

Date of Hearing: March 15, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 13 (Essayli) – As Amended January 26, 2023

SUBJECT: Elections: Election Day holiday: voting by mail.

SUMMARY: Repeals provisions of law that require a county elections official to mail a ballot to every registered voter, and provisions of law that authorize any county, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every registered voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day. Reinstates provisions that require a voter to send a written request to receive a vote by mail (VBM) ballot and to become a permanent vote by mail (PVBM) voter, and reinstates provisions related to VBM and PVBM processes and procedures, as specified. Makes the day of statewide general elections in even-numbered years a state holiday. Specifically, **this bill:**

- 1) Provides that the first Tuesday after the first Monday in November in every even-numbered year is a state holiday. Provides that all state employees are entitled to this holiday.
- 2) Repeals provisions of law that require a county elections official to mail a ballot to every registered voter, and instead reinstates prior laws that require a VBM application to be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election, and require the application to be signed by the applicant and show the applicant's place of residence. Reinstates laws that require the Secretary of State (SOS) to prepare uniform printed and electronic VBM application formats, and make them available to the county elections officials.
- 3) Reinstates prior laws that require the elections official to determine if the signature and residence address on the VBM ballot application are the same as on the original affidavit of registration. Reinstates provisions that require a VBM ballot to be delivered to the voter or the voter's spouse, child, parent, grandparent, grandchild, or sibling, or person residing in the same household as the VBM voter, as specified.
- 4) Reinstates prior laws that permit any eligible voter to apply to become a PVBM voter. Reinstates PVBM voter application requirements, and various PVBM voter application processes and procedures, as specified.
- 5) Deletes provisions of law that authorize any county, pursuant to the CVCA, to conduct elections in which every registered 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.
- 6) Repeals provisions of law that permit Los Angeles County, beginning in 2020 and for a period of not more than four years, to conduct elections in which 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.
- 7) Deletes provisions of law that authorize a VBM voter who is unable to return their ballot to designate any other person to return the ballot, and instead reinstates provisions that permit a

VBM voter to designate only the voter's spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the voter to return the ballot.

- 8) Repeals provisions of law that require a county elections official to permit any voter to cast a ballot using a certified remote accessible vote by mail (RAVBM) system.
- 9) Deletes provisions of law that provide that a VBM ballot is timely cast if it is postmarked on or before election day and received by the voter's elections official no later than seven days after election day, and reinstates provisions that require the VBM ballot to be postmarked before or on election day and received by no later than three days after election day.
- 10) Repeals provisions of law that require a county that does not conduct an election pursuant to the CVCA to provide at least two VBM ballot drop-off locations within the jurisdiction where the election is held or at least one VBM ballot drop-off location for every 30,000 registered voters within the jurisdiction where the election is held, whichever results in more VBM ballot drop-off locations, as specified.
- 11) Deletes provisions of law that require a county elections official to designate one location on the main campus of each California State University (CSU) within the official's jurisdiction as a VBM ballot drop-off location for each statewide primary and statewide general election, in addition to other drop-off locations required by law, as specified.
- 12) Makes corresponding, conforming, and technical changes.

EXISTING LAW:

- 1) Requires the statewide general election to be held on the first Tuesday after the first Monday in November of each even-numbered year. (Elections Code §1200)
- 2) Provides that the following are state holidays:
 - a) Every Sunday.
 - b) January 1.
 - c) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."
 - d) February 12, known as "Lincoln Day."
 - e) The third Monday in February, known as "Washington Day."
 - f) March 31, known as "Cesar Chavez Day."
 - g) The last Monday in May.
 - h) July 4.
 - i) The first Monday in September.

- j) September 9, known as “Admission Day.”
 - k) The fourth Friday in September, known as “Native American Day.”
 - l) The second Monday in October, known as “Columbus Day.”
 - m) November 11, known as “Veterans Day.”
 - n) December 25.
 - o) Good Friday from 12 p.m. to 3 p.m.
 - p) Every day appointed by the President or Governor for a public fast, thanksgiving, or holiday. (Civil Code §7.1)
- 3) Requires a county elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location. (Elections Code §3000.5)
 - 4) Requires county elections officials to begin mailing ballots and other required materials to voters no later than 29 days before the day of the election. (Elections Code §3000.5)
 - 5) Authorizes a voter who is unable to return their ballot to designate any other person to return the ballot, as specified. (Elections Code §3011)
 - 6) Provides that a VBM ballot is timely cast if it is postmarked on or before election day and received by the voter’s elections official no later than seven days after election day, as specified. (Elections Code §3020)
 - 7) Requires a county elections official to permit any voter to cast a ballot using a certified RAVBM system for an election. (Elections Code §3016.7)
 - 8) Authorizes any county, pursuant to the CVCA, to conduct elections in which every registered 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. (Elections Code §4005)
 - 9) Permits Los Angeles County, beginning in 2020 and for a period of not more than four years, to conduct elections in which 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. (Elections Code §4007)
 - 10) Permits an elections official, whenever there are 250 or fewer persons registered to vote in any precinct, to furnish each voter with a VBM ballot along with a statement that there will be no polling place for the election. (Elections Code §3005)
 - 11) Requires a county that does not conduct an election pursuant to the CVCA to provide at least two VBM ballot drop-off locations within the jurisdiction where the election is held or at least one VBM ballot drop-off location for every 30,000 registered voters within the

jurisdiction where the election is held, whichever results in more VBM ballot drop-off locations, as specified. (Elections Code §3025.5)

- 12) Requires a county elections official to designate one location on the main campus of each CSU within the official's jurisdiction as a VBM ballot drop-off location for each statewide primary and statewide general election, in addition to other drop-off locations required by law, as specified. (Elections Code §3025.7)

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

COMMENTS:

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

Public trust in government and concerns with election fraud have been an ever-growing issue across the nation. This bill is a common sense approach to ensuring our election process is secure and trustworthy by removing the requirement that vote-by-mail ballots are sent out by default.

- 2) **Vote by Mail Ballots and Previous Legislation:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which, among other provisions, authorized any voter to become a PVBM voter. As a result, California voters have increasingly used VBM ballots to vote in elections.

Additionally, existing law permits certain local elections to be conducted as all-mailed ballot elections, where every active registered voter is furnished with a VBM ballot, and the elections official is not required to establish polling places or vote centers for in-person voting. Similarly, existing law allows elections officials to designate a precinct that has 250 or fewer registered voters as an all-mailed ballot precinct, where every active registered voter is furnished with a VBM ballot, but no polling place is established for the precinct. Although state law does not require elections officials to establish polling places on election day in these situations, voters in these situations are able to vote in-person at the office of the elections official. There are three counties (Alpine, Plumas, and Sierra), in which 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts.

- 3) **California Voter's Choice Act:** 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 11 days, including election day. In 2018, five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) conducted elections under this system.

In 2020, fifteen counties chose to conduct elections pursuant to the CVCA (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne). According to the SOS's website, as of last year, an additional twelve counties have adopted the CVCA election model for a total of 27 counties.

This bill repeals the CVCA. If signed into law this year, this bill would go into effect on

January 1, 2014, just 64 days before the scheduled 2024 presidential primary election. It is unclear how this bill would affect the 27 counties that made the decision to conduct elections using the CVCA method, and subsequently made significant investments to accommodate this choice. For instance, many counties purchased new or more elections equipment, conducted new trainings for their election employees and volunteers, and conducted robust outreach to educate and inform voters about the CVCA. Given that this bill would repeal the legal authority to conduct elections using that method, those counties presumably would need to revert to conducting elections with polling places. Requiring such a change in time for the 2024 primary election would be a significant undertaking and could jeopardize the successful conduct of that election.

Moreover, while this bill reinstates prior laws that require a voter to request a VBM ballot and become a PVBM voter, this bill does not reinstate other important VBM ballot processes and procedures. For example, this bill does not reinstate certain VBM ballot application processes and the penalties associated with violating those rules. Consequently, additional changes and amendments will be necessary in order for this bill to comprehensively reinstate prior VBM practices.

- 4) **Elections, COVID-19, and Previous Legislation:** Due to concerns that conducting in-person voting during the spread of COVID-19 could threaten the health and safety of voters, election workers, and the public generally, the Legislature approved and Governor Newsom signed bills that made significant changes to the way that the state conducted the November 2020 presidential general election. Those changes largely were enacted through two bills—AB 860 (Berman), Chapter 4, Statutes of 2020 and SB 423 (Umberg), Chapter 31, Statutes of 2020. Notably, those bills required that a mail ballot be sent to every active registered voter, provided voters in all counties with the ability to track their ballot, authorized changes to in-person voting requirements, extended the deadline by which a VBM ballot must be received by the elections official from three days after election day to 17 days after election day, and made other changes to facilitate the expected surge in voting by mail at the November election.

In February of 2021, SB 29 (Umberg), Chapter 3, Statutes of 2021, was signed into law and continued the practice of requiring county elections officials to mail a ballot to every active registered voter for all elections proclaimed or conducted prior to January 1, 2022. Subsequently, in September 2021, AB 37 (Berman), Chapter 312, Statutes of 2021, was signed into law which permanently requires an elections official to send every active voter a VBM ballot for each election in which they are eligible to vote, and extends the deadline by which a VBM ballot must be received by the elections official from three days after election day to seven days after election day.

- 5) **Mail Ballot Usage:** According to official election results compiled by the SOS, California voters are increasingly choosing to vote using a ballot sent to them, instead of voting in-person. The chart below shows historical use of VBM ballots in statewide elections since 2016. The results show a steady increase in the use of VBM ballots even before policy changes were made to send every eligible voter a ballot. That trend has continued after those policy changes were implemented.

Year	Statewide Election	Total Ballots Cast	VBM Ballots Cast	%	In-Person Ballots Cast	%
2016	Primary	8,548,301	5,036,262	58.92%	3,512,039	41.08%
	General	14,610,509	8,443,594	57.79%	6,166,915	42.21%
2018	Primary	7,141,987	4,834,975	67.70%	2,307,021	32.30%
	General	12,712,542	8,302,488	65.31%	4,410,054	34.69%
2020	Primary	9,687,076	6,982,750	72.08%	2,704,326	27.92%
	General	17,785,151	15,423,301	86.72%	2,361,850	13.28%
2021	Special	12,892,578	11,733,429	91.01%	1,159,149	8.99%
2022	Primary	7,285,230	6,647,212	91.24%	638,018	8.76%
	General	11,146,610	9,755,188	87.52%	1,391,422	12.48%

- 6) **Voting by Mail Practices in Other States:** According to the National Conference of State Legislatures (NCSL), eight states conduct elections entirely by mail (California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont and Washington), which means voters do not need to request a ballot, and instead automatically receive one. At least 15 other states have laws that allow certain smaller elections, such as school board contests, to be conducted by mail.
- 7) **Vote by Mail Ballot Return and Previous Legislation:** In 2016, the Legislature approved and Governor Brown signed AB 1921 (Gonzalez), Chapter 820, Statutes of 2016, which permits a VBM voter who is unable to return their 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 of 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 their VBM ballot. This bill reinstates those prior provisions. If this bill is signed into law, a voter would be prohibited from asking a friend or co-worker to return their voted VBM ballot on their behalf.

- 8) **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, 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.

- 9) **VBM Ballot Return in Other States:** Other states allow a voter to designate any person to drop off their mail ballot. According to NCSL, these laws vary from state to state. For example, some states, such as Alabama, state that only the voter must return the ballot and others, such as Rhode Island and Wyoming, do not explicitly specify who may or may not return a ballot on behalf of a voter. In 31 states, however, someone other than the voter is explicitly allowed to return a voted ballot on behalf of another voter. Many of these states limit this provision to a family member, household member or caregiver. Sixteen states allow a voter to designate someone—not necessarily a family member, household member or caregiver—to return their ballot for them.
- 10) **Election Day Holiday:** This bill makes the day of statewide general elections in even-numbered years a state holiday. Unlike previous legislative attempts to establish an election day holiday, this bill only entitles state employees to the election day holiday. This bill does not include certain public school and community college employees. Like prior legislative efforts, this bill does not require private employers to close their offices or give their employees the day off. By making election day a holiday for state employees, this bill could provide an opportunity for state buildings to serve as polling places or vote centers, and afford state employees the opportunity to serve as poll workers.
- 11) **Election Day Holidays in Other States:** Approximately 18 states – Delaware, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Montana, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia, and Wisconsin, and the territory of Puerto Rico, have declared election day to be a state holiday.
- 12) **Arguments in Support:** The Election Integrity Project California, Inc. (EIPCa) has a “support if amended” position on this bill, requesting amendments to eliminate the provisions of this bill that allow voters to sign-up for PVBM status and that create an election day holiday. In support of the other substantive provisions of the bill, EIPCa writes:

The elimination of the universal mailing of vote by mail ballots is the element of the bill EIPCa supports most strongly, for reasons delineated below. But this great step toward securing election integrity is meaningless if “permanent vote by mail” status is still an option.

- As long as there is any voting by mail outside of the 1-3% of individuals who have no other choice, there will be no election integrity in this state.
- [The] moment a ballot goes into the mail to or from the voter, it loses chain of custody and becomes vulnerable to the errors...
- The chain of custody is equally broken by the use of unstaffed drop boxes that are vulnerable to vandalism and ballot theft and stuffing...
- When ballots are marked and handled outside the supervision and protection of elections officials there is no way to determine who actually marked the ballot, whether it was marked under duress or undue influence, or whether it arrived at its intended destination untampered with or at all.

- Mailing a ballot to any individual without a recent verification of their eligibility, correct residence or even existence is reckless as well as wasteful of millions of taxpayer dollars...

13) **Arguments in Opposition:** All of the organizations listed below in opposition to this bill, except for the California Association of Clerks and Election Officials, sent a joint letter of opposition to this bill. In that letter, those organizations write:

Though some of the undersigned organizations are in support of making Election Day a state holiday, all oppose AB 13's effort to repeal the mandate to send every registered voter a vote-by-mail ballot; eliminate the use of vote centers; repeal the Voter's Choice Act; unduly restrict those who may be authorized by a voter to return their ballot to a limited number of relatives; prohibit voters who cannot leave their home or are in a facility to designate an authorized representative to pick up and return their ballot; and shorten the timeframe for elections offices to receive a ballot that will be considered timely cast.

If passed, AB 13 would weaken California's democracy by greatly curtailing civic participation and undermining the critical voter accessibility measures the legislature has implemented as recently as the legislative session before last. Many of the undersigned organizations worked hard to enact the voting reforms that AB 13 would attempt to repeal. California must not reverse the progress it has made thus far in ensuring that all Californians, including those from underrepresented communities, have full access to its democratic process.

14) **Previous Legislation:** AB 53 (Low) of 2021, would have made the day of statewide general elections in even-numbered years a state holiday, and eliminated Washington Day as a holiday in those years. AB 53 was approved by the Assembly Elections Committee by a 5-1 vote, but was held on the Assembly Appropriations Committee's suspense file. AB 177 (Low) of 2019, AB 2165 (Low) of 2018, and AB 674 (Low) of 2017 all proposed to make the day of the statewide general election in even-numbered years a state holiday. All bills were approved by the Assembly Elections & Redistricting Committee, but were held on the Assembly Appropriations Committee's suspense file. AB 2634 (Torrico) of 2008, would have made the first Tuesday after the first Monday in November of each year in which a statewide or national election is held a state holiday. AB 2634 was approved by the Assembly Elections & Redistricting Committee, but failed to pass in the Assembly Governmental Organization Committee.

SB 29 (Correa), Chapter 618, Statutes of 2014, allowed VBM ballots to be counted if they are cast by election day and received by the elections official by mail no later than three days after the election.

REGISTERED SUPPORT / OPPOSITION:

Support

Election Integrity Project California, Inc. (if amended)
Two individuals

Opposition

ACLU California Action
Advancing Justice - Asian Law Caucus
Asian Americans Advancing Justice-Southern California
California Association of Clerks & Election Officials
California Black Power Network
California Donor Table
California Environmental Voters
California State Council of Service Employees International Union (SEIU California)
Disability Rights California
Inland Empire United
League of Women Voters of California
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
Voices for Progress
Three individuals

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