

Date of Hearing: April 9, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 269 (Grove & Patterson) – As Amended: April 1, 2013

SUBJECT: Vote by mail ballots: military or overseas voters.

SUMMARY: Allows the vote by mail (VBM) ballot of a military or overseas voter to arrive up to 10 days after the election and still be counted, provided that the ballot is postmarked by the United States Postal Service or the Military Postal Service Agency on or before election day.

EXISTING LAW:

- 1) Defines a "military or overseas voter" as an elector absent from the county in which he or she is otherwise eligible to vote who is any of the following:
 - a) A Member of the active or reserve components of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, Merchant Marine, a member of the United States Public Health Service Commissioned Corps, a member of the National Oceanic and Atmospheric Administration Commissioned Corps of the United States, or a member on activated status of the National Guard or state militia;
 - b) A United States citizen living outside of the territorial limits of the United States or the District of Columbia; or,
 - c) A spouse or dependent of a person described above in subdivision (a).
- 2) Provides that any voter who qualifies as a military or overseas voter has the right to register for, and to vote by a VBM ballot in any election within the state, including any general, special, or primary election for any federal or statewide office or ballot measure that is voted on statewide. Provides that any voter who qualifies as a military or overseas voter has the right to register for and to vote by a VBM ballot in any other election for any office or ballot measure held in the precinct in which he or she was a resident when he or she was last living within the territorial limits of the United States or the District of Columbia, or in any precinct of the state in which his or her parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia.
- 3) Requires all VBM ballots to be received by the elections official from whom they were obtained or by the precinct board no later than the close of polls on election day in order to be counted.
- 4) Provides that an application for a VBM ballot by a military or overseas voter is deemed to be an affidavit of registration and an application for permanent VBM voter status. Provides that such an application is deemed complete if it contains the voter's name, the voter's date of birth, the address of the voter's residence in the state where the voter was last living within the territorial limits of the United States or the District of Columbia, or the address of the

voter's parent or legal guardian when the parent or legal guardian was last living within the United States or District of Columbia, the address to which the ballot is to be sent, the voter's political party preference or a statement that the voter declines to disclose a political party preference, and the voter's signature.

- 5) Provides that a completed federal postcard application from a military or overseas voter is deemed to be an affidavit of registration, an application for a VBM ballot, and an application for permanent vote by mail status.
- 6) Requires the county elections official to send military and overseas ballots not earlier than 60 days, but not later than 45 days, before an election.
- 7) Allows a military or overseas voter to use a federal write-in absentee ballot to vote in any election in which the military or overseas voter is qualified to vote.
- 8) Permits a qualified military or overseas voter to register to vote and apply for a VBM ballot by facsimile transmission. Requires an elections official to send a VBM ballot to a military or overseas voter by mail, facsimile, or electronic transmission, as requested by the voter.
- 9) Allows a military or overseas voter who is temporarily living outside of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to make application for a VBM ballot, to return his or her ballot by facsimile transmission.
- 10) Permits a qualified military or overseas voter who is unable to appear at his or her polling place because of being recalled to service after the final day for applying for a VBM ballot to appear before the elections official in the county in which the voter is registered to apply for a VBM ballot.

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

COMMENTS:

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

Californians in our nation's military serve and sacrifice much to ensure that their family, friends, and neighbors maintain the right to free and open elections. These selfless men and women deserve every benefit and opportunity to ensure that their voices are also heard at the ballot box, making it as convenient as reasonably possible for them to cast their vote.

The same should be done for the many Californians living abroad, whether they are working for American companies in other countries, serving on religious missions, or performing humanitarian efforts.

With provisional ballot counting in most California counties already extending well beyond ten days after Election Day, the passage of this bill will require few logistical changes, thus resulting in a very small fiscal impact to counties – one that is dwarfed by

the benefit of ensuring that the voices of these patriots and overseas Californians are heard.

- 2) Facilitating Voting by Overseas Voters: On October 28, 2009, President Obama signed into law the Military and Overseas Voter Empowerment (MOVE) Act to expand the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which was established to protect the rights of service members to vote in federal elections regardless of where they are stationed. The MOVE Act builds on UOCAVA to provide greater protections for service members, their families, and other overseas citizens.
- 3) Existing Laws to Facilitate Voting by Overseas and Military Voters: The provisions of the MOVE Act have been in effect since the November 2010 election. However, given that California law already included provisions to facilitate voting by military members and other California residents who are outside of the United States, the Secretary of State's (SOS) office and local elections officials only had to make minimal adjustments to their practices in order to be in compliance. For example, the MOVE Act requires states to establish procedures to allow overseas voters to request voter registration applications and absentee ballot applications by mail or electronically, and requires at least one means of electronic communication for voters to make that request, and for all states to send, voter registration applications, absentee ballot applications, and voting information. Current law allows a military or overseas voter to register to vote and apply for VBM ballot by facsimile transmission and requires an elections official to send a VBM ballot by mail, facsimile, or electronic transmission, as requested by the voter. Exceeding the requirement of the MOVE Act, current law allows a military or overseas voter who is temporarily living outside of the United States or District of Columbia to return his or her ballot by facsimile transmission.

In addition, the MOVE Act requires states to transmit a requested absentee ballot to overseas voters not later than 45 days before an election for federal offices. Again, California law exceeds this requirement by specifically requiring the county elections official to send all military and overseas ballots with a list of all candidates who have qualified for the ballot beginning on the 60th day before the election, but not later than 45 days before the election, along with a list of all measures on which the voter is qualified to vote.

In addition to being compliant with all provisions in the MOVE Act, California law also makes other accommodations to facilitate voting by military voters and other California residents who are outside of the United States. Specifically, current law provides that an application for a VBM ballot by a military or overseas voter is deemed to be a request for voter registration (if the voter was not already registered to vote) and an application for permanent VBM voter status. In addition, California makes all overseas voters permanent VBM voters, thereby eliminating the need for overseas military voters and other overseas voters to request a VBM ballot for each election. Moreover, current law allows a military or overseas voter to use a federal write-in absentee ballot to vote in any election in which the military or overseas voter is qualified to vote.

- 4) Illegible and Missing Postmarks: It is not uncommon for a postmark to be smudged or otherwise illegible. Occasionally, mail does not receive a postmark at all. Under existing law, this is not a problem for VBM ballots cast in California elections, as all VBM ballots are

required to be received by the close of polls on election day. Under this bill, however, an illegible or missing postmark could result in a voter's ballot being discarded. Voters may be given a false sense of security that their ballots will be counted as long as they are mailed by election day, only to have some ballots disqualified due to the lack of a legible postmark.

- 5) Delayed Canvass and Potential Amendments: Under existing law, by the close of polls on election day, county elections officials have received all the materials necessary to complete the official canvass of ballots. This bill would require county elections officials to begin the official canvass of ballots before they have received all the ballots that will be included in the final official canvass. While many smaller counties have no difficulty completing the official canvass of ballots by the 28 day deadline, larger counties frequently take the full amount of time available to certify election results. Especially since larger counties would likely receive the largest number of ballots after election day, this bill could hinder the ability of a number of counties to certify election results by the 28th day after an election, as required by law.

Even in elections with relatively low turnout, allowing ballots to arrive up to 10 days after the election and still be counted could create problems for elections officials. When elections officials finish processing all the ballots in their possession and complete all the other tasks required as part of the official canvass of an election, the election commonly is certified at that point, even though the deadline for certifying an election may be days away. In the case of special elections held to fill vacancies in the Legislature or Congress, for instance, it is not uncommon for an election to be certified just a few days after the election took place.

Under the provisions of this bill, however, the elections official would have to wait until at least the 10th day after an election before completing the official canvass and certifying election results. This could delay the filling of vacancies and, in the case of primary elections, could delay the preparation and printing of ballots for a subsequent general or runoff election. To the extent that this bill delays the completion of the official canvass at a primary election, this bill could actually make it less likely that an overseas voter will have adequate time to vote and return a ballot for the general or runoff election, because the delay of finalizing the official canvass while awaiting the potential arrival of overseas ballots could delay the production and mailing of ballots for the general or runoff election.

Furthermore, the California Association of Clerks and Election Officials, who have taken an "oppose unless amended" position, point out in their letter that data from recent elections shows that the majority of late VBM ballots were received by the first Friday following the election, or within three days following the election day. Additionally, a recent survey of the county elections officials shows that the majority of VBM ballots from military and overseas voters that arrive late (past 8 p.m. on election day), were received within three days after election day. In order to prevent against unnecessary delays and due to this most recent data from the county elections officials, the author and the committee may wish to consider amending the bill to require ballots to be received not later than three days after the election in order to be counted, instead of 10 days after the election. This amendment would ensure that elections officials have all the ballots necessary to complete the official canvass by the end of the week of the election.

- 6) State Mandates: The 2011-2012 and 2012-2013 state budgets included the suspension of various state mandates as a mechanism for cost savings. Included on the list of suspensions were all six existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2013-2014 fiscal year. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.
- 7) Related Legislation: AB 472 (Patterson), which is pending in this committee, would allow a VBM ballot of a military or overseas voter to be counted if it is postmarked on or before election day and received by the voter's elections official not later than 10 days after election day.

AB 1157 (Jones), which is pending in this committee, would allow a VBM ballot of a member of the Armed Forces of the United States who is an "absent uniformed services voter," as defined by federal law, to be counted if it is postmarked or signed and dated on or before election day and received by the voter's elections official not later than 21 days after election day, among other provisions.

SB 29 (Correa), which is pending in the Senate Appropriations Committee, would allow any VBM ballot to be received by the elections official from whom it was obtained no later than three days after election day if the ballot is postmarked on or before election day, or if the ballot has no postmark or an illegible postmark, the VBM ballot identification envelope is signed and date on or before election day.

- 8) Previous Legislation: AB 562 (Fong) of 2012, would have allowed a VBM ballot to be counted if it was postmarked on or before election day or signed and dated on or before election day and received by the elections official no later than three days after the election, among other provisions. AB 562 failed passage on the Assembly floor.

AB 477 (Valadao) of 2011, was substantially similar to this bill. AB 477 was held on the Senate Appropriations Committee's suspense file.

SB 348 (Correa) of 2011, would have allowed any VBM ballot to be counted if the ballot envelope was postmarked by election day and received by the elections official no later than six days after election day. SB 348 (Correa) was held on the Senate Appropriations Committee's suspense file.

AB 1805 (Huffman), Chapter 744, Statutes of 2012, established new voting procedures for military and overseas voters, as defined, to comply with UOCAVA and implement the policies of that act and the Uniform Military and Overseas Voters Act adopted by the National Conference of Commissioners on Uniform State Laws.

- 9) Double-Referral: This bill has been double-referred to the Assembly Veterans Affairs Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

AMVETS-Department of California
Vietnam Veterans of America-California State Council

Opposition

California Association of Clerks and Election Officials (Unless Amended)

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