

Date of Hearing: April 29, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

AB 1591 (Committee on Elections) – As Introduced March 18, 2021

SUBJECT: Elections omnibus bill.

SUMMARY: Makes various minor, technical, and corresponding changes to the Elections Code. Specifically, **this bill:**

- 1) Revises ballot instructions with respect to candidates for Justice of the California Supreme Court or the California Court of Appeal such that voters are no longer instructed to mark a voting target to the right of the name of the candidate, since the voting targets may not appear to the right of the name of the candidate.
- 2) Permits a voter who wishes to opt out of receiving election materials by mail to confirm their identity by telephone or in person, and allows the elections official to process that request upon confirmation of the voter's date of birth, residence address, and California driver's license number, California identification number, or a partial social security number.
- 3) Revises the notice required to be posted at voting locations that use electronic poll books to state that only a member of the precinct board may operate the device, and that it is a misdemeanor to tamper with, manipulate, or otherwise operate or interact with the device with the intent to falsify or prevent others from ascertaining specified information about a voter, instead of stating that any person is guilty of misdemeanor who "removes, tears, marks or otherwise defaces" the voter list.
- 4) Specifies that if an electronic poll book is used, a copy of the electronic data file may be preserved in lieu of preserving a paper copy of the rosters or combined rosters and voter lists, if applicable.
- 5) Deletes provisions of law that require an elections official, for specified elections, to preserve, among other items, a copy of the roster used as the voting record or, if an electronic poll book is used, a copy of the electronic data file, for a period of 22 months, and instead requires the records to be preserved for five years pursuant to a separate provision of existing law.
- 6) Makes conforming changes.

EXISTING LAW:

- 1) Requires ballots to comply with certain layout and printing requirements, including specifying font type, font size, margin widths, spacing of contests, voting square size, and write-in spacing, among other formats and conditions.
- 2) Requires ballot instructions to direct voters, with respect to candidates for Justice of the California Supreme Court or the California Court of Appeal, to mark the voting target next to the word "Yes" or "No," to the right of the name of the candidate and requires ballot

instructions to direct voters, with respect to voting on any measure, to mark the voting target next to the word “Yes” or after the word “No.”

- 3) Authorizes county and city elections officials to establish procedures designed to permit a voter to opt out of receiving the county voter information guide, state voter information guide, notice of polling place, and associated materials by mail, and instead obtain them electronically if specified conditions are satisfied. Requires these procedures to include a verification process to confirm a voter’s identity, either in writing, as specified, or electronically by submitting the voter’s California driver’s license number, California identification number, or a partial social security number.
- 4) Requires a local precinct board to maintain at least one printed copy of the voter list, and to post a notice stating that only a member of the precinct board may mark the list, and that it is a misdemeanor to remove, tear, mark, or otherwise deface the list with the intent to falsify or prevent others from ascertaining specified information about a voter. Requires a similar notice to be posted if an electronic poll book is used.
- 5) Requires an elections official to preserve all voter rosters or combined rosters and voter lists, if applicable, until 5 years after the date of the election, after which they may be destroyed by the official.
- 6) Requires an elections official, for an election for the office of President of the United States, Vice President of the United States, United States Senator, or United States Representative, to preserve, among other items, a copy of the roster used as the voting record or, if an electronic poll book is used, a copy of the electronic data file, for a period of 22 months.

FISCAL EFFECT: None. This bill is keyed non-fiscal by Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** This is an Assembly Elections Committee omnibus bill, containing various minor and technical changes to the Elections Code. This bill includes changes requested by the California Association of Clerks and Election Officials (CACEO).
- 2) **Ballot Design Clean up:** Existing law requires ballots to comply with certain layout and printing requirements, including specifying font type, font size, margin widths, spacing of contests, voting square size, and write-in spacing, among other formats and conditions. In an effort to update the law, AB 623 (Berman), Chapter 863, Statutes of 2019, provided elections administrators with greater flexibility when designing ballot layouts that are user friendly and compatible with new voting systems. Specifically, AB 623 removed outdated Elections Code sections related to ballot layouts, font sizes, and font types.

Notwithstanding the changes made by AB 623, some ballot instructions found in the Elections Code do not accurately describe the process for marking a ballot when using certain voting systems. Specifically, Elections Code section 13204 requires ballot instructions to direct voters, with respect to candidates for Justice of the California Supreme Court or the California Court of Appeal, to mark the voting target next to the word “Yes” or “No,” to the right of the name of the candidate and requires ballot instructions to direct

voters, with respect to voting on any measure, to mark the voting target next to the word “Yes” or after the word “No.” Depending on the voting system, however, the voting target may not be located to the right of the names of candidates, and may not come after the word “No.” This bill revises those ballot instructions found in section 13204 of the Elections Code so that they generally instruct the voter to mark the voting target next to the names of candidates, and next to the words “Yes” or “No.”

This provision was requested by the CACEO and is found in Section 1 of this bill.

- 3) **Voting Materials:** Under existing law an elections official is authorized to establish procedures designed to permit a voter to opt out of receiving the county voter information guide, state voter information guide, notice of polling place, and associated voting materials by mail, and instead obtain them electronically if specified conditions are satisfied. Current law requires these procedures to include a verification process to confirm a voter’s identity, either in writing, as specified, or electronically by submitting the voter’s California driver’s license number, California identification number, or a partial social security number.

County elections officials note that many voters make requests by telephone or in person to opt out or opt in to receiving voting materials by mail, but there is no explicit verification procedure for processing requests that are received by these methods. This bill permits a voter who wishes to opt out of receiving election materials by mail to confirm their identity by telephone or in person, and allows the elections official to process that request upon confirmation of the voter’s date of birth, residence address, and California driver’s license number, California identification number, or a partial social security number.

This provision was requested by the CACEO, and is found in Section 2 of the bill.

- 4) **Electronic Poll Books:** Elections Code section 14298 requires a precinct board to maintain at least one printed copy of the voter list during the time of voting, and to post a notice stating that only a member of the precinct board may mark the list, and that it is a misdemeanor to remove, tear, mark, or otherwise deface the list with the intent to falsify or prevent others from ascertaining specified information about a voter. Current law requires a similar notice to be posted if an electronic poll book is used.

Because it is not possible to tear or mark an electronic poll book, however, county elections officials believe the posted notice at voting locations that use electronic poll books should be updated to more accurately describe the types of actions that are prohibited. Specifically, this bill revises the notice that must be posted at voting locations that use electronic poll books to state that any person is guilty of a misdemeanor who “tampers with, manipulates, or otherwise operates or interacts with” the electronic poll book with the intent to falsify or prevent others from ascertaining specified voter information, instead of stating that any person is guilty of misdemeanor who “removes, tears, marks or otherwise defaces” the voter list.

This provision was requested by the CACEO and is in Section 3 of the bill.

- 5) **Retention of Voting Materials:** Elections Code section 17300 requires an elections official to preserve all voter rosters or combined rosters and voter lists, if applicable, until five years after the date of the election, after which they may be destroyed by the official. Additionally, in accordance with federal law, Elections Code section 17303 requires an elections official, for an election for the office of President of the United States, Vice President of the United States, United States Senator, or United States Representative, to preserve, among other items, a copy of the roster used as the voting record or, if an electronic poll book is used, a copy of the electronic data file, for a period of 22 months.

According to county elections officials, having different code sections require different retention periods of either 22 months or five years creates ambiguity and results in inconsistent retention policies. To clarify current law and eliminate ambiguity, this bill eliminates provisions of law that require elections officials to preserve these records for 22 months, and instead requires the records to be preserved for five years. Additionally, this bill provides that if an electronic poll book is used, a copy of the electronic data file may be preserved in lieu of preserving a paper copy of the rosters or combined rosters and voter lists, if applicable.

This provision was requested by the CACEO, and is found in Sections 4 and 5 of the bill.

- 6) **Arguments in Support:** In support of this bill the CACEO writes:

The ballot instructions for Chief Justice of California, Associate Justice of the Supreme Court, Presiding Justice of the Court of Appeal, and Associate Justice of the Court of Appeal specify that the voting targets must be placed “to the right of the name of that candidate.” Unfortunately, this wording provides little flexibility for counties that place the voting target to the left of the candidate’s name, either for voter convenience or because of limitations of the voting system. AB 1591 would remove the specific instruction for the voting target to be to the right of these candidates’ names, thus bringing uniformity to this code section and providing voters with a better voting experience.

Current law allows voters to opt out of receiving certain voting materials by mail and instead receive them electronically...In order to opt out of, or, alternatively, opt back in to, receiving these materials, the voter must make the request in writing, either by letter or email. Voters are often frustrated to find they cannot simply perform this function by telephone. AB 1591 amends California Elections Code section 13300.7 to establish a procedure where county elections officials, after confirming the voter’s identity, may perform this service for the voter by telephone.

Existing law prohibits certain actions at the polls, such as removing, tearing, marking, or defacing voter lists. However, as technology replaces paper voter lists with electronic voter rosters, there has not been a similar change in the notice to voters about prohibited activities. AB 1591 amends California Elections Code section 14298 to bring counties that use electronic poll books into similar

compliance.

Finally, there is conflicting law with respect to how long voting rosters must be preserved. California Elections Code section 17300 states that all rosters or combined rosters must be kept a minimum of five years after the date of the election. However, California Elections Code section 17303 states that a copy of the roster used as the voting record need only be kept for 22 months after an election. AB 1591 would delete the reference to rosters found in Elections Code section 17303, thus requiring county elections officials to keep rosters for the longer statutory limit of five years. Additionally, this proposal clarifies that the data file from electronic poll books must also be kept a minimum of five years after the election.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Clerks and Election Officials

Opposition

None on file.

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