

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 800 (Gomez) – As Amended March 23, 2015

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Requires the postage on return envelopes for vote by mail (VBM) ballots to be prepaid. Specifically, **this bill** requires an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid if the ballot is to be mailed within the territorial limits of the United States or the District of Columbia.

EXISTING LAW requires an elections official to deliver all of the following to each qualified applicant for a VBM ballot:

- 1) The ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any; and,
- 2) All supplies necessary for the use and return of the ballot.

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

COMMENTS:

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

Increasing voter turnout is crucial to the future of California. AB 800 will provide paid postage envelopes for registered voters who elect to vote-by-mail and removes one obstacle for voters.

- 2) **Vote by Mail Voting:** AB 1520 (Shelley) Chapter 922, Statutes of 2001, allowed any voter to become a permanent VBM voter. Since that time, the percentage of voters in California who choose to receive a VBM ballot has increased significantly. While just under 25 percent of voters who participated in the 2000 statewide general election cast a VBM ballot, more than 60 percent of voters who participated in the 2014 statewide general election voted using a VBM ballot.

While these figures demonstrate that there has been a substantial increase in the number of voters who are casting a VBM ballot, they also give a somewhat misleading picture of the portion of voters who are returning their ballots by mail, since many voters who receive a VBM ballot return their completed ballots in person to polling places or to ballot drop-off sites established by elections officials. In August 2014, the California Voter Foundation, a nonprofit, nonpartisan organization that works to advance the responsible use of technology to improve the democratic process, released a study that looked at the VBM process in three California counties (Orange, Sacramento, and Santa Cruz), and made recommendations to

improve the VBM process based on that study. While statewide figures are not available, the report found that at the 2012 general election, approximately 30 percent of VBM voters in the three counties studied returned their ballots in person. In Santa Cruz County, 48 percent of VBM voters who cast a ballot at the 2012 general election did not mail back their ballots, but instead returned their ballots to the office of the elections official, to a ballot drop-off site, or to a polling place on election day.

- 3) **Jurisdictions that Prepay Return Postage:** Although it is not currently required by state law, some jurisdictions nevertheless prepay the return postage for VBM ballots. Alpine and Sierra Counties, both of which conduct elections entirely by mailed ballot, both prepay the return postage on all VBM ballots, as does the City and County of San Francisco.
- 4) **San Mateo County Study:** A study undertaken by a group of academics, conducted in San Mateo County and published in the Election Law Journal (Volume 11, Number 3, 2012) suggests providing prepaid postage for VBM ballot return envelopes may have little effect on overall turnout, and could create confusion for voters. In their study, conducted at the November 2010 statewide general election, postage-paid return envelopes were provided to 10,000 permanent VBM voters in San Mateo County who were selected at random. The researchers compared participation rates between those voters who received a postage-paid return envelope and those who did not. The researchers found that the voters who received a postage-paid envelope were no more likely to vote than those who did not, but also found that voters who received a postage-paid envelope were more likely to vote in person (i.e., not by mail) than those who did not. Voters who had regularly voted by mail in prior elections and who received a postage-paid envelope were even more likely to vote in person than voters who voted by mail more infrequently in the past. The researchers hypothesized that the disruption in the routine to VBM voters who were receiving a postage-paid return envelope for the first time, combined with potentially confusing instructions, may have caused some voters to vote in person in order to ensure that their ballots were counted. The researchers concluded that carefully worded ballot instructions and highlighting changes to voting procedures may help ease voter confusion and concerns.
- 5) **Could Prepaid Return Postage Delay Ballots?** As detailed above, last summer, the California Voter Foundation released a study of the VBM process in three California counties. One of the counties studied—Sacramento County—prepays the return postage on ballots for voters who live in all-mail ballot precincts through the use of business reply mail (California law allows elections officials to convert any precinct with fewer than 250 voters into an all-mail ballot precinct, where all voters in the precinct are mailed a ballot and no polling place is established for that precinct on election day). The study found that the ballots that had prepaid postage through the use of business reply mail could be delayed at the post office, because those ballots had to be processed through the business reply unit of the post office in order to be canceled against the county's business reply account. The study noted that "[w]hen only one person works in the business reply unit, mail can be delayed if that person is out of the office or if there is a surge of business reply mail from other sources, possibly disenfranchising a voter who waited until close to the election to return his or her ballot." While the report did not recommend against providing prepaid return postage for VBM ballots, it cautioned that "[w]hile some have suggested providing postage-paid envelopes to all VBM voters (and not just those overseas or living in an all vote-by-mail

precinct as current law provides), doing so can actually delay VBM ballot processing since postage paid mail is typically sent business class, not first class. In addition, the cost must be debited from the account holder before the mail piece can be delivered. Ensuring postage-paid mail is debited from the correct account adds extra time to ballot processing and can further delay the return of voted ballots."

Last year, the Legislature approved and the Governor signed SB 29 (Correa), Chapter 618, Statutes of 2014, which allowed ballots that are mailed by election day to be counted if they are received by the third day after the election. While SB 29 may help protect against voters being inadvertently disenfranchised if ballots are delayed due to the use of business reply mail under this bill, if delays in the return of VBM ballots nonetheless persist, the timeframe for ballots to be received that was established in SB 29 may need to be revisited to ensure that voters are not inadvertently disenfranchised.

- 6) **Postal Service Policy Regarding Ballots With Insufficient Postage:** In order to protect against the inadvertent disenfranchisement of voters, it is the policy of the United States Postal Service that VBM ballots with insufficient postage "must not be detained or treated as unpaid mail." Instead, under Postal Service policy, postal workers are supposed to deliver the ballot to the appropriate elections official, and to seek to recover the postage due from the elections official. Notwithstanding this policy, ballots are nonetheless occasionally returned to voters for insufficient postage.
- 7) **State Mandates:** The last four state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2015-16 fiscal year. This bill adds another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.
- 8) **Previous Legislation:** This bill is similar to SB 1062 (Block) of 2014, which was held on the Senate Appropriations Committee's suspense file, and to AB 1519 (De La Torre) of 2009 and SB 117 (Murray) of 2005, both of which were held on the Assembly Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
Service Employees International Union, California State Council

Opposition

None on file.

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