

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2252 (Ting) – As Amended April 5, 2016

SUBJECT: Elections: remote accessible vote by mail systems.

SUMMARY: Allows a voter with disabilities to electronically receive and mark his or her vote by mail (VBM) ballot using a remote accessible VBM system, as defined. Establishes processes and procedures for the review and approval of remote accessible VBM systems, as specified.

Specifically, **this bill:**

- 1) Deletes the term “ballot marking system” and replaces and updates it with the term “remote accessible VBM system.” Defines a remote accessible VBM system to mean a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking an electronic VBM ballot for a voter with disabilities or a military or overseas voter who shall print the paper cast vote record to be submitted to the elections official. Prohibits a remote accessible VBM system from being connected to a voting system at any time.
- 2) Revises and updates the definition of a “ballot” and deletes an obsolete part of that definition.
- 3) Defines a “paper cast vote record” to mean an auditable document that corresponds to the selection made on the voter’s ballot and lists the contests on the ballot and the voter’s selections for those contests. Provides that a paper cast vote record is not a ballot.
- 4) Updates the definition of a “voter verified paper audit trail” to mean a paper cast voter record containing a copy of each of the voter’s selections that allows each voter to confirm his or her selections before the voter casts his or her ballot for systems that do not contain a paper ballot.
- 5) Deletes the term “paper record copy” and instead replaces and updates it with the term “paper cast vote record,” as defined above.
- 6) Revises, updates, and establishes processes and procedures for the review and approval of a remote accessible VBM system for use in California elections, as specified.
- 7) Makes other technical and corresponding changes.

EXISTING LAW:

- 1) Establishes processes and procedures for the review and approval of ballot marking systems, as defined, for use in California elections.
- 2) Defines a ballot marking system as any mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking a ballot for a military or overseas voter and is not connected at any time to a voting system.
- 3) Requires the Secretary of State (SOS) to study and adopt regulations governing the use of ballot marking systems and establishes procedures for the review and approval of ballot marking systems.

- 4) Permits a person or corporation owning or being interested in a ballot marking system to apply to the SOS to examine and report on its accuracy and efficiency to fulfill its purpose. Requires a vendor of such a system, upon and after submission of an application, to notify the SOS in writing of any known defect, fault, or failure of the hardware, software, or firmware of the ballot marking system or part of the system.
- 5) Requires a vendor, upon approval of the ballot marking system, to notify the SOS and all local elections officials who use the system, of any defect, fault, or failure of the hardware, software, or firmware of the system or part of the system within 30 calendar days after the vendor learns of the defect, fault, or failure.
- 6) Prohibits a ballot marking system approved by the SOS from being changed or modified until the SOS has been notified in writing and determined that the change or modification does not impair its accuracy and efficiency sufficient to require reexamination and re-approval.
- 7) Permits the SOS to seek relief, as specified, for an unauthorized change in hardware, software, or firmware or a known and undisclosed defect, fault, or failure, in a ballot marking system approved or conditionally approved in California.
- 8) Defines a ballot to mean, among other definitions, a large sheet of paper upon which is printed the names of candidates and ballot titles of measures to be voted on by pressing the designated area on a direct-recording electronic device.
- 9) Allows elections held on no more than three different dates in San Mateo, Yolo, Sacramento, Monterey counties to be conducted wholly by mail, as part of a pilot project lasting through January 1, 2018, subject to certain conditions, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

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

Technology has permeated many aspects of our daily lives for greater convenience and efficiency. In government, technology has proven an effective tool in greater transparency and public participation. However, the act of voting itself is not as convenient or accessible as it should be. Proponents of vote by mail elections argue that it boosts turnout by expanding voter convenience. San Mateo County's experience with its first all vote by mail election last fall boosted turnout 16 percent over the last comparable election in 2013, and the voting rate among Asians increased by more than 30 percent in six cities. However, vote by mail only systems have proven an obstacle for some voters to participate. By emailing ballots to voters living with disabilities, we can ensure that their right to vote is not compromised. AB 2252 would allow voters with disabilities to cast their vote by using technology currently limited to military and overseas voters.

- 2) **Ballot Marking Systems:** In 2013, the Legislature passed and the Governor signed AB 1929 (Gorell), Chapter 694, Statutes of 2012, which established processes and procedures for the review and approval of ballot marking systems, as defined, for use in California elections. The intent of AB 1929 was to make voting more accessible and convenient for military and

overseas voters. Specifically, AB 1929 drastically sped up the amount of time it takes for a military or overseas voter to cast his or her ballot by allowing a military or overseas voter to electronically print and mark his or her ballot and cast it via fax or mail. To ensure a military or overseas voter's security and privacy, AB 1929 prohibited the ballot marking system, or part of the system, from having the capability, including the optional capability, to use a remote server to mark the voter's selections transmitted to the server from the voter's computer via the Internet, store any voter identifiable selections on any remote server, or tabulate votes.

This bill allows a voter with disabilities to also electronically receive his or her VBM ballot though technology currently only available to military and overseas voters. In order to expand the use of ballot marking systems to voters with disabilities and to better reflect the current technology used to do so, this bill deletes the term "ballot marking system" and replaces and updates it with the term "remote accessible VBM system." This bill defines a "remote accessible VBM system" to mean a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking an electronic VBM ballot for a voter with disabilities or a military or overseas voter who shall print the paper cast voter record to be submitted to the elections official and prohibits a remote accessible VBM system from being connected to a voting system at any time. Additionally, this bill defines the term "paper cast vote record" to mean an auditable document that corresponds to the selection made on the voter's ballot and lists the contests on the ballot and the voter's selections for those contests and provides that a paper cast vote record is not a ballot. Finally, this bill revises, updates, and establishes processes and procedures for the review and approval of a remote accessible VBM system, as specified.

- 3) **Previous Legislation and San Mateo County Lawsuit:** In 2014, the Legislature approved and the Governor signed AB 2028 (Mullin), Chapter 209, Statutes of 2014, which authorized San Mateo County to participate in an ongoing pilot project that allows certain elections to be conducted entirely by mailed ballot. Specifically, AB 2028 allowed San Mateo County to join a pilot program currently underway in Yolo County, under which Yolo County is permitted to conduct all-mailed ballot elections on up to three different dates through January 1, 2018, subject to certain conditions and reporting requirements. San Mateo County was chosen to be a part of the pilot program because it is a diverse urban county. On November 3, 2015, as part of the pilot program, San Mateo County held its first all-mail ballot election.

Last year, a federal lawsuit was filed challenging San Mateo County's VBM voting system for excluding blind and visually impaired residents by relying on paper ballots. In December of 2015 a lawsuit was filed in the Northern District of California, San Francisco Division against San Mateo County and the State of California challenging the unlawful and discriminatory exclusion of blind and visually impaired voters from San Mateo County's VBM program (*California Council of the Blind, et al v. County of San Mateo, et al (2015) No. 3:15-cv-5784*). The plaintiffs argue that "[despite] the availability of reliable and secure technologies that would enable blind and visually impaired voters to cast [VBM] ballots in a private and independent manner, the County has failed to provide any alternative to paper ballots for [VBM] voting. As a result, blind and visually impaired voters must rely on the assistance of others to read and mark their [VBM] ballots, thereby sacrificing the confidentiality of their vote, or forgo their right to vote by [VBM] ballot altogether."

The plaintiffs further state that San Mateo County "exacerbated the discriminatory denial of

access to its [VBM] program in 2014 by adopting an All-Mailed Ballot Election Pilot Program" which not only authorizes the county to conduct elections wholly by mail, subject to certain limitations, but reduces the number of physical polling sites in a jurisdiction which disproportionately impacts blind and visually impaired voters who consequently face longer travel times to reach polling sites equipped with accessible voting systems.

Plaintiffs are asking for an order and judgment enjoining Defendants from violating the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and California Government Code Section 11135, and requiring Defendants to take all steps necessary to ensure that blind and visually impaired voters have access to a method to read and mark VBM ballots privately and independently in San Mateo County.

- 4) **State and Federal Accessibility Requirements:** Both state and federal laws require certain conditions be met to ensure a voter with disabilities is provided with the opportunity to vote. Specifically, the federal Help America Vote Act (HAVA) of 2002 requires accessible, independent, and private voting for all eligible voters by ensuring: 1) equal access to polling places that are accessible to all, and 2) voting systems that allow for independent and private voting. Additionally, the federal Voting Accessibility for the Elderly and Handicapped Act requires polling place access for senior voters and voters with disabilities. State law requires elections officials, when designating polling places, to undertake necessary measures in the locating of polling places to ensure that polling places meet the guidelines promulgated by the SOS for accessibility by the physically handicapped.

Moreover, to provide guidance in interpreting federal and state requirements for accessible polling places, the SOS contracts with the California Department of Rehabilitation (DOR) to update the Polling Place Accessibility Guidelines. The SOS also coordinates with the DOR to provide training on surveying polling places for accessibility. According to the SOS's website, in 2005, the SOS established the state Voting Accessibility Advisory Committee (VAAC) to advise, assist, and provide recommendations on how best to implement federal and state laws regarding access to the electoral process for voters with disabilities. The state VAAC is composed of members representing disability advocacy groups and county elections offices. Through the years, the state VAAC has provided input on many voting-related projects and issues, including the polling place accessibility guidelines, checklist, and training video; voting system accessibility; a confidential voter accessibility survey; and the online voter registration application system. This guide is designed to share ideas and best practices for creating and maintaining a voting accessibility advisory committee at the city, county, or regional level.

Moreover, last year, the Legislature passed and the Governor signed AB 683 (Low), Chapter 334, Statutes of 2015, which codified the VAAC into law and requires the SOS to establish a VAAC to make recommendations related to improving the accessibility of elections for voters with disabilities, as specified.

- 5) **Suggested Technical Amendments:** The committee staff recommends the following technical amendments to address drafting errors:

On page 3, in line 13, strike out "case" and insert "cast."

On page 5, strike lines 16 through 40 and insert the following:

(a) The Secretary of State shall adopt and publish standards and regulations governing the use of remote accessible vote by mail systems.

(b) Remote_accessible vote by mail system standards adopted by the Secretary of State pursuant to subdivision (a) shall include, but not be limited to, all of the following requirements:

(1) The machine or device and its software shall be suitable for the purpose for which it is intended.

(2) The remote accessible vote by mail_system shall preserve the secrecy of the ballot.

(3) The remote accessible vote by mail_system shall be safe from fraud or manipulation.

(4) The remote accessible vote by mail_system shall be accessible to voters with disabilities and to voters who require assistance in a language other than English if the language is one in which a ballot or ballot materials are required to be made available to voters.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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