

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 49 (Cervantes) – As Amended April 2, 2019

SUBJECT: California Voter Protection Act of 2019.

SUMMARY: Requires an elections official to send a vote by mail (VBM) ballot to a voter within five days of receiving that voter's request for a VBM ballot, or within five days of the 29th day before the election for any person who has requested a VBM ballot as of the 29th day before the election. Requires a county that conducts elections using vote centers and mailed ballots in lieu of using polling places, as specified, to have at least one vote center in each Assembly district. Specifically, **this bill:**

- 1) Requires county elections officials to begin mailing VBM ballots at least 29 days before the day of the election. Requires county elections officials to mail all VBM ballots within five days of the start of the mailing of ballots, for any person who is a VBM voter as of the 29th day before the election. Requires a county elections official to mail a ballot to each voter who requests a VBM ballot within five days of the request, if the request is received after the 29th day before an election.
- 2) Prohibits county elections officials from discriminating against any region or precinct in the county in choosing which ballots to mail first within the mailing period provided by this bill.
- 3) Requires a county elections official, in a county that is conducting a regularly scheduled election pursuant to the California Voter's Choice Act (CVCA), to ensure that at least one vote center is open in each Assembly district whenever a vote center is open in the county.
- 4) Makes technical and corresponding changes.

EXISTING LAW:

- 1) Allows any voter to request and vote a VBM ballot. Allows any voter to sign-up to become a permanent VBM voter. Requires that each permanent VBM voter be mailed a ballot for every election in which the voter is eligible to vote.
- 2) Permits an application for a VBM ballot to be made in writing to the elections official between the 29th and the 7th day prior to the election except as specified. Requires an application for a VBM ballot that is received by the elections official prior to the 29th day prior to the election to be kept and processed during the application period.
- 3) Permits counties, pursuant to the CVCA, to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. Requires a county that is conducting a regularly-scheduled election pursuant to the CVCA to have at least one vote center for every 50,000 registered voters in the county open from the 10th day before the election to the fourth day before the election, and to have at least one vote center for every 10,000 registered voters in the county open from the third day before the election through election day, as specified.

- 4) Permits Los Angeles County, beginning January 1, 2020, to conduct elections subject to requirements similar to those in the CVCA, except that the county is not required to mail a ballot to every voter, but is required to have a larger number of vote centers than would otherwise be required under the CVCA. Provides that Los Angeles County may conduct elections pursuant to this provision for not more than four years.

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

COMMENTS:

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

As voting by mail increasingly becomes the primary method that California voters use to exercise their fundamental right to vote, we must ensure that our state's elections policies are up to the task of accommodating that changing reality. By sending mail ballots to voters earlier and setting deadlines for the mailing of these ballots, the California Voter Protection Act of 2019 will provide California voters with more time having their ballots in hand. This will not only protect the right to vote by ensuring that mail ballots are received by voters in a timely manner, but also allow voters with a greater opportunity to do research in exercising the franchise.

- 2) **VBM Ballot Mailings:** Existing state law does not *explicitly* specify a date on which elections officials are required to start mailing VBM ballots to voters. Instead, state law permits applications for VBM ballots to be made beginning the 29th day before the election; for applications received before that date, the elections official is required to hold on to the application until the application period has begun. State law also generally requires that an application for permanent VBM status be processed in the same manner as an application for a VBM ballot, and requires VBM ballots that are mailed to and received from voters on the permanent VBM list to be subject to the same deadlines and processed and counted in the same manner as all other VBM ballots. Collectively, these provisions of state law create an implication that elections officials cannot begin sending VBM ballots to voters (other than military and overseas voters) until the 29th day before the election. (For counties that are conducting elections as part of the CVCA, state law explicitly requires the elections official to begin mailing ballots to voters on the 29th day before the election.)

Furthermore, state law generally does not include a deadline for elections officials to *finish* sending ballots to VBM voters. In practice, while elections officials typically *begin* mailing ballots to permanent VBM voters starting on the 29th day before the election, those ballots often are sent out over a period of a few days given the large number of ballots to be sent. When requests for VBM ballots are received less than 29 days before an election, elections officials typically fulfill those requests as promptly as possible.

- 5) **California Voter's Choice Act and Suggested Amendments:** SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the CVCA, 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. Fourteen specified counties were permitted to conduct elections under this system in 2018, though only five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) did so. All counties

are permitted to conduct elections under the CVCA beginning in 2020, and at least nine counties (Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, and San Mateo) are expected to do so. Other counties may still choose to join the list of counties conducting elections pursuant to the CVCA in 2020.

Counties that choose to conduct elections pursuant to the CVCA are required to develop an election administration plan in consultation with the public. The process for adopting that plan requires the elections official to provide multiple opportunities for the public to provide input on how the election should be administered, including input on potential locations for vote centers and ballot dropoff locations. When developing the election administration plan and determining the placement of vote centers and ballot dropoff locations, elections officials are required to consider several factors, including vote center and ballot dropoff location proximity to all of the following: public transportation; communities with historically low vote by mail usage; population centers; language minority communities; voters with disabilities; communities with low rates of household vehicle ownership; low-income communities; communities of eligible voters who are not registered to vote and may need access to same day voter registration; and geographically isolated populations, including Native American reservations. Elections officials additionally must consider access to accessible and free parking at vote centers and ballot dropoff locations, the distance and time that voters must travel by car or public transportation to reach vote centers and ballot dropoff locations, and traffic patterns near vote centers and ballot dropoff locations.

As noted above, elections officials conducting a regularly scheduled election pursuant to the CVCA must open one vote center for every 50,000 registered voters from the 10th day before the election through the fourth day before the election, and one vote center for every 10,000 registered voters from the third day before the election through election day. In light of these ratios, in a county that is conducting elections pursuant to the CVCA, it is likely the case that most Assembly districts in the county will have multiple vote centers. (Assembly districts have populations of around 500,000 people; the number of registered voters in each Assembly district ranges from a low of about 150,000 registrants to a high of about 338,000 registrants.) The criteria that elections officials must consider when choosing vote center locations and the numerous opportunities for public input during the process for developing an election administration plan also decrease the likelihood that an Assembly district in a CVCA county would not have a vote center open in the district.

In situations where only a small portion of an Assembly district is located in a county, however, it may be unrealistic or impractical for a county elections official to locate a vote center in the portion of the Assembly district that is located in that county. For example, a small portion of Assembly District 37 is located in San Luis Obispo County. There are no registered voters, however, who live in Assembly District 37 in San Luis Obispo County. Instead, all 170,000 registered voters in the county live in Assembly District 35.

While it is uncommon for an Assembly district to include a portion of a county with no registered voters in that county, there are several instances in which the portion of an Assembly district that is located in a county is very small. Assembly District 45, for example, includes about 1,300 registered voters in Ventura County; the remaining 279,000 voters in the district live in Los Angeles County. Similarly, just 3,400 of the 281,000 registered voters in the 23rd Assembly District live in Tulare County; the remainder are in Fresno.

This bill requires a county elections official that is conducting a regularly scheduled election pursuant to the CVCA to ensure that at least one vote center is open in each Assembly district at all times when any vote center is open in the county. In light of the examples detailed above, that requirement is likely to be unrealistic in certain instances, and could serve as a disincentive for counties to choose to conduct elections using the CVCA.

Accordingly, to address these concerns, committee staff recommends that this bill be amended instead to require a county elections official that is conducting a regularly scheduled election pursuant to the CVCA to ensure that at least one vote center is open in each Assembly district that includes at least 50,000 registered voters in the county.

- 3) **Technical Issues and Amendments:** As currently drafted, this bill appears to require elections officials to mail a VBM ballot to every voter, regardless of whether the voter requested a VBM ballot. According to the author's staff, this is not the author's intent. Accordingly, committee staff recommends that this bill be amended to clarify that non-CVCA counties are not required to mail ballots to voters who have not applied for VBM ballots.

As currently drafted, this bill provides for county elections officials to begin sending VBM ballots "at least" 29 days before an election. That language appears to allow counties to begin sending ballots *more* than 29 days before an election, which could create inconsistencies between counties in the mailing dates for VBM ballots. To ensure that all counties begin mailing ballots at the same time, committee staff recommends that this bill be amended to require that elections officials start sending VBM ballots "beginning" on the 29th day before the election.

- 4) **Arguments in Support:** In support of this bill, the California League of Conservation Voters writes:

As more voters opt for mail ballots and as more counties adopt the Voters Choice Act, there is more we can do to ensure that voters receive their ballots on time so that they have ample time to do satisfactory research into issues and candidates. While current law sets the timeline for when the counties should begin sending mail ballots to voters, it does not set a deadline for when the counties must send mail ballots to early registrants.

AB 49 protects Californians right to vote by ensuring ballots are received by voters in a timely manner for both vote center counties and polling place counties. This policy builds on California's continued commitment to democracy and further enfranchises voters to participate in elections.

- 5) **Arguments in Opposition:** The California Association of Clerks and Election Officials (CACEO) submitted an opposition letter to a prior version of this bill. Many of the concerns raised in that letter were addressed by recent amendments to the bill. Two concerns raised in the letter, however, are still relevant to the current version of the bill. Specifically, the CACEO letter raised concerns about the language that allows county elections officials to begin sending VBM ballots "at least" 29 days before the election, which is discussed above in comment #3 of this analysis. Additionally, the CACEO letter raises the following concerns regarding this bill's provisions governing the locations of vote centers:

Vote center locations: This proposal adds the requirement that county elections officials who conduct elections under the provisions of [the CVCA] ensure a vote center location to be sited in each Assembly district. Many counties have portions of an Assembly district that is not a large geographic area, is often in a more rural area, most likely falls under the mail ballot precinct regulations set forth in Elections Code 3005 and does not have adequate locations for vote centers. Elections Code 4005 contains 14 criteria that counties need to consider when placing their vote centers. Making elections officials try to find a location that meets these 14 criteria in all Assembly districts will create an undue, and in some cases impossible, mandate for many counties.

REGISTERED SUPPORT / OPPOSITION:

Support

California League of Conservation Voters

Opposition

California Association of Clerks and Election Officials (prior version)

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