

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
SB 29 (Correa) – As Amended: June 10, 2013

SENATE VOTE: 27-10

SUBJECT: Vote by mail ballots and election result statements.

SUMMARY: Allows vote by mail (VBM) ballots to be counted if they are cast by election day and received by the elections official no later than three days after the election. Specifically, this bill:

- 1) Provides that a VBM ballot is timely cast if it is received by the voter's elections official 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 signed and dated on or before election day.
- 2) Allows jurisdictions that have the necessary computer capability to begin processing VBM ballots on the 10th business day prior to the election, instead of the seventh business day prior to the election.
- 3) Extends the deadline for elections officials to prepare a certified statement of the results of an election from 28 days after the election to 30 days after the election.
- 4) Allows counties to continue to use envelopes and other official election materials that do not take into account the provisions of this bill until the supply of those materials is exhausted.

EXISTING LAW:

- 1) Provides that a VBM ballot must be received by the elections official from whom it was obtained, or by a precinct board in that jurisdiction, no later than the close of polls on election day in order for that ballot to be counted.
- 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) Allows jurisdictions that have the necessary computer capability to begin processing VBM ballots on the seventh business day prior to the election. Provides that processing VBM ballots, pursuant to these provisions, includes opening VBM ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them. Provides that under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election.
- 4) Requires the elections official to prepare a certified statement of the results of an election and to submit that statement to the governing body within 28 days of the election.

FISCAL EFFECT: According to the Senate Appropriations Committee, county election officials will likely incur additional costs to manually check the postmark on all ballots that arrive after the close of the polls through the following third day. An unofficial count indicates that more than 20,000 ballots arrived too late to be counted at the last statewide general election. However, exact costs will be dependent on the change in voter behavior – that is, how many vote by mail voters who currently mail their ballots a week or more before the election, will then wait until closer to election day once they learn about the three day grace period. This could result in tens of thousands of ballots arriving at the county offices after election day and therefore necessitating a manual inspection of the postmark, resulting in substantial overtime costs for county election officials. Staff estimates that reimbursable state costs could be approximately \$150,000 per election.

COMMENTS:

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

SB 29 provides that any valid vote-by-mail ballot will be accepted if it is postmarked on or before Election Day and received by the elections official no later than three days after Election Day. A date stamp from a bona fide mail delivery service, such as FedEx will also be accepted.

Late delivery of otherwise valid ballots has long been a problem but will grow worse given the U.S. Postal Service's plans to continue closing mail processing centers.

According to estimates, as many as 26,000 mail ballots arrived too late to be counted in California's November 2010 election – and this was prior to the USPS cutbacks....

Numerous states grant additional time for the arrival of regular vote-by-mail ballots or military and overseas ballots.

Under this bill, if the ballot has no postmark, a postmark with no date, or an illegible postmark, the ballot will still be counted if it arrives by the new deadline and the voter has signed under penalty of perjury that it was voted and mailed on or before Election Day.

- 2) Florida Law: The issue of counting VBM ballots received after election day gained increased attention during the aftermath of the 2000 Presidential Election in Florida. VBM

ballots cast in Florida that are received from overseas are counted if received up to 10 days after the election, provided that the ballot is signed and dated or postmarked on or prior to election day. That provision of Florida law is the result of a consent decree, entered into in 1982 due to concerns that overseas voters did not have sufficient time between the primary and general election (which were only a month apart) to receive, vote, and return their ballots.

- 3) Breaking New Ground: If this bill passes, it will represent the first time that California state law explicitly has allowed any ballot which was received after election day to be counted. Florida's experience with counting ballots that arrive after election day shows that adopting such a policy can result in unequal treatment of votes. In a review of overseas VBM ballots that were counted in Florida in 2000, the New York Times found that hundreds of ballots that arrived after election day and were postmarked after the election were improperly counted.
- 4) United States Postal Service Facility Closures and Mail Delays: Last year, this committee and the Senate Elections and Constitutional Amendments Committee held a joint oversight hearing to discuss United States Postal Service (USPS) facility closures and the impact on voters and upcoming elections. During the hearing, state and county elections officials testified about the impact that recent post office and processing facility closures had on their jurisdictions and on local elections, as well as the anticipated challenges with more closures expected.

According to testimony from elections officials, one of the most significant impacts those closures had on the election process is that there had been significant delays in mail delivery in some circumstances. Elections officials from counties that were previously served by closed facilities have indicated that some first class mail took five to seven days to arrive after closures of USPS facilities, compared to the usual delivery time of one to three days.

To the extent that these closures and additional future closures planned by the USPS result in mail delivery delays, voters who mail their ballots within a reasonable timeframe could, through no fault of their own, find themselves disenfranchised.

- 5) 2010 Primary Election Ballots in Riverside County: In Riverside County, 12,563 VBM ballots were discovered at a local post office the day after the June 8, 2010 statewide primary election. These ballots were eventually accepted by the county elections official, but only after a superior court judge ruled that they should be counted. In this instance, the voters had mailed their ballots in time for normal delivery but county elections officials, who previously and routinely visited certain post offices to collect VBM ballots, did not visit the post office that actually had these ballots. While a plain reading of the applicable statute would have resulted in these ballots being rejected, the presiding judge ordered that the ballots be counted based on a provision of the California Constitution which reads "A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted."
- 6) VBM Ballot Deadlines in Other States: Each state has its own deadlines for the return of mail 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, three states

require 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) require such ballots to be received by election day. Eleven states and the District of Columbia allow mail ballots from civilians living in the US to arrive after election day and still be counted as long as the ballot is postmarked (or in some cases, signed and dated) by election day.

For active duty military and overseas citizens who are covered under UOCAVA, one state requires mail ballots to be returned prior to election day in order to be counted, and 32 states (including California) require ballots to be received by election day. Seventeen states and the District of Columbia allow mail ballots from at least some voters who are covered under UOCAVA to arrive after election day and still be counted. Most of those states require the ballot to be postmarked (or in some cases, signed and dated) by election day.

- 7) State Mandates: The last three state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all six existing elections-related mandates. Additionally, the 2013-2014 state budget that was approved by the Legislature earlier this month suspended three additional newly identified elections-related mandates. This bill adds another mandate on local elections officials. However, this bill also includes provisions designed to help offset some of the costs associated with that mandate by giving elections officials additional flexibility when conducting elections. Specifically, this bill allows elections officials to begin processing returned VBM ballots three business days earlier than is allowed under existing law, and gives elections officials two additional days to complete the official canvass of election results.
- 8) Suggested Technical Amendment: In order to correct a drafting error, and to ensure that the provisions of this bill apply to ballots cast by all voters, committee staff recommends a technical amendment to add the following language to this bill:

Section 3117 of the Elections Code is amended to read:

3117. A valid ballot cast shall be counted if it is received by the elections official ~~by the time the polls close on the day of the election~~ in accordance with Section 3020.

- 9) Secretary of State's Proposed Amendments: Secretary of State Debra Bowen and the League of Women Voters of California both have a "support if amended" position on this bill, and both entities request amendments to eliminate the provisions of this bill that would extend the timeline for county elections officials to complete the official canvass of election results. In support of this proposed amendment, Secretary of State Bowen writes:

Extending the deadline for elections officials to report their results to their governing body will make it difficult for the Secretary of State to comply with state and federal deadlines for publishing the statement of the vote and certifying election results. Currently, elections officials have to submit election results to their governing body 28 days after the election and must submit their certified results to the Secretary of State's office no more than 3 days later, 31 days after the election.

Unfortunately, many county elections [officials] are unable to comply with the existing requirement to submit certified elections results to the Secretary of State's

office by 31 days after the election. That already makes it difficult for the Secretary of State's office to comply with its statutory mandate to certify the statewide results 38 days after the election. Giving county elections officials more time to do their work is likely to lead to more counties missing the 31-day deadline to report their certified results to my office, which in turn would impact my ability to meet state and federal deadlines.

10) Related Legislation: AB 269 (Grove), which is pending in the Senate Elections and Constitutional Amendments Committee, allows the VBM ballot of a military or overseas voter to arrive up to three 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. AB 269 was approved by this committee on a 7-0 vote and by the Assembly on a 78-0 vote.

AB 813 (Melendez), which is pending in the Senate Appropriations Committee, would require elections officials to post election results on the Internet in a downloadable spreadsheet format, as specified. Both AB 813 and this bill propose to amend Section 15372 of the Elections Code, and thus, these two bills are in conflict. This conflict should be resolved through amendments to one or both of these bills prior to final passage by the Legislature.

11) Previous Legislation: SB 348 (Correa) of 2011, would have allowed VBM ballots to be counted if they were postmarked by election day and received by the elections official no later than six days after the election. SB 348 was approved by the Senate Elections and Constitutional Amendments Committee, but subsequently was held on the Senate Appropriations Committee's suspense file.

AB 562 (Fong) of 2012, was similar to this bill. AB 562 was approved by the Senate on a 28-9 vote, but failed passage on the Assembly Floor for concurrence in Senate amendments on a 47-29 vote (AB 562 contained an urgency clause, and thus required 54 votes for passage on the Assembly Floor).

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Law Caucus
Asian Pacific American Legal Center
California Association of Clerks and Election Officials
California Common Cause
California Forward Action Fund
California Teachers Association
CALPIRG
League of Women Voters of California (if amended)
Rural County Representatives of California
Secretary of State Debra Bowen (if amended)

Opposition

None on file.