

Date of Hearing: March 26, 2025

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 331 (Pellerin) – As Introduced January 27, 2025

SUBJECT: Elections: duties of election officials: voter information guides.

SUMMARY: Requires the Secretary of State (SOS) and county elections officials to prepare voter information guides (VIGs) for jail facilities in a format that will be accepted by the jail facilities. Makes it a crime to use misleading unofficial ballot return envelopes. Clarifies that the duty to certify elections results is a ministerial duty of the elections official. Specifically, **this bill:**

- 1) Requires the SOS and county elections officials to prepare state and county VIGs for each jail in the state in a format that will be accepted by jail facilities, and to make guides available to eligible voters inside each facility. Requires the number of state and county VIGs the elections officials make available to eligible voters inside each facility to be equal to either of the following, as applicable:
 - a) At least 30 percent of the number of eligible voters inside the facility, if the guides will be in a location accessible by all eligible voters.
 - b) Equal to the number of eligible voters inside the facility, if the guides will be delivered individually to each eligible voter.
- 2) Requires jail officials to work in good faith with the SOS and county elections officials to ensure delivery of state and county VIGs to their facilities for each primary and general election.
- 3) Clarifies that existing provisions of law that require an elections official to prepare a certified statement of the results of the election and submit it to the governing body within 30 days of the election, post the certified statement of results of the election on its internet website, and send to the SOS within 31 days of the election in an electronic format a complete copy of specified election results, are ministerial and nondiscretionary duties.
- 4) Requires an elections official, if they fail to prepare a certified statement of the results of the election as specified under existing law, to immediately deliver all records and other information pertaining to the election, including all ballots and paper cast vote records, to the SOS. Requires the SOS, after receipt of the records and information, to make all necessary determinations and certify the results of the election as soon as practicable.
 - a) Requires the governing body and all other county staff necessary to complete the canvass and certification of the election to be present and available at all times during the completion of the canvass and certification by the SOS.
 - b) Provides that all costs associated with the completion of the canvass and certification of the election by the SOS are borne by the county that fails to timely certify its election

results.

- 5) Makes it a crime punishable by a fine, by imprisonment in county jail or in state prison, or by both a fine and imprisonment, for a person who provides, directs, or solicits a voter to place or return a ballot in an envelope with the intent or in a way to deceive a voter into returning a ballot in an unofficial return envelope and believing that the envelope is an official ballot return envelope.
- 6) Makes conforming changes.

EXISTING LAW:

- 1) Requires the SOS to produce a state VIG that contains specified information, including, but not limited to, arguments and rebuttals for and against each state ballot measure, and an analysis of each state ballot measure. (Elections Code §§9081, 9084, 9086, 9094)
- 2) Requires that a state VIG be mailed to every postal address at which one or more persons are registered to vote starting the 29th day before a statewide election. (Elections Code §13300)
- 3) Requires the SOS to establish a process that allows a voter to choose to opt out of receiving a paper copy of the state VIG, and instead to receive it by electronic mail, as specified. (Elections Code §§9094.5, 13300.7)
- 4) Requires the SOS to send one copy of the state VIG by mail to each city and county elections official, each member of the Legislature, the proponents of each statewide ballot measure, each public library, and specified educational institutions. (Elections Code §9096)
- 5) Provides that upon request, and at the discretion of the SOS, additional copies of the state VIG may be furnished to these persons and institutions listed above. (Elections Code §9096)
- 6) Requires an elections official, upon completion of the count, to add to the results as so determined, the results of the write-in votes and any paper ballots used as certified by the precinct board, and thereupon to declare the vote, and forthwith post one copy at the counting place for public inspection. (Elections Code §15371)
- 7) Requires an elections official to prepare a certified statement of the results of the election and submit it to the governing body within 30 days of the election, as specified. Requires an elections official to post the certified statement of the results of the election on their website in a downloadable spreadsheet format, as specified. (Elections Code §15372)
- 8) Requires an elections official to send one complete copy of all results to the SOS in an electronic format within 31 days of the election as to all of the following:
 - a) All candidates voted for statewide office.
 - b) All candidates voted for the following offices:
 - i) Member of the Assembly.

- ii) Member of the Senate.
 - iii) Member of the United States House of Representatives.
 - iv) Member of the State Board of Equalization.
 - v) Justice of the Court of Appeal.
 - vi) Judge of the superior court.
- c) All statewide measures.
- d) The total number of ballots cast. (Elections Code §15375)
- 9) Requires a governing body to declare elected or nominated to each office voted on at each election under its jurisdiction the person having the highest number of votes for that office, and to declare the results of each election under its jurisdiction as to each measure voted on at the election. (Elections Code §15400)
- 10) Provides that every person is punishable by a fine not exceeding \$1,000, or by imprisonment for 16 months or two or three years, or by both that fine and imprisonment, as specified, who does either of the following:
- a) Displays a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box. Evidence of intent to deceive may include using the word “official” on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an elections official.
 - b) Directs or solicits a voter to place a ballot in an unofficial ballot box prohibited as described above. (Elections Code §18586)

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

AB 331 makes technical changes to the Elections Code to ensure timely certification of results, provide voter guides to eligible voters in jails, and clarify that all materials distributed with the intention to mislead voters are unlawful. By clearly defining elections officials’ certification duties as ministerial, AB 331 removes any ambiguity that could be potentially exploited by bad actors. Furthermore, AB 331 makes it clear that it is the duty of county elections officials and the Secretary of State to provide voter information guides in a format accepted by jails. These changes will ensure that the Department of Justice, under the Attorney General, can more easily enforce California’s voter protection laws.

2) **Unofficial Vote by Mail (VBM) Ballot Return Envelopes and Previous Legislation:**

During the November 2020 statewide general election, there were instances of unauthorized and non-official VBM drop boxes. According to an October 11, 2020, advisory from the SOS to county elections officials, the SOS's office received several complaints regarding the use of unauthorized and non-official VBM drop boxes being used or proposed to be used at local political party offices, candidate headquarters, and churches throughout the state. According to the memo, examples that were provided to the SOS's office included boxes or containers labeled simply as "ballot drop boxes" or designated misleadingly as "official ballot drop boxes." The memo stated that, "[state] law does not authorize the use of unauthorized, non-official vote-by-mail ballot drop boxes. County elections officials alone have the authority to designate the location, hours of operation, and number of drop boxes in the county, and have the responsibility for ensuring compliance with all applicable statutes and regulations that guarantees the security and chain of custody of vote-by-mail ballots deposited. Moreover, the use of unauthorized, non-official vote-by-mail ballot drop boxes does not comply with state law governing ballot collection activities." Subsequently, SB 35 (Umberg), Chapter 318, Statutes of 2021, was enacted to prohibit displaying a ballot collection container with the intent to deceive a voter into casting a ballot in an unofficial ballot box and directing or soliciting a voter to cast a ballot into an unofficial ballot collection container. SB 35 established that evidence of an intent to deceive may include using the word "official" on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an elections official.

According to the author and sponsor, the state Department of Justice (DOJ) received a report of a potentially misleading ballot return envelope being delivered to a voter during the November 2024 general election. In order to protect voters and deter this type of conduct from occurring, this bill expands current prohibitions on the use of unauthorized and non-official VBM drop boxes to include the use of unauthorized and non-official VBM ballot return envelopes.

3) **Election Certification Processes and Guardrails:** Certification, the statutory process by which officials sign off on the completion of election results, has historically been an uncontroversial postelection formality across the country. State law has long established that officials have a mandatory, nondiscretionary duty to certify elections. Despite this, since the 2020 election, more than 30 local officials nationwide have refused or threatened to refuse to certify election results (committee staff is unaware of any local elections officials in California who have refused or threatened to refuse to certify election results during that time). Their efforts did not succeed because state courts and state officials intervened to protect the certification process. State officials have several legal tools available to respond to and protect against future election certification issues. The Citizens for Responsibility and Ethics in Washington (CREW) published a report, "Election Certification Under Threat: A legal roadmap to protect the 2024 election including from 35 officials who have refused to certify results" that outlines legal remedies available to state and federal authorities to protect certification at the county level. Based on a review of states' responses to certification abuses since the 2020 election, the report recommends the following preventative and remedial measures:

- State election boards, secretaries of state, attorneys general and local prosecutors should explicitly advise county officials of their non-discretionary certification duties and the

penalties for non-compliance before any election, as Michigan authorities have done.

- State authorities should bring expedited mandamus litigation to swiftly resolve certification disputes in the state’s highest court, as New Mexico and Nevada authorities have. Mandamus can be used to compel an official to perform a ministerial duty required by law.
- States should utilize mechanisms, where available, for state election officials to step in to certify elections in place of county officials who refuse to do so.
- States should utilize mechanisms, where available, for state election boards or courts to remove county officials who willfully disregard their legal duties, as North Carolina, New Mexico and Nevada have in place.
- If county officials willfully violate the law, state authorities should pursue appropriate civil and criminal remedies. If state authorities fail to act, then federal authorities should pursue appropriate civil and criminal remedies to protect federal voting rights.

This bill codifies some of the legal protections mentioned above. Specifically, this bill clarifies that the duty to certify election results is a ministerial and nondiscretionary duty of the elections official. Additionally, this bill requires an elections official, if they fail to timely certify and report the election results in accordance with the law, to immediately deliver all election materials to the SOS, and requires the SOS to tabulate and certify the results of the election as soon as practicable. Finally, this bill requires the county to pay all costs associated with the completion of the canvass and certification of the election by the SOS.

- 4) **State and County Voter Information Guides:** State VIGs contain information about federal and statewide candidates and statewide ballot measures and are mailed to registered voters prior to a statewide election. County VIGs (also known as a “sample ballot”) contain a sample of the ballot, information about local candidates and ballot measures, and polling place locations. A county VIG is sent to registered voters prior to statewide and local elections.

This bill requires the SOS and county elections officials to prepare state and county VIGs for each jail in the state in a format that will be accepted by jail facilities. According to the author and sponsor, guides are not reaching eligible voters in jails because these publications are almost always held together with staples, which is often not allowed by the jails. Additionally this bill requires the elections officials to make guides available to eligible voters inside each jail facility, as specified. By default, every registered voter will receive a paper state and county VIG in the mail, unless a voter chooses to receive electronic voting materials. If a voter has a mailing address at a jail facility or if a jailed individual requests a ballot to be mailed to the jail where they are incarcerated (temporary address change), their state and county VIGs will be mailed to that location.

The term “eligible voter” often is used to include individuals who meet the requirements to be able to vote, but who are not registered to vote. As written, this bill requires elections officials to make guides available to all eligible voters inside each jail facility, instead of all *registered* voters within the jail. It may be logistically challenging for elections officials to comply with this requirement, as they do not receive notifications when an eligible voter has

been incarcerated in a jail facility. The author and sponsor indicate that this bill is intended to apply to eligible voters who are already registered to vote and inside jail facilities, and they intend to clarify this provision.

Additionally, the term “jail facility” is not defined in the bill. There are various types of jail facilities in the state. For example, there are separate facilities for adults and juveniles. It may be logistically challenging for elections officials to provide guides to all eligible voters in every jail facility in the state.

- 5) **Unique Barriers for Justice Involved Individuals and Recent Research:** A 2020 Prison Policy Initiative report, “Eligible but Excluded: A guide to removing the barriers to jail voting,” discusses that while most individuals in local jails are legally eligible to vote, in practice many are unable to exercise those rights. According to the report, the main reasons for this include: most people in jail have not been convicted of the charges on which they are being held (also known as being detained “pretrial”) and pretrial detention does not disqualify someone from voting; people in jail who are serving post-conviction sentences have typically been convicted of misdemeanors and few states disenfranchise people serving time for misdemeanor convictions; and, not all states disenfranchise individuals on probation or parole.

The report further discusses several barriers that prevent those in jail from voting. Voter registration and ballot-casting related barriers include confusion about voter eligibility requirements for justice involved individuals and deadlines for registering to vote and casting a ballot. Moreover, incarcerated people have limited or no access to the internet or various paper resources, making it challenging to access voting forms, election resources, or confirm a ballot has been received and/or accepted by election officials. Many states and counties publish voter guides that are sent to all residential addresses. However, these guides may not be distributed to jails, either because policies do not require such distribution or because such policies are not enforced. Additionally, delays in jail mail may also impede the timely casting of ballots or voter registration forms. Additionally, the report discusses high population turnover rates in jails. According to the report, the average jail stay is between three to four weeks, however, many people are incarcerated for much shorter periods of time. Consequently, an individual may register to vote, but end up in jail on election day (or for the duration of the voting period). Conversely, an individual may register to vote while in jail, but be released prior to casting a ballot. In either scenario, a person’s registration information will not match their status on election day, and thus the person may be unable to vote.

- 6) **Arguments in Support:** The sponsor of this bill, Attorney General Rob Bonta, writes in support:

Since November 2020, counties in eight states have experienced delayed certification because officials have refused to certify the vote. Due to the tight certification deadlines at the local, state and federal levels, it is crucial that California’s results are certified on time. Clarity in the law would be beneficial to ensure officials are aware of their nondiscretionary obligation to certify. Additionally, DOJ received reports that registered voters in jails are not receiving voter information guides because these publications are almost always held together by staples, which often are not allowed in the jails. Lastly, DOJ received a report of a potentially misleading ballot return envelope being delivered to a

voter and recommends an expansion of California's ballot return protections to establish consequences to deter this type of conduct.

To address certification delays, AB 331 would 1) ensure counties certify elections as required under current law by (A) clarifying existing law that a county's duty to certify and report their election results is ministerial and nondiscretionary, (B) requiring any county that fails to timely certify and report its election results to transmit all election materials to the custody of the Secretary of State in Sacramento, to facilitate the timely tabulation of ballots, [and] (C) imposing financial liability on counties for refusal to certify election results, which would both deter counties from failing to certify election results and compensate the State if it is forced to intervene.

To ensure registered voters in jail receive voter information guides required under current law, the bill would 2) require delivery of voter information guides to jails in a form that those institutions are able to accept. To ensure unofficial ballot return envelopes are not used to mislead voters, AB 331 would 3) expand rules that currently prohibit intentionally misleading voters into depositing their ballots in unofficial ballot collection containers to also prohibit the use of misleading unofficial ballot return envelopes.

- 7) **Double Referral:** This bill has been double-referred to the Assembly Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta (sponsor)
La Defensa

Opposition

None on file.

Analysis Prepared by: Nichole Becker / ELECTIONS / (916) 319-2094