

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 1271 (Grove) – As Amended May 6, 2015

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Requires the disqualification of vote by mail (VBM) ballots that are received after election day if those ballots are delivered by a bona fide private mail delivery company or if those ballots have no postmark, a postmark with no date, or an illegible postmark. Specifically, **this bill:**

- 1) Prohibits a VBM ballot from being counted if it is received by the elections official from a bona fide private mail delivery company after election day, regardless of when it was provided by the voter to the company.
- 2) Prohibits a VBM ballot from being counted if it is received by the elections official from the United States Postal Service (USPS) after election day if the return envelope for the ballot has no postmark, a postmark with no date, or an illegible postmark.
- 3) Provides that a VBM ballot cast by a military or overseas voter is timely cast if it is received by the elections official no later than three days after election day and the ballot is postmarked by a certified foreign postal service on or before election day.

EXISTING LAW:

- 1) Provides that a VBM ballot is timely cast if it is received by the voter's elections official via the USPS or a bona fide private mail delivery company no later than three days after election day and either of the following is satisfied:
 - a) The ballot is postmarked or is time stamped or date stamped by a bona fide private mail delivery company on or before election day; or,
 - b) If the ballot has no postmark, a postmark with no date, or an illegible postmark, the VBM ballot identification envelope is date stamped by the elections official upon receipt of the VBM ballot from the USPS or a bona fide private mail delivery company, and is signed and dated by the voter on or before election day.
- 2) Requires a VBM ballot identification envelope to include specified information, including the following:
 - a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope;
 - b) The signature of the voter; and,
 - c) The date of signing.

FISCAL EFFECT: None. Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

AB 1271 will ensure that all late-arriving [VBM] ballots were voted on or before Election Day, and will prevent them from being handled by third parties who are not postal workers or elections officials. This bill require[s] all late-arriving VBM ballots to have a postmark to ensure that they were voted on or before Election Day, and will ensure that they are not handled and perhaps selectively delivered in the days following an election by non-postal worker third parties.

2) **"Postmark Plus Three" and Previous Legislation:** Last year, the Legislature approved and the Governor signed SB 29 (Correa), Chapter 618, Statutes of 2014, which allowed VBM ballots to be counted if they were cast by election day and received by the elections official by mail no later than three days after the election. Prior to the enactment of SB 29, VBM ballots in California could be counted only if they were received by the elections official by election day.

SB 29 was introduced in response to the fact that an increasing number of VBM ballots that were returned to elections officials were arriving too late to be counted. Furthermore, given a number of recently enacted and planned USPS facility closures, there was a fear that the number of ballots arriving too late to be counted would continue to rise. According to a September 2014 report by the California Civic Engagement Project at the University of California at Davis Center for Regional Change, nearly 69,000 VBM ballots that were received by county election offices in California for the November 2012 general election were rejected during ballot processing, with 47.8 percent of uncounted ballots being rejected because they arrived too late.

3) **Mail Without Legible Postmarks:** One provision of SB 29 allowed a VBM ballot to be counted if the return envelope had no postmark, a postmark with no date, or an illegible postmark, if the ballot was (1) received by the elections official no later than three days after the election, (2) received from the USPS or a bona fide private mail delivery company, (3) date stamped by the elections official upon receipt from the USPS or bona fide private mail delivery company, and (4) the VBM ballot envelope was signed and dated by the voter on or before election day.

Information provided by the California Association of Clerks and Election Officials (CACEO) during the consideration of SB 29 suggests that a significant portion of ballots that are received by mail do not have a legible postmark. According to a survey that CACEO conducted of county elections officials regarding the ballots received by those officials in the six days after the November 2012 general election, approximately 10.4 percent did not have a postmark, while another 2.5 percent had an illegible postmark. Among VBM ballots received from military and overseas voters, the proportion of ballots without a legible postmark was even higher—19.2 percent of such ballots did not have a postmark, and another 4.3 percent had an illegible postmark.

To the extent that the survey information from CACEO is representative of the proportion of VBM ballots that are returned by mail and fail to receive a legible postmark, it is likely that county elections officials receive thousands of VBM ballots in the three days following a statewide election that do not have legible postmarks. Under this bill, those ballots would not be able to be counted.

- 4) **Bona Fide Delivery Services Other than USPS:** In addition to requiring VBM ballots that arrive after election day to be disqualified if they do not have a legible postmark, this bill also requires VBM ballots that arrive after election day from a bona fide delivery service to be disqualified, regardless of whether those ballots include proof that they were provided to the bona fide delivery service on or before election day. As a result, ballots returned by voters to elections officials by FedEx, UPS, or other similar private mail carriers would need to be received by the elections official by the close of the polls on election day in order to be counted. Although it is uncommon, elections officials report that voters occasionally return their ballots by FedEx, UPS, or other similar private mail carriers.

According to the author's staff, the rationale for treating ballots delivered by private mail delivery companies differently than ballots delivered by USPS is not due to a concern with ballots delivered by FedEx, UPS, or similar private mail carriers. Instead, the author is concerned that, because the term "bona fide private mail delivery company" is not defined, elections officials could accept ballots that were delivered by delivery companies that are less reputable or legitimate than those more established companies. While it is true that the term "bona fide private mail delivery company" is not defined in the Elections Code, the fact that the term includes the words "*bona fide*" would seem to preclude elections officials from accepting ballots from delivery companies that were not legitimate, authentic delivery companies. Is there any reason to believe that elections officials would abuse their discretion—and would ignore the language of state law—by accepting ballots returned by less-than-legitimate private mail companies?

- 5) **VBM Ballot Deadlines in Other States:** Each state has its own deadlines for the return of VBM ballots. In some states, the deadline varies depending on whether the individual submitting the ballot is a civilian living in the United States (US), or a military or overseas voter covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

According to information from the National Association of Secretaries of State, for the 2014 general election, three states required mail ballots from civilians living in the US to be returned prior to election day in order to be counted, while 36 states (including California at the time) required such ballots to be received by election day. Eleven states and the District of Columbia allowed mail ballots from civilians living in the US to arrive after election day and still be counted.

For active duty military and overseas citizens who are covered under UOCAVA, for the 2014 general election, 28 states (including California at the time) required ballots to be received by election day. Twenty-two states and the District of Columbia allowed VBM ballots from at least some voters who are covered under UOCAVA to arrive after election day and still be counted.

In all, 22 states and the District of Columbia allow VBM ballots from at least some voters to arrive after election day and be counted. According to research by committee staff, among the jurisdictions that allow ballots received after election day to be counted, at least 14 appear to allow ballots that lack legible postmarks to be counted, and some jurisdictions even allow ballots to be counted if they are postmarked *after* election day, provided that the ballot is dated on or before election day by the voter.

- 6) **Arguments in Opposition:** In opposition to this bill, the California Association of Clerks and Election Officials writes:

The postmark rules were passed last year and have not been fully implemented so there is no way, using data and facts, to know the numbers of ballots which may have unreadable or missing postmarks. It is, in our view, pre-mature to amend this important provision of the election code which was intended to enfranchise more voters.

This bill would suppress voter turnout at a time when low turnout is a central concern of both elected and election officials while offering no objective claims of increased security or integrity.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Association of Clerks and Election Officials

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