

Date of Hearing: January 10, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 306 (Gonzalez Fletcher) – As Amended January 3, 2018

**SUBJECT:** Vote by mail ballots.

**SUMMARY:** Requires a person who is designated by a vote by mail (VBM) voter to return the voter's ballot to deliver it no later than two days after receiving it from the voter or before the close of the polls on election day, whichever is sooner. Makes technical changes.

**EXISTING LAW:**

- 1) Permits any registered voter to apply for and receive a VBM ballot.
- 2) Requires a VBM voter to sign the VBM ballot return envelope, as specified. Requires a county elections official, upon receiving a VBM ballot, to compare the signature on the envelope with a signature appearing in the voter's registration record, as specified. Prohibits a VBM ballot from being counted if the signature on the envelope does not compare to a signature in the voter's registration record.
- 3) Requires a VBM ballot to be received by the elections official from whom it was obtained or by the precinct board no later than the close of polls on election day. Provides, notwithstanding this requirement, that a VBM ballot is considered to be timely cast if it is received by the voter's elections official via United States Postal Service or a bona fide private mail delivery company no later than three days after election day if specified conditions are satisfied.
- 4) Permits a VBM voter who is unable to return his or her ballot to designate any person to return the ballot to the elections official who issued it, to the precinct board at a polling place or vote center within the state, or to a VBM ballot dropoff location within the state, as specified. Prohibits a person designated to return a VBM ballot from receiving any form of compensation based on the number of ballots that the person has returned, and prohibits an individual, group, or organization from providing compensation on that basis.
- 5) Provides that if a VBM ballot is returned to a precinct board at a polling place or vote center, or to a VBM ballot dropoff location, that is located in a county that is not the county of the elections official who issued the ballot, the elections official for the county in which the VBM ballot is returned shall forward the ballot to the elections official who issued it no later than eight days after receipt.
- 6) Provides that a VBM ballot shall not be counted if it is delivered to the elections official in violation of specified provisions of law.
- 7) Provides that any person having charge of a completed VBM ballot who willfully interferes or causes interference with its return to the local elections official having jurisdiction over the election is guilty of a misdemeanor, as specified.

- 8) Requires an elections official to establish procedures to ensure the secrecy of a VBM ballot returned to a precinct polling place and the security, confidentiality, and integrity of any related personal information collected, stored, or otherwise used.
- 9) Provides, in the California Constitution, that a voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted.

**FISCAL EFFECT:** None. This bill has been keyed non-fiscal by the Legislative Counsel.

**COMMENTS:**

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

In 2016, the Governor signed AB 1921 into law, which allowed voters to designate a person of their own choosing to return a completed mail ballot to the proper drop-off location or post office. The bill also prohibited individual canvassers or volunteers from engaging in any sort of paid-per ballot or performance-based compensation schemes based on the number of ballots deposited or collected by that person.

With voting by mail becoming increasingly popular among individual voters and counties, this change helped reduce arbitrary obstacles for individuals attempting to vote. However, as this change in law has been implemented during the special election in Assembly District 51, concerns have been voiced by voters that a designee might not return their ballot in a timely fashion, which could inadvertently mean that their vote is not counted.

While it is already the law that the person designated by a voter to submit a mail ballot must do so, some states have laws on the books to ensure that the designee of a voter returns the ballot quickly. For instance, Iowa requires the designee to return the ballot within 72 hours or by close of the polls, whichever is sooner.

AB 306 would clarify both for voters and for those they might designate to turn in their mail ballot for them that ballots must be turned in promptly. This bill would require that if a voter has chosen to designate someone else to turn in their mail ballot for them, that person must do so within two days, or the close of polls on election day, whichever comes first. This would help ensure that voters have flexible options available to them for how to turn in their ballots, that these options are trustworthy, and that a voter's mail ballot will be counted on time.

- 2) **VBM Ballot Return and Previous Legislation:** AB 1921 (Gonzalez), Chapter 820, Statutes of 2016, permits a VBM voter to who is unable to return his or her ballot to designate any person to return the ballot, as specified, and prohibits a designated person from receiving any form of compensation based on the number ballots that person returns, as specified. Prior to the enactment of AB 1921, California law generally allowed a voter to designate only specified family members or persons residing in the same household as the voter to return his or her VBM ballot.

While existing law does not specify a time period by which someone must deliver a VBM ballot that the person has been designated to return to the elections official, existing law does make it a misdemeanor for a person having charge of a completed VBM ballot to willfully interfere or cause interference with its return to the local elections official.

- 3) **Existing Vote by Mail Safeguards:** Existing law includes a variety of safeguards to protect against VBM ballot abuse or fraud. When a VBM ballot is received by an elections official, existing law requires the elections official to compare the signature on the VBM ballot envelope with the signature on file for that voter before the ballot can be counted. If the signatures do not compare, the ballot is not counted. Furthermore, state law includes extensive penalties for misconduct in connection with VBM ballots. For instance, criminal penalties are possible for committing fraud in connection with any vote cast, as specified; coercing or deceiving elders in casting a vote, as specified; interfering with the return of a VBM ballot or VBM ballot application, as specified; soliciting the vote of a VBM voter while the voter is voting, as specified; providing any valuable consideration to a person in exchange for that person voting or refraining from voting for a particular person or measure, as specified; coercing or intimidating a voter to vote or refrain from voting in an election, or to vote or refraining from voting for a particular person or measure, as specified; and fraudulently signing a VBM ballot envelope, as specified, among other provisions.
- 4) **Vote by Mail Data:** Since California law was amended in 2001 to allow any voter to become a permanent VBM voter (known at the time as a "permanent absentee voter,") the percentage of voters who vote using a ballot that was mailed to them generally has increased from election-to-election. In fact, in each statewide election going back to the 2012 primary election, a majority of ballots cast in the election were cast on a VBM ballot. In the 2016 statewide general election, 57.8% of ballots were cast on a VBM ballot, including a majority of the ballots in 55 of the state's 58 counties.

The percentage of voters who cast VBM ballots is expected to continue to climb in future elections as recent policy changes are implemented. Specifically, SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the California Voter's Choice Act, which permits counties to conduct elections in which all voters are mailed ballots, and voters have the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) are expected to conduct elections under this system in 2018, while additional counties may begin using this system in 2020.

- 5) **Disqualification of Ballots and Potential Amendment:** As detailed above, the section of law that this bill amends—Section 3017 of the Elections Code—provides that a VBM ballot "shall not be counted if it is not delivered in compliance with this section." If a person who was designated to return a voter's VBM ballot failed to return it within the timeline, that provision could be interpreted to require the ballot to be disqualified.

California law generally errs on the side of counting ballots in situations where a voter substantially complies with the law, where any non-compliance with the law is outside the control of the voter, and where there is no evidence of fraud or tampering with the ballot. For example, Article II, Section 2.5 of the California Constitution provides that "[a] voter

who casts a vote in an election in accordance with the laws of this State shall have that vote counted." Similarly, Section 3000 of the Elections Code requires state laws governing VBM voting to be "liberally construed in favor of the [VBM] voter," and Section 14312 of the Elections Code requires state laws governing provisional balloting to be "liberally construed in favor of the provisional voter."

The author has indicated that the purpose of this bill in proposing a deadline for a designated person to return a voter's VBM ballot is to ensure that a voter's ballot is counted on time. It appears contrary to the intent of this bill to create the potential for a VBM ballot to be disqualified if the voter's designated representative fails to meet the deadline imposed by this bill. To better achieve the author's intent, the author and the committee may wish to consider amending this bill to specify that a representative's failure to return a VBM ballot by the deadline imposed by this bill will not result in the invalidation of that ballot.

**REGISTERED SUPPORT / OPPOSITION:****Support**

None on file.

**Opposition**

None on file.

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