

Date of Hearing: April 9, 2025

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
AB 5 (Berman) – As Amended March 10, 2025

SUBJECT: Elections: official canvass.

SUMMARY: Requires county elections officials to report election results for all ballots, except ballots requiring special processing, by the 10th day after the election. Specifically, **this bill:**

- 1) Requires each county elections official, on or before the 10th day following the election, to count all ballots, and to release the vote count for those ballots, except for the following types of ballots:
 - a) A duplicate ballot, as specified.
 - b) A vote by mail (VBM) ballot that is forwarded to the county elections official who issued the ballot by another elections official, as specified.
 - c) A VBM ballot for which a voter has the opportunity either to verify a signature or to provide a signature, as specified.
 - d) A provisional ballot.
 - e) A ballot cast by a person who completes a conditional voter registration (CVR), as specified.
- 2) Permits an elections official to request an extension of this deadline from the Secretary of State (SOS), and permits the SOS to grant such an extension if the SOS determines there are sufficient grounds.

EXISTING LAW:

- 1) Requires an elections official to conduct a semifinal official canvass of each election by tabulating VBM and precinct ballots and compiling the results. Requires the semifinal official canvass to begin immediately upon the closing of the polls and to continue without adjournment until all precincts are accounted for. (Elections Code §15150)
- 2) Requires an official canvass of an election to commence no later than the Thursday following the election. Requires the official canvass to be open to the public and, for state elections, to result in a report of results to the SOS. Requires the official canvass be continued daily (except for Saturdays, Sundays, and holidays) for not less than six hours each day until completed. (Elections Code §15301)
- 3) Requires an elections official, beginning no later than the Thursday following an election, to post updated information regarding the election on their website at least once per week, except as specified. Requires the update to include the following information:

- a) Updated results for any candidate or measure appearing on the ballot.
 - b) The number of ballots processed and an estimated number of outstanding ballots remaining unprocessed for each of the following categories: ballots voted at a polling place, VBM ballots received on or before election day, VBM ballots received after election day, provisional ballots, and conditional registration ballots.
 - c) The date and time when it is expected that the next results will be posted. (Elections Code §15306)
- 4) Requires the elections official to prepare a certified statement of the results of an election and submit it to the governing body within 30 days of the election, except as specified. (Elections Code §15372)
 - 5) Requires a county elections official, upon receiving a VBM ballot, to compare the signature on the VBM ballot identification envelope with signatures that are part of the voter's registration record, as specified. Requires, in the case of a VBM ballot identification envelope that was not signed by the voter, or in the case of an identification envelope that was signed but where the signature on the envelope did not compare to the signatures that are part of the voter's registration record, that the voter be given the opportunity to verify the ballot so that it may be counted, as specified. (Elections Code §3019)
 - 6) Requires a county elections official, if a VBM ballot is returned to the county that was not issued by the official, to forward the ballot to the elections official who issued the ballot no later than eight days after receipt. (Elections Code §3017(a)(3))
 - 7) Provides for an elections official to make a duplicate copy of a ballot under any of the following circumstances:
 - a) Where necessary, if the ballot is torn, bent, or otherwise defective such that every vote cast by the voter can be counted by the tabulating equipment. (Elections Code §15210)
 - b) Upon receipt of a ballot returned by a military or overseas voter via facsimile transmission. (Elections Code §3106)
 - 8) Permits a voter who is not registered to vote, but who is otherwise qualified to register to vote to complete a CVR, as defined, and to cast a ballot during the 14 days immediately preceding an election or on election day. Provides that a CVR shall be deemed effective if the county elections official is able to determine before or during the canvass period for that election that the registrant is eligible to register to vote. (Elections Code §§2170-2173)
 - 9) Entitles a voter claiming to be properly registered, but whose qualification or entitlement to vote cannot be immediately established, to vote a provisional ballot. Requires the elections official, during the official canvass, to examine the records with respect to a provisional ballot cast, and provides for the ballot to be counted if the county elections official can verify the eligibility of the provisional voter. (Elections Code §§14310-14314)

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

COMMENTS:

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

California has one of the most accessible, secure, and transparent voting systems in the country. We also have some of the most competitive congressional and legislative races, due to our independent redistricting process and lack of political gerrymandering. These are things to be proud of, but the reality is that they also lead to very slow vote counts that can confuse and frustrate the public, drawing negative attention to our voting process, and creating an opportunity for bad actors to sow doubt about election results they don't like in an effort to undermine confidence in our democracy.

AB 5 seeks to maintain voting accessibility and security while also speeding up vote counting by establishing clear and achievable metrics for when the vast majority of ballots must be counted and races decided. This increases transparency in the vote count process to give voters and the public even more confidence, while maintaining our nation-leading voting rights.

2) **Processing Ballots and Reporting of Election Results:** The speed at which California finalizes election results and certifies elections garnered increased attention following the 2024 statewide general election. That attention was due, at least in part, to the fact that California had the two closest Congressional races in the nation, which meant that the winners in those two races were not apparent until weeks after the election.

Ultimately, election results are official only once they have been certified and the winning candidates have been declared elected by relevant government officials. However, news organizations frequently declare winners in election contests long before the results are final and official. In some cases, media organizations will declare a winner before *any* ballot counts have been released for a contest, based on a variety of factors including exit polls and other election data. These "calls" by the media, however, have no legal significance, and they are not always correct.

The desire to know the outcomes of elections sooner is understandable, and is part of the reason why media organizations declare the winners of elections before ballot counting is complete. The government officials who are responsible for running elections, however, do not have the ability to declare a winner before all ballots are counted. Instead, they are tasked with ensuring that all legally-cast ballots are tabulated accurately and in accordance with state laws, using a process that is open to public scrutiny, and that contains many safeguards to protect against the release of incorrect results due to errors, fraud, or other factors.

The committee should consider whether there is an actual problem, rather than a perceived problem, with the current time frame to finalize election results. Ultimately, the judgement of how quickly state law should require election results to be finalized is a subjective one. To

the extent that the committee believes that the speed at which election results are finalized by California elections officials is an actual problem that is in need of a policy solution, there are a variety of potential approaches to speeding the rate at which election results are finalized. Each of those approaches, however, would involve policy and/or budgetary tradeoffs. For example, significant additional funding for staff, ballot processing equipment, and processing facilities could help expedite election results, but would mean that fewer resources would be available for other policy priorities. Modifying the state's robust procedures for verifying ballots prior to counting could speed the processing of ballots, but could harm the integrity of elections and the accuracy of results. Limiting the circumstances under which voters can vote by mail likely would speed up election results, but also undoubtedly would reduce access for many voters, and could negatively impact voter participation.

This bill seeks to speed up vote counting, to an extent, by requiring county elections officials to finish counting all ballots, and to release the vote counts for those ballots, by the 10th day after the election, except for certain specified types of ballots that require additional processing, as described in more detail below. In recent statewide general elections, the overwhelming majority of ballots in California have been counted by that point. At the November 2024 election, for example, 94.72% of ballots cast statewide were counted with results reported by the 10th day after the election (the Friday of the week after the election). In November 2022, 88.07% of ballots were counted by that point. There can be wide variation from county-to-county, however, on the percentage of ballots that are counted by that point. For instance, in 2024, one county had reported results for less than 32% of its ballots by the 10th day after the election, and three other counties had reported results for less than 75% of their ballots. On the other hand, 14 counties had counted more than 98% of their ballots by that point.

It is unclear exactly what percentage of ballots fall into the categories of ballots that would not be required to be counted by the 10th day after the election under this bill. Given the rate at which many counties currently tabulate ballots and release election results, however, compliance with this bill may be more achievable than compliance with many other bills that have been introduced in this legislative session to try to hasten the release of election results. Furthermore, to the extent that this bill's requirements cannot be met by a county, this bill gives county elections officials the ability to request an extension of the deadline from the SOS.

- 3) **Ballots Requiring Additional Processing:** Notwithstanding the fact that nearly 95% of ballots from the November 2024 election were counted by the 10th day after the election, the remaining 5% of ballots to be counted likely were disproportionately the types of ballots that require additional processing by elections officials before they can be counted. In many cases, the additional workload associated with processing and counting those ballots are the result of provisions of state law that were enacted in an effort to err on the side of counting as many ballots and enfranchising as many voters as possible. In some cases, the types of ballots cast and counted under these provisions of California law would not be counted if they were cast in other states.

This bill generally would not require those types of ballots to be counted by the 10th day

after the election, but instead would maintain the requirement for elections officials to finish counting those ballots before certifying the election no later than 30 days after election day. Those types of ballots include the following:

- a) **VBM Ballots Forwarded from Other Counties:** Prior to 2017, if a voter who was travelling on election day dropped their completed VBM ballot off at an in-person voting location or VBM ballot drop-off location in a county other than the one where the voter was registered to vote, state law did not require the ballot to be counted. SB 450 (Allen), Chapter 832, Statutes of 2016, however, requires a county to forward any VBM ballot that it receives that was issued by another county to the issuing county within eight days of receiving the ballot, among other provisions. While that requirement increases the number of ballots that are able to be counted, it also increased workload for county elections officials. Furthermore, because a county cannot begin processing a VBM ballot until it has possession of that ballot, ballots that are forwarded under this provision may not be able to be counted until many days after election day.
- b) **VBM Ballots Subject to Signature Curing:** Under existing law, when a voter casts a VBM ballot, that voter generally returns the completed VBM ballot in a ballot identification envelope that contains information about the voter to whom the ballot was issued. Among other purposes, the identification envelope serves as a way to verify the identity of the voter who cast the ballot. Accordingly, before a VBM ballot identification envelope can be opened and the ballot counted, the elections official must first verify information on the envelope, including comparing the voter's signature on the identification envelope to the signature(s) in the voter's registration record. That verification process means that tabulating VBM ballots generally is more time- and labor-intensive than tabulating ballots that are cast at in-person voting locations.

It is not uncommon for a VBM ballot to be returned in an envelope that is missing the voter's signature or with a signature that doesn't compare to signatures in the voter's record. Until 2016, those VBM ballots would not be counted, and a voter who returned such a ballot would not necessarily be notified that there was a problem that prevented the ballot from being counted. Since that time, multiple pieces of legislation have created a "cure process" under which the ballot can still be counted if the voter provides the missing signature or verifies that they cast a VBM ballot with a signature that did not compare with signatures in the voter's registration records. While these processes have decreased the number of ballots that are unable to be counted, they also have increased the workload of elections officials. Furthermore, because state law requires that a voter be notified of their ability to "cure" a problem with their VBM ballot and be given time to complete that curing process, it generally is considerably longer before these ballots can be verified and counted by elections officials.

- c) **Provisional Ballots:** Under state law, a voter is entitled to cast a provisional ballot if the voter claims to be properly registered but the elections official cannot immediately establish that voter's eligibility. While federal law requires most states to have a provisional balloting process, California's laws generally err on the side of counting provisional ballots whenever possible.

For example, in many states, if a voter attempts to vote at a polling place other than the one to which the voter was assigned, that voter may be allowed to cast a provisional ballot, but that provisional ballot will not be counted. By contrast, if a California voter appears at a polling place other than their assigned polling place, but is still in the county in which the person is registered to vote, that voter will be issued a provisional ballot, and once the voter's eligibility to vote is verified, the voter's ballot will be counted.

Because the provisional ballot issued to the voter may contain contests in which the voter was not eligible to participate, provisional ballots in California sometimes must be duplicated on to other ballots so that the ballot only counts for those contests in which the voter was eligible to vote. These verification and duplication processes take time and add workload to county elections officials, but also result in many more voters being able to participate in elections. In California, more than 90% of provisional ballots cast in statewide elections generally are counted in whole or in part. By contrast, in some other states, fewer than 40% of provisional ballots are counted.

- d) **CVR Ballots:** California law allows a person who did not register to vote by the regular voter registration deadline (15 days before the election) to register and vote in-person up to and including on election day through a process known as CVR. Before a CVR ballot can be counted, however, the elections official must first verify the registrant's eligibility to register to vote and cast a CVR ballot, which may require the elections officials to wait until other ballots and election records are processed before processing the CVR ballot. This verification process takes time, and adds to the workload of elections officials.
 - e) **Ballots that Need Duplicating:** As detailed above, certain provisional ballots need to be duplicated once the voter's eligibility has been established, but before the ballot can be tabulated. Additionally, ballots that are damaged or that otherwise cannot be counted by the tabulating equipment and ballots containing a voter's personal information generally must be duplicated on to a blank ballot following a specified procedure before those ballots can be counted. Both the original ballot and the re-made duplicate are preserved with other election records. The process for duplicating ballots takes time, and adds to the workload of elections officials.
- 4) **Related Legislation:** AB 16 (Alanis), which is also being heard in this committee today, removes discretion from county elections officials on whether to process VBM ballot return envelopes and ballots prior to the election, and instead requires elections officials to process those materials before election day.

AB 25 (DeMaio), which is also being heard in this committee today, requires an elections official to count all ballots, except provisional ballots and VBM ballots for which the voter has the opportunity either to verify their signature or to provide a signature, by no later than 72 hours after the election, among other provisions.

AB 1214 (Patterson), which is also being heard in this committee today, reduces the amount of time that elections officials have to complete the official canvass of the election and certify the election from 30 days to 21 days, among other provisions.

SB 3 (Cervantes) requires a county elections official, beginning the Thursday after an election, to post updated election results on their website at least twice a week, rather than once a week as is required under existing law, among other provisions. SB 3 is pending in the Senate Elections & Constitutional Amendments Committee.

SB 407 (Choi) requires elections officials to certify results within 10 days of an election, among other provisions. SB 407 is pending in the Senate Elections & Constitutional Amendments Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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