

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2071 (Harper) – As Amended March 15, 2016

SUBJECT: Vote by mail ballots.

SUMMARY: Requires a person delivering vote by mail (VBM) envelopes received by a bona fide private mail delivery company, as defined, to present satisfactory proof of the company's status as a bona fide private mail delivery company in order to process the ballot envelopes.

Specifically, **this bill:**

- 1) Requires a person delivering VBM envelopes received by a bona fide private mail delivery company, as defined, to present satisfactory proof, as determined by the elections officials, of the company's status as a bona fide private mail delivery company in order to process the ballot envelopes. Prohibits an elections official, if the person cannot provide satisfactory proof, from processing the ballot envelopes and instead requires the elections official to retain the ballot envelopes in the event of an election contest.
- 2) Requires an elections official, if a VBM ballot envelope is delivered after election day by a bona fide private mail delivery company and the envelope has no postmark, a postmark with no date, or an illegible postmark, to retain the ballot envelope and ballot for further evaluation in the event of an election contest.
- 3) Defines a "bona fide private mail delivery company" to mean a for-profit courier service that is in the regular business of accepting a mail item, package, or parcel for the purpose of delivery, at a cost, to a person or entity whose address is specified on the item. Provides that a bona fide private mail delivery company includes, but is not limited to, DHL, Federal Express Corporation and United Parcel Service.

EXISTING LAW:

- 1) Provides that a VBM ballot is timely cast if it is received by the voter's elections official via the United States Postal Service (USPS) or a bona fide private mail delivery company no later than three days after election day and either of the following is satisfied:
 - a) The ballot is postmarked or is time stamped or date stamped by a bona fide private mail delivery company on or before election day; or,
 - b) If the ballot has no postmark, a postmark with no date, or an illegible postmark, the VBM ballot identification envelope is date stamped by the elections official upon receipt of the VBM ballot from the USPS or a bona fide private mail delivery company, and is signed and dated by the voter on or before election day.
- 2) Requires a VBM ballot identification envelope to include specified information, including the following:

- a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope;
 - b) The signature of the voter; and,
 - c) The date of signing.
- 3) Permits a VBM voter who is unable to return his or her ballot to designate his or her spouse, child, parent, grandparent, 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.
 - 4) 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.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

AB 2071 will protect the integrity of California's election system by providing that only legitimate courier services that are in the regular business of delivering parcels may handle and deliver VBM ballots on behalf of voters after Election Day. This includes well-known services such as DHL, FedEx, and UPS. As such, it will ensure that only legitimate votes are counted, and that no California voter is disenfranchised by the counting of ballots that have been illegally harvested or tampered with in the days following an election.

- 2) **"Postmark Plus Three" and Previous Legislation:** In 2014, the Legislature approved and the Governor signed SB 29 (Correa), Chapter 618, Statutes of 2014, which allowed VBM ballots to be counted if they were cast by election day and received by the elections official by mail no later than three days after the election. Specifically, SB 29 provides that any VBM ballot is timely cast if it is received by the voter's elections official via the USPS or a bona fide delivery company not later than three days after election day, as specified. Prior to the enactment of SB 29, VBM ballots in California could be counted only if they were received by the elections official by election day.

SB 29 was introduced in response to the fact that an increasing number of VBM ballots that were returned to elections officials were arriving too late to be counted. Furthermore, given a number of recently enacted and planned USPS facility closures, there was a fear that the number of ballots arriving too late to be counted would continue to rise. According to a September 2014 report by the California Civic Engagement Project at the University of California at Davis Center for Regional Change, nearly 69,000 VBM ballots that were received by county election offices in California for the November 2012 general election were rejected during ballot processing, with 47.8 percent of uncounted ballots being rejected

because they arrived too late. Arriving late was the number one reason why a VBM ballot was rejected.

This bill adds further requirements to VBM ballots that are returned by a bona fide private mail delivery company. Specifically, this bill requires a person delivering VBM ballots received by a bona fide private mail delivery company to present satisfactory proof, as determined by the elections official, of the company's status as a bona fide private mail delivery company in order for the VBM ballot identification envelope to be processed. This bill defines a "bona fide private mail delivery company" to mean a for-profit courier service that is in the regular business of accepting a mail item, package, or parcel for the purpose of delivery, at cost, to a person or entity whose address is specified on the item, and provides that a bona fide private mail delivery company includes, but is not limited to, DHL, Federal Express Corporation and United Parcel Service. If a person delivering the VBM ballots is unable to provide satisfactory proof to the elections official, this bill prohibits those VBM identification ballot envelopes from being processed and instead requires an elections official to retain the ballot envelopes in the event of an election contest. This bill, however, does not provide any guidance or detail on what constitutes satisfactory proof to confirm the company's status as a bona fide private mail delivery company. Instead this bill provides that proof must be determined by the elections official. Would a name tag identification card listing the company's name serve as proof? Would the identification card need to include a photo of the person? Without any guidance, it is conceivable that ballots will be treated differently across the state.

- 3) **Mail Without Legible Postmarks:** One provision of SB 29 allowed a VBM ballot to be counted if the return envelope had no postmark, a postmark with no date, or an illegible postmark, if the ballot was (1) received by the elections official no later than three days after the election, (2) received from the USPS or a bona fide private mail delivery company, (3) date stamped by the elections official upon receipt from the USPS or bona fide private mail delivery company, and (4) the VBM ballot envelope was signed and dated by the voter on or before election day.

Information provided by the California Association of Clerks and Election Officials (CACEO) during the consideration of SB 29 suggests that a significant portion of ballots that are received by mail do not have a legible postmark. According to a survey that CACEO conducted of county elections officials regarding the ballots received by those officials in the six days after the November 2012 general election, approximately 10.4 percent did not have a postmark, while another 2.5 percent had an illegible postmark. Among VBM ballots received from military and overseas voters, the proportion of ballots without a legible postmark was even higher—19.2 percent of such ballots did not have a postmark, and another 4.3 percent had an illegible postmark.

To the extent that the survey information from CACEO is representative of the proportion of VBM ballots that are returned by mail and fail to receive a legible postmark, it is likely that county elections officials receive thousands of VBM ballots in the three days following a statewide election that do not have legible postmarks.

Under this bill, if ballots are delivered by a bona fide private mail delivery company and those ballots do not have postmarks, have postmarks that do not have dates, or have illegible postmarks, those ballots would be retained for further evaluation in the event of an election

contest. Again, because this bill does not provide any guidance or details on how a VBM ballot would be further evaluated in the event of an election contest, it is unclear how those ballots would be treated and it is conceivable that those ballots would be treated differently across the state.

- 4) **VBM Ballot Deadlines in Other States:** Each state has its own deadlines for the return of VBM ballots. In some states, the deadline varies depending on whether the individual submitting the ballot is a civilian living in the United States (US), or a military or overseas voter covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

According to information from the National Association of Secretaries of State, for the 2014 general election, three states required mail ballots from civilians living in the US to be returned prior to election day in order to be counted, while 36 states (including California at the time) required such ballots to be received by election day. Eleven states and the District of Columbia allowed mail ballots from civilians living in the US to arrive after election day and still be counted.

For active duty military and overseas citizens who are covered under UOCAVA, for the 2014 general election, 28 states (including California at the time) required ballots to be received by election day. Twenty-two states and the District of Columbia allowed VBM ballots from at least some voters who are covered under UOCAVA to arrive after election day and still be counted.

In all, 22 states and the District of Columbia allow VBM ballots from at least some voters to arrive after election day and be counted. Among the jurisdictions that allow ballots received after election day to be counted, at least 14 appear to allow ballots that lack legible postmarks to be counted, and some jurisdictions even allow ballots to be counted if they are postmarked *after* election day, provided that the ballot is dated on or before election day by the voter.

- 5) **Previous Legislation:** AB 1271 (Grove) from 2014, would have required the disqualification of VBM ballots that were received after election day if those ballots were delivered by a bona fide private mail delivery company or if those ballots had no postmark, a postmark with no date, or an illegible postmark, as specified. AB 1271 failed passage in this committee on a 3-4 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Howard Jarvis Taxpayers Association

Opposition

None on file.

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