

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 1219 (Berman) – As Introduced February 16, 2023

SUBJECT: Elections: ballots.

SUMMARY: Revises and recasts ballot design requirements, as specified. Specifically, **this bill:**

- 1) Revises and recasts the definition of a “ballot.” Defines a “ballot” to mean the presentation of the contests consisting of offices and measures, and the candidates and choices to be voted on. Permits the contents to be rendered using visual, auditory, or other methods of presentation, language, or graphics. Permits ballot presentations to include:
 - a) One or more sheets of paper upon which are printed the names of candidates for each contest and the ballot titles of measures to be voted on by marking the designated area and that are tabulated manually or by optical scanning equipment.
 - b) An electronic device on which the names of the candidates for each contest and the ballot titles of measures to be voted on are selected by touching the screen or using other physical controls.

Provides that the printed ballot produced by a ballot marking device may be a list of voter selections or may be a facsimile of a marked preprinted ballot.

- 2) Removes obsolete provisions of law related to write-in ballot cards.
- 3) Revises and recasts the definition of a “ballot label.” Defines a “ballot label” to mean:
 - a) For a candidate, the combination of candidate name and candidate designation.
 - b) For a statewide measure, the ballot title and summary pursuant to existing law.
 - c) For all other measures, the questions in accordance with existing law for an initiative measure, for a referendum measure, or for an advisory vote.
- 4) Deletes an obsolete provision of law that requires a voter to stamp a cross (+) in the square opposite the name of the candidate, and instead requires a voter to completely fill in the voting target next to the candidate’s name.
- 5) Requires additional instructions to be added to the ballot in a recall election for a state officer to communicate the following information:
 - a) That there are two contests on the ballot; and,
 - b) That the two contests are separate and can be voted on independently.

Recommends the following instructions to voters be added to the ballot:

“You can vote for the recall question regardless of whether you vote for a replacement candidate. You can vote for a replacement candidate regardless of whether or how you vote on the recall question.”

Requires the exact wording of the instructions to be written by the elections official to conform to the actions required by the layout of the ballot.

- 6) Deletes provisions of law that prohibits a ballot not printed in accordance with existing ballot layout requirements from being cast or counted at any election, and instead prohibits ballots not printed in substantial compliance with existing ballot layout requirements from being cast or counted at any election.
- 7) Provides that for multilingual ballots, if there is not sufficient space to print candidate names in at least 10-point bold type, the size of candidate names shall be uniformly adjusted to a size that is no less than 8-point type.
- 8) Decreases the font size and removes capitalization from headings that appear on the first page of the ballot. Allows a county to display their county seal or logo on the first page of the ballot, as specified.
- 9) Deletes provisions of law that require specified instructions to voters to be printed on the ballot informing a voter how to mark their ballot, and instead revises and recasts those provisions, and requires those instructions to communicate to voters, in plain language, how to cast a vote in a contest printed on the ballot, how to write in the name of a write-in candidate, and what to do if a mistake is made, and provides recommended sample text to be printed on the ballot, as specified.
- 10) Revises and recasts ballot instructions printed on presidential election ballots that instruct a voter how to vote for a party’s nomination for President, and how to vote for electors of President and Vice President, as specified.
- 11) Revises and recasts ballot instructions provided to voters on a partisan ballot for a direct primary and a statewide general election ballot that instruct a voter how to cast a vote in a party-nominated office contest, a voter-nominated office contest, and a nonpartisan office contest, as specified.
- 12) Removes, updates, and revises ballot instructions to voters that specify the font, type size, and location of certain text for certain candidate contests, as specified.
- 13) Deletes and revises ballot printing space requirements, as specified.
- 14) Repeals specified ballot stub printing requirements, and instead permits a ballot stub to be used for a ballot, and allows a ballot to contain printed and distinguishing marks if the secrecy in voting is protected, as specified.
- 15) Deletes obsolete provisions of law related to punch card voting systems.
- 16) Repeals and revises provisions of law that require a ballot to be marked only with the marking device provided or recommended by the elections official, as specified.

- 17) Deletes, updates, and revises specified ballot instructions provided to a voter on how to cast a vote in a contest where two or more candidates for the same office are to be elected.
- 18) Repeals outdated requirements for conducting a manual tally on a direct recording electronic (DRE) voting system, as specified.
- 19) Deletes, updates, and revises various ballot printing requirements that specify font size, style and location, and voting target locations. Makes other minor and technical ballot layout changes.
- 20) Makes technical, clarifying, and conforming changes.

EXISTING LAW:

- 1) Defines a “ballot” to mean any of the following:
 - a) The combination of a card with number positions that is marked by the voter and the accompanying reference page or pages containing the names of candidates and the ballot titles of measures to be voted on with numbered positions corresponding to the numbers on the card.
 - b) One or more cards upon which are printed the names of the candidates and the ballot titles of measures to be voted on by punching or marking in the designated area.
 - c) One or more sheets of paper upon which are printed the names of candidates and the ballot titles of measures to be voted on by marking the designated area and that are tabulated manually or by optical scanning equipment.
 - d) An electronic touchscreen upon which appears the names of candidates and ballot titles of measures to be voted on by touching the designated area on the screen for systems that do not contain a paper ballot. Permits an electronic touchscreen to qualify as a ballot even for systems that contain paper ballots if the votes are tabulated manually or by optical scanning equipment. (Elections Code §301)
- 2) Defines a “ballot card” to mean a card or a number of cards upon which are printed, or identified by reference to the ballot, the names of candidates for nomination or election to one or more offices or the ballot titles of one or more measures. Requires a ballot card to also contain proper blank spaces to allow the voter to write in names not printed on the ballot unless a separate write-in ballot is used, as specified. (Elections Code §302)
- 3) Defines a “ballot label” to mean that portion of the ballot containing the names of the candidates or a statement of a measure. Requires the ballot label, for statewide measures, to contain a condensed version of the ballot title and summary, including the fiscal impact summary prepared pursuant to existing law, that is no more than 75 words, followed by a listing of the names of supporters and opponents in the ballot arguments printed in the state voter information guide. (Elections Code §303)
- 4) Requires, across the top of the ballot, to be printed in boldface capital type not smaller than 30-point, the words “OFFICIAL BALLOT.” Requires beneath this heading, in the case of a

partisan primary election, to be printed in 18-point boldface capital type the official party designation or the words “NONPARTISAN BALLOT” as applicable. (Elections Code §13203)

- 5) Requires the ballot to contain specified instructions to voters, printed in specific type sizes, informing a voter how to mark the contests listed on the ballot, as specified. (Elections Code §13204)
- 6) Prohibits ballots not printed in accordance with existing law from being cast or counted at any election. (Elections Code §13200)
- 7) Requires specified ballot instructions to be printed on a partisan ballot for a direct primary election and a ballot used in a statewide general election that instruct a voter how to cast a vote in a party-nominated office contest, a voter-nominated office contest, and a nonpartisan office contest. (Elections Code §13206)
- 8) Requires specified ballot stub printing requirements. (Elections Code §13216)
- 9) Specifies requirements for punch card voting systems. (Elections Code §§13260, 13261, 13262, 13263, 13264, 13265, 13266, 13267, 14443, 15211, 15360)
- 10) Requires a ballot to be marked with only the marking device provided by law. (Elections Code §14284)
- 11) Requires specified ballot instructions be provided to a voter on how to cast a vote in a contest where two or more candidates for the same office are to be elected. (Elections Code §14285)
- 12) Requires a manual tally to be conducted on a DRE voting system, as specified. (Elections Code §15360(b))
- 13) Requires specified ballot instructions to be printed on presidential election ballots instructing a voter how to vote for a party’s nomination for President, and electors of President and Vice President, as specified. (Elections Code §§13205, 13206.5)
- 14) Requires specified ballot instructions to voters to be printed on a partisan ballot for a direct primary and a statewide general election ballot that instruct a voter how to cast a vote in a party-nominated office contest, a voter-nominated office contest, and a nonpartisan office contest, as specified. (Elections Code §§13206, 13206.5)
- 15) Requires the Secretary of State (SOS) to establish a ballot design advisory committee (BDAC) to assist with promulgating regulations that prescribe ballot design and format, as specified. (Elections Code §13218)
- 16) Requires ballot headings, instructions, and other ballot layout specifications to be printed on the ballot in specific font sizes, types, and certain locations on the ballot, as specified. (Elections Code §13200 et seq.)

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

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

The need to rethink ballot design rules came to my attention through discussions I had with constituents leading up to local elections held in November 2018. Voters were confused about how to vote in certain local races. It was clear that our existing laws for ballot design were outdated and needed a comprehensive review in order to meet the needs of our state's greatest strength – our diverse population and communities.

I authored legislation in 2019 to establish the Ballot Design Advisory Committee, which under the Secretary of State, brought together recognized ballot design experts and county elections officials to thoughtfully consider how we might update our laws. The report introduction best summarizes the need for a review and update, explaining:

Designing a ballot is a key component of administering every election. Ballot design not only affects the visual presentation of voter choices, but also the voter's ability to know how to mark their ballot so that their vote will count. . . . To best serve voters, ballots must be easy to understand and use, visually comprehensive, and avoid jargon. They must also give elections officials the ability to adjudicate and count the voter choices.

AB 1219 would implement the recommendations of the Ballot Design Advisory Committee. This would enhance voters' experience by simplifying instructions and providing elections officials more flexibility when designing ballot layouts that are user friendly.

2) **Ballot Design Advisory Committee and Previous Legislation:** AB 623 (Berman), Chapter 863, Statutes of 2019, made numerous changes to the way ballots are formatted. AB 623's goal was to update outdated ballot design requirements and allow county election officials the flexibility to create a ballot that contains all the required contests in a manner that is accessible and easy to read, allowing voters to have a better voting experience. Moreover, with a large majority of counties purchasing new voting systems for use in the 2020 election cycle, the changes made in AB 623 allowed counties to create ballots that comply with new voting systems and enhance the voting experience for voters.

Additionally, AB 623 required the SOS to establish the BDAC to assist with promulgating regulations that prescribe ballot design and format. The BDAC is required to consist of staff from the Office of the SOS and appointed committee members who have demonstrated experience in ballot design and knowledge of presenting voters with elections materials in plain language.

3) **Ballot Design Advisory Committee Report and Recommendations:** The SOS established the BDAC in April 2021, and held its first public meeting on July 8, 2021. Committee members consisted of local elections officials, voting system vendors, and experts from the nonprofit sector. The BDAC engaged the Center for Civic Design and included representatives from 18 county elections offices. It held nine public meetings in 2021 and

2022, culminating with the issuance of an August 2022 report making numerous recommendations for changes to the Elections Code.

According to the report, the BDAC generally found that providing elections officials with more flexibility to design ballots than current law provides will benefit voters in terms of increased usability and readability. The report states that while local elections offices work diligently to comply with all legal requirements, the BDAC finds that strict adherence has a negative impact on ballot design and, consequently, voters rely on officials to cut through the complexity of an election and explain, simply and concisely, how voting works.

The BDAC's report provides three central recommendations: 1) increase readability and usability of ballots, and provide elections officials with the flexibility needed to meet voter needs; 2) eliminate obsolete sections of the elections code affecting ballot design; and, 3) promulgate regulations and/or resources that provide elections officials and voting system vendors with guidance and best practices on ballot design. Specifically, the report outlines the following key recommendations:

- Provide ballot instructions in plain language so that voters may easily understand the nature of every election and how to mark a ballot.
- Update font size requirements to provide flexibility for jurisdictions providing multilingual ballots.
- Allow elections officials to be in “substantial compliance” with ballot design requirements in order to prevent an administrative error or design characteristic from inadvertently invalidating ballots.
- Codify ballot instructions for recall elections, which are not currently in law.
- Reformat instructions and the location for party nominated, voter nominated, and nonpartisan contests using plain language explanations.
- Eliminate references to punch cards and DREs, as these types of voting systems are no longer certified for use in California.
- Update font, voting target, and other recommendations to provide consistency with the federal Voluntary Voting System Guidelines (version 2.0).
- Eliminate the required use of capitalization when presenting instructions to voters to increased readability and accessibility.

This bill implements recommendations from the BDAC.

- 4) **New Recall Ballot Instructions:** One of the key recommendations from the BDAC is to codify ballot instructions for recall elections, which are not currently in law. Existing law requires a ballot for a recall election for a state officer to include the names of the candidates nominated to succeed the officer sought to be recalled and a space to enter the name of a write-in candidate. During the September 2021 statewide gubernatorial recall election, due to misinformation about the voting process, some BDAC members and their staff fielded phone

calls and questions from concerned voters about how to mark their ballot in a meaningful way. For instance, the report states that concerned voters were worried that a “No” vote on the recall would preclude an elections officials from counting a vote for a replacement candidate. Moreover, although county elections officials had state guidance on what the recall ballot instructions should include, many BDAC members believed that the instructions were not clear enough to address voters’ immediate concerns.

According to the report, providing voters with simple, clear instructions may not address every voter’s concern, but it can provide answers to common questions about the nature of an election and how to mark a ballot. Accordingly, the BDAC recommends changes to the instructions at the top of the ballot and proposes a more general recommendation for recall election ballots that allows local elections officials to take into account the exact format of the ballot.

This bill requires a ballot for a recall election for a state officer to include instructions explaining that the recall election includes two contests: one for whether to recall the officer and the other for the officer’s successor if the recall is successful, and that voters may cast a vote in either or both of those contests. Additionally, this bill provides the following examples for the above instructions: “You can vote for the recall question regardless of whether you vote for a replacement candidate. You can vote for a replacement candidate regardless of whether or how you vote on the recall question.” This bill also requires the exact wording of the instructions to be written by the elections official to conform to the actions required by the layout of the ballot.

- 5) **National Conference of State Legislatures (NCSL) Ballot Design Report:** According to a 2011 report by the NCSL, good design doesn’t mean making ballots pretty, it means making a ballot easy to understand, use, and count. Good ballot design encompasses wording, images, color, layout, spacing, typeface, and usability and applies to polling place signs, ballots, absentee ballot envelopes, voter information cards, voter registration applications—every piece of paper, image, or webpage about an election. The report acknowledges that good design is also a moving target and what was state-of-the-art in 1920 may be hard-to-read now. Back then, ballot designers had few options to make words stand out, so many states mandated by statute that large blocks of text be centered or that uppercase letters be used for candidate names or for the full text of various parts of the ballot. Research has since proven that centered text and uppercase letters are actually hard to read.

The NCSL report suggests the following to improve ballot design: 1) ask state election officials for a review of existing laws to identify archaic or overly prescriptive language and to suggest potential improvements; 2) review all legislative proposals to ensure they promote flexibility in design, rather than hard-and-fast rules that may become cumbersome later on; 3) adopt “plain language” requirements for ballots; 4) use a design checklist; 5) require, or at least encourage, usability testing of ballots; 6) consult the National Institute of Standards and Technology’s publications on language, style, color, clear writing, and usability for election design; or, 7) fund a “design fellow” position in a state’s elections office.

- 6) **Technical Amendment:** According to the author’s office, the current version of this bill inadvertently deletes a provision of existing law. To correct that error, committee staff recommends the following technical amendment:

On page 18, starting in line 22, amend the bill as follows:

Reinstate subdivision (b) to section 13210 of the Elections Code and amend it as follows:

(b) In the case of candidates for President and Vice President, the words “Vote for One Party” shall appear just below the heading “President and Vice President” and shall be printed so as to appear above the voting targets for that office. The heading “President and Vice President” shall be printed in at least 10-point bold type. ~~boldface 12-point type.~~

7) **Arguments in Support:** The sponsor of this bill, Secretary of State Shirley N. Weber, Ph.D., writes:

AB 1219 updates statutory provisions to make ballot instructions and wording more voter friendly. This measure codifies the BDAC goals to enhance the readability of ballots by increasing font sizes, making voting targets easier for voters to identify, and incorporating the use of plain language.

In addition, AB 1219 provides elections officials with the flexibility needed to meet the visual needs of voters while eliminating obsolete statutes that no longer apply to voting systems approved for use in California. Passage of this measure is necessary to deliver the improvements to the voting experience recommended by the BDAC.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Shirley N. Weber, Ph.D. (Sponsor)
One individual

Opposition

None on file.

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