

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 973 (Low) – As Introduced February 16, 2017

SUBJECT: Remote accessible vote by mail system.

SUMMARY: Requires a county elections official to permit a voter with a disability, or a military or overseas voter, to cast his or her ballot using a certified remote accessible vote by mail (VBM) system. Requires these provisions to become operative one year after the date on which the Secretary of State (SOS) certifies a remote accessible VBM system for use in elections in the state.

EXISTING LAW:

- 1) Permits any voter—including a voter with a disability or a military or overseas voter—to apply for and receive a VBM ballot from his or her elections official.
- 2) Permits a voter with a disability or a military or overseas voter to electronically receive and mark his or her VBM ballot using a remote accessible VBM system.
- 3) 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.
- 4) Defines a voting system to mean a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both. Provides that a voting system does not include a remote accessible VBM system.
- 5) 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.

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

COMMENTS:

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

Voting in elections is vital to the success of our democracy. As Californians, we must ensure that voters do not face unnecessary barriers when casting their ballots. One-third of voters with disabilities report having difficulty voting, which can lead to lower turnout rates. AB 973 will provide an alternative voting method to ensure all voters with disabilities are able to participate in the electoral process.

Specifically, AB 973 will allow voters with disabilities, and military and overseas voters, to cast a ballot using a certified remote accessible vote by mail system. Every vote represents a voice that deserves to be heard. As Chair of the Elections and Redistricting Committee, I am committed to working with my colleagues to increase voter turnout.

- 2) **Previous Legislation and Remote Accessible Vote by Mail System:** 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.

Last year the Legislature passed and the Governor signed AB 2252 (Ting), Chapter 75, Statutes of 2016, which also allowed a voter with disabilities to electronically receive and mark his or her VBM ballot using a remote accessible VBM system. However, in order to expand the use of ballot marking systems to voters with disabilities and to better reflect the technology used to do so, AB 2252 (Ting) deleted the term "ballot marking system" and replaced and updated it with the term "remote accessible VBM system." AB 2252 (Ting) defined 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, as defined, to be submitted to the elections official. AB 2252 further prohibits a remote accessible VBM system from being connected to a voting system at any time. Finally, AB 2252 (Ting) revised, updated, and established processes and procedures for the review and approval of a remote accessible VBM system, as specified.

While AB 2252 established the requirements for remote accessible VBM systems and created procedures for the review and approval of such systems, it did not expressly *require* that elections officials make such a system available to voters in their jurisdiction. By requiring that voters with disabilities and military and overseas voters be permitted to cast their ballots using a remote accessible VBM system, this bill effectively requires *all* county elections officials to purchase a remote accessible VBM system for use by eligible voters.

- 3) **Status of Remote Accessible Vote by Mail System Certification:** As mentioned above, this bill requires a county elections official to permit a voter with a disability, or a military or overseas voter, to cast his or her ballot using a certified remote accessible VBM system and requires those provisions to become operative one year after the date on which the SOS certifies a remote accessible VBM system. While there are no remote accessible VBM systems currently certified for use in California, four applications have been submitted to the

SOS for review.

- 4) **Will This Increase County Elections Officials' Workload?** When a person votes using a remote accessible VBM system, the voter does not mark a ballot, but instead indicates his or her selections on a paper cast voter record. In practice, when a county elections official receives a paper cast voter record that was generated using a remote accessible VBM system, the elections official must remake that voter record into a ballot in order to scan and count the ballot. Because this bill mandates that remote accessible VBM systems be available, this bill could add to the county elections officials' workload depending on the number of voters who decide to use such a system.
- 5) **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 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 session, the Legislature passed and the Governor signed AB 683 (Low), Chapter 334, Statutes of 2015, which codified the VAAC into law and required the SOS to establish a VAAC to make recommendations related to improving the accessibility of elections for voters with disabilities, as specified. In March of 2016, the VAAC released their recommendations for modifications to the Polling Place Accessibility Guidelines. The recommendations include technical changes to make polling places more accessible for individuals with disabilities, including parking, paths of travel, signage, ramps, elevators and lifts, and restrooms.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
Disability Rights California

Opposition

None on file.

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