elections: vote by mail ballots.

**SUMMARY:** Permits a vote by mail (VBM) voter to who is unable to return his or her ballot to designate any person to return the ballot, as specified. Prohibits a designated person from receiving any form of compensation based on the number ballots that person returns, as specified. Specifically, **this bill:**

- 1) Deletes provisions of law that allow a VBM voter who is unable to return his or her ballot to designate his or her spouse, child, parent, grandparent, grandchild, brother, sister, or a person residing in the same household as the VBM voter to return the ballot, and instead permits the VBM voter to designate any person to return the ballot.
- 2) Prohibits a person designated to return a VBM ballot from receiving any form of compensation based on the number of ballots that the person has returned and prohibits an individual, group, or organization from providing compensation on this basis.
- 3) Defines "compensation" to mean any form of monetary payment, goods, services, benefits, promises or offers of employment, or any other form of consideration offered to another person in exchange for returning another voter's VBM ballot.
- 4) Provides that any person in charge of a VBM ballot who knowingly and willingly engages in criminal acts related to that ballot as described under current law, including, but not limited to, fraud, bribery, intimidation, and tampering with or failing to deliver the ballot in a timely fashion, is subject to the appropriate punishment pursuant to existing law.
- 5) Repeals provisions of law that prohibit a VBM voter's ballot from being returned by a paid or volunteer worker of a general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest the individual designated to return the ballot is performing a service.

**EXISTING LAW:**

- 1) Requires voting by mail to be available to any registered voter.
- 2) Permits a VBM voter who is unable to return his or her ballot to designate his or her spouse, child, parent, grandparent, grandchild, brother, sister, or a person residing in the same household as the VBM voter to return the ballot to the elections official from whom it came or to a precinct board before the close of the polls on election day.
- 3) Prohibits a VBM ballot from being returned by a paid or volunteer worker of a general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest

the individual designated to return the ballot is performing a service. Provides this prohibition does not apply to a candidate or a candidate's spouse.

- 4) Requires an elections official to establish procedures to ensure the secrecy of a VBM ballot returned to a precinct polling place and the security, confidentiality, and integrity of any related personal information collected, stored, or otherwise used.
- 5) Prohibits a ballot from being counted if it is not delivered in compliance with the aforementioned sections.
- 6) Requires an elections official to establish procedures to track and confirm the receipt of voted VBM ballots and to make this information available by means of online access using the county's elections division Internet Web site. Requires a county elections official that does not have an elections division Internet Web site to establish a toll-free telephone number that may be used to confirm the date a voted VBM ballot was received.
- 7) Provides that any person who votes more than once, attempts to vote more than once, or impersonates or attempts to impersonate a voter at an election is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year.
- 8) Provides that every person who defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.
- 9) Provides that any person having charge of a completed VBM ballot who willfully interferes or causes interference with its return to the local elections official having jurisdiction over the election is guilty of a misdemeanor punishable by imprisonment in a county jail, a fine of ten thousand dollars (\$10,000), or both.

**FISCAL EFFECT:** None. This bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) **Purpose of the Bill:** According to the author:

AB 1921 will allow voters to designate a person of their own choosing to return a completed mail ballot to the proper drop-off location or post office. Currently in code, voters are only allowed to designate a person from the arbitrary list of "spouse, child, parent, grandparent, grandchild, brother, sister, or a person residing in the same household as the vote by mail voter" to return a mail ballot. While perhaps a well-meaning attempt at defining those who would be trusted by the voter, these restrictions simply provide yet another obstacle for individuals attempting to vote, without any evidence based justification against voter fraud.

More and more voters in California are choosing to vote by mail. For instance, in the 2014 June primary election, data from the Secretary of State shows that 68% of voters turned in a mail ballot. In addition to this preference by individual voters, counties in California are increasingly looking to conduct all mail ballot

elections with the hopes of improving turnout while simultaneously lowering costs. San Diego, Yolo, San Mateo, Sacramento, and Monterey County all currently have pilot programs to conduct certain elections by mail. As these trends continue, it is important that we make sure the processes we have in place for mail ballots are easy for voters to follow, encourage participation, and make sense for today's California.

Texas, Oregon, Arizona, Washington, Colorado, and Florida all allow any person designated by those voters to turn in completed mail ballots. This allows for the friend who happens to be driving by the ballot drop-off location, or the co-worker who is heading to the polls on election day, to assist in making sure each and every vote counts.

In order to further protect every vote, this bill would prohibit individual canvassers or volunteers from engaging in any sort of paid-per ballot or performance-based compensation schemes based on the number of ballots deposited or collected by that person.

- 2) **Current Practice:** Under current law, a person that is unable to return his or her VBM ballot is permitted to designate his or her spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the VBM voter to return the voter's VBM ballot to the elections official from whom it came or to the precinct board at a polling place within the jurisdiction. Additionally, existing law prohibits a VBM ballot from being returned by a paid or volunteer worker of a general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest the individual designated to return the ballot is performing a service and provides this prohibition does not apply to a candidate or a candidate's spouse. This bill makes changes to this practice. First, this bill deletes provisions of law that require a designated person to be a spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the VBM voter, and instead permits the designated person to be any person. Second, this bill deletes the prohibition provisions described above and provides that any person in charge of a VBM ballot who knowingly and willingly engages in criminal acts related to the VBM ballot as described under current law, including, but not limited to, fraud, bribery, intimidation, and tampering with or failing to deliver the ballot in a timely fashion, is subject to the appropriate punishment pursuant to existing law. Finally, this bill prohibits a person designated to return a VBM ballot from receiving any form of compensation, as defined, based on the number of ballots that the person has returned and prohibits an individual, group, or organization from providing compensation on this basis. This bill defines compensation to mean any form of monetary payment, goods, services, benefits, promises or offers of employment, or any other form of consideration offered to another person in exchange for returning another voter's VBM ballot.

The practical effect of this bill is that a VBM voter may designate any person such as a co-worker, friend, neighbor, or even a campaign worker to drop off his or her VBM ballot.

- 3) **Existing Penalties:** Current law provides for a variety of safeguards in law to protect against voter fraud and abuse. Existing law makes it a felony for any person who defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than the candidate for whom he or she intended or desired to vote. Additionally, any

person having charge of a completed VBM ballot who willfully interferes or causes interference with its return to the local elections official having jurisdiction over the election is guilty of a misdemeanor punishable by imprisonment in the county jail, a fine of ten thousand dollars (\$10,000), or both. Moreover, once the ballot is received by the elections official, California law requires the elections officials to compare the signature on a VBM ballot envelope with the signature on that voter's affidavit of registration before the VBM ballot may be counted. If those signatures do not match, the ballot will not be counted.

Furthermore, the Legislature has taken steps to address the potential for fraud in connection with VBM ballots. For example, many elders in state-licensed or state-subsidized facilities or programs have physical and cognitive impairments or conditions that may limit their ability to independently cast a vote. As a result, many elders choose to vote via VBM ballot. As a result of the high use of VBM ballots in this population, some questions and concerns have arisen regarding the influence elders are receiving from caregivers in the receipt, completion, and return of their ballots. In response to those concerns, the Legislature approved and the Governor signed AB 547 (Gatto), Chapter 260, Statutes of 2011, which makes it a misdemeanor for a person who is providing care or direct supervision to an elder in a state-licensed or state-subsidized facility or program to coerce or deceive the elder into voting for or against a candidate or measure contrary to the elder's intent or in the absence of any intent of the elder to cast a vote for or against that candidate or measure.

This bill adds to these penalties and specifically prohibits a person designated to return a VBM ballot from receiving any form of compensation based on the number of ballots that the person has returned and prohibits an individual, group, or organization from providing compensation on this basis. This bill defines "compensation" to mean any form of monetary payment, goods, services, benefits, promises or offers of employment, or any other form of consideration offered to another person in exchange for returning another voter's VBM ballot.

- 4) **Other States:** As mentioned in the author's statement, other states allow a voter to designate any person to drop off his or her mail ballot. The laws, however, vary from state to state. For example, Colorado permits a person to drop off up to 10 mail ballots, as specified. Oregon state law permits a person who returns a ballot for an elector to return the ballot no later than two days after receiving the ballot in accordance with existing law. Moreover, Texas state law permits a voter who is eligible to vote by mail to designate any person to drop off his or her ballot, however, requires the designated person to put his or her name and address on the carrier envelope as a witness or assistant, as specified. The Texas Secretary of State's web site also recommends a VBM voter to decline assistance from a political organization and to instead select a trusted relative or friend to return the mail ballot.
- 5) **Vote by Mail Data:** Statistics show that voters are choosing to cast a VBM ballot more and more each election. For instance, according to the Secretary of State's office, in the November 2004 general election approximately 32 percent of voters cast a VBM ballot. In the November 2014 general election over 60 percent of voters cast a VBM ballot.
- 6) **Arguments in Support:** In support, Disability Rights California writes:

AB 1921 will allow voters to designate a person of their own choosing to return a completed mail ballot to the proper drop-off location or post office. This proposal

also allows for a mail ballot to be returned by an individual belonging to a group or organization at whose behest the voter designated them to return a ballot to any of the aforementioned locations, and will prohibit individual canvassers or volunteers from engaging in any sort of paid-per ballot or performance-based compensation schemes based on the number of ballots deposited or collected by that person.

According to the [SOS's] office, in the November 2014 General election only about half of [VBM] ballots were returned.

California is among the few states that explicitly prohibit volunteers or paid canvassers from collecting ballots from voters. State like Arizona, Oregon and Washington allow anyone to return completed ballots on behalf of a voter.

People with disabilities who have difficulty returning a mail ballot will now have more options for identifying a person to return the ballot to the post office or other drop-off locations.

7) **Arguments in Opposition:** In opposition, the Howard Jarvis Taxpayers Association writes:

AB 1921 promotes vote harvesting and greatly increases the likelihood for fraud in our elections process. This is especially true now that current law allows for absentee ballots without a postmark to be turned in up to three days after the election. It would not be an implausible scenario for a close election to be reversed through the filling out of absentee ballots after Election Day.

Obviously we are not in favor of discouraging or disenfranchising disabled people from being able to vote. In fact, it was for this group of people that the [VBM] system was created in the first place. But as it stands today an individual can drop their ballot in the mail on Election Day and have it count. This process does not need to be made any easier than that.

8) **Previous Legislation:** AB 2080 (Gordon), Chapter 508, Statutes of 2012, deleted provisions of law that required a voter to be ill or disabled in order to have a family member or a person in the same household return a VBM ballot for that voter.

AB 1271 (Krekorian) of 2009, AB 1096 (Umberg) of 2005, and SB 462 (Karnette) of 2001, all proposed to delete the requirement that a voter must be ill or disabled in order to designate another person to return that voter's VBM ballot, among other provisions. AB 1271 and AB 1096 were vetoed by Governor Schwarzenegger, who argued that the bills could lead to abuse of the system. SB 462 was vetoed by Governor Davis, who stated that it was "important to maintain the standard under current law that a person be ill or disabled to request that someone else submit" a voter's VBM ballot.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California

California Association of Clerks and Election Officials  
California Labor Federation  
California School Employees Association  
California State Council of the Service Employees International Union  
California Teachers Association  
Cooperativa Campesina de California  
Disability Rights California  
Mexican American Legal Defense and Educational Fund  
Planned Parenthood Affiliates of California

**Opposition**

Election Integrity Project, Inc.  
Hi-Desert Republican Women, Federated  
Howard Jarvis Taxpayers Association  
72 Individuals

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