

Date of Hearing: March 22, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 216 (Gonzalez Fletcher) – As Introduced January 24, 2017

SUBJECT: Vote by mail ballots: identification envelopes: prepaid postage.

SUMMARY: Requires the postage on return envelopes for vote by mail (VBM) ballots to be prepaid. Specifically, **this bill** requires an elections official, when delivering a VBM ballot to a voter, to include a return envelope with postage prepaid.

EXISTING LAW requires an elections official to deliver all of the following to each qualified applicant for a VBM ballot:

- 1) The ballot for the precinct in which the voter resides and, in the case of a presidential primary election, the ballot for the central committee of the party for which the voter has declared a preference, if any; and,
- 2) All supplies necessary for the use and return of the ballot.

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

COMMENTS:

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

Voting by mail is becoming more popular both for individual voters and for conducting entire elections.

Since 2012, between 50 and 60 percent of ballots cast in California statewide elections have been by mail. As of June 2016, 52.3 percent of registered voters in California were registered as permanent vote by mail (PVBM) voters....

As more and more voters use mail ballots, either through individual choice or the decision by counties, it is important to ensure that the process of voting is as equitable as possible. Unfortunately, the current system of returning a mail ballot is not.

In some counties— such as San Francisco, Santa Clara, Alpine, and Sierra Counties — the postage is pre-paid for mail ballots...

With a stamp currently costing 47 cents each and a lengthy ballot for most voters this past November, this meant some voters ended up paying almost a dollar in order to vote, while others had the cost of their mail ballot covered or were able to vote at no cost in person— even within the same precinct. For voters who do not

regularly carry stamps, voting can be even more costly, as some retailers only sell stamps in books of 20, which cost nearly \$10...

AB 216 will standardize this process by requiring postage on mail ballots to be prepaid, ensuring that voting is free for all California voters.

- 2) **Rates of Vote by Mail Voting:** AB 1520 (Shelley), Chapter 922, Statutes of 2001, allowed any voter to become a permanent VBM voter. Since that time, the percentage of voters in California who choose to receive a VBM ballot has increased significantly. A majority of California voters now choose to vote using a VBM ballot, either by returning that ballot through the mail or by dropping off their VBM ballot in person. In 2016, about 58% of votes in the primary election and about 59% of votes in the general election were cast using VBM ballots. In 2014, when voter turnout was lower, an even larger percentage of votes were cast on VBM ballots: over 60% of the general election votes and nearly 70% of the votes in the primary election were cast using VBM ballots.
- 3) **VBM Postage Rules and Voter Confusion:** Since existing law does not require the return postage on VBM ballots to be prepaid, in most counties, a VBM voter must affix the correct amount of postage on the return envelope of their ballot. The amount of postage required can vary depending on the size of the ballot, potentially causing confusion for voters. Some jurisdictions in California already prepay return postage on their VBM ballots even though it is not currently required by state law.

According to California Common Cause, the variations in postage requirements that currently exist between counties and even within elections in the same county add an unreasonable degree of confusion and uncertainty for voters.

By requiring that an envelope with prepaid postage be included with every VBM ballot in the state of California, this bill could help reduce voter confusion. The provisions outlined in this bill would apply to both state and local elections.

- 4) **Insufficient Postage and VBM Ballot Rejection:** Although California has one of the highest mail ballot rejection rates in the country, it does not appear that insufficient postage is a significant factor in the rejection of mail ballots. In a statewide survey of the 58 county elections offices conducted in 2014, the California Civic Engagement Project (CCEP) found that the top reasons for rejection of VBM ballots were ballots not arriving on time (50%), or having issues with signatures (37%) including ballots not being signed, or because the signatures could not be verified. CCEP research also found that every California county that responded to their survey (54 of the state's 58 counties sent a response) reported that the county covered the cost of insufficient postage for VBM ballots.

Furthermore, in order to protect against the inadvertent disenfranchisement of voters, it is the policy of the United States Postal Service (Postal Service) that VBM ballots with insufficient postage "must not be detained or treated as unpaid mail." Instead, under Postal Service policy, postal workers are supposed to deliver the ballot to the appropriate elections official, and to seek to recover the postage due from the elections official. Notwithstanding this policy, ballots nonetheless are occasionally returned to voters for insufficient postage.

- 5) **Prepaid Return Postage Could Delay Ballots:** One of the most common methods of providing prepaid postage is by using Business Reply Mail. The advantage of using Business Reply Mail is that postage is paid only on the pieces that are sent back to the county. The disadvantage however, is that Business Reply Mail can increase processing time and delay the delivery of ballots to the elections official.

A 2014 California Voter Foundation study of the VBM process in three California counties cautioned about possible delays when counties use Business Reply Mail to prepay the return postage on VBM ballots. The study found that in Sacramento County, the ballots that had prepaid postage through the use of Business Reply Mail could be delayed at the post office, because those ballots had to be processed through the business reply unit of the post office in order to be charged against the county's business reply account. The study noted that "[w]hen only one person works in the business reply unit, mail can be delayed if that person is out of the office or if there is a surge of business reply mail from other sources, possibly disenfranchising a voter who waited until close to the election to return his or her ballot." While the report did not recommend against providing prepaid return postage for VBM ballots, it cautioned that "[w]hile some have suggested providing postage-paid envelopes to all VBM voters (and not just those overseas or living in an all vote-by-mail precinct as current law provides), doing so can actually delay VBM ballot processing since postage paid mail is typically sent business class, not first class."

Additionally, the restructuring of the Postal Service in recent years called *network rationalization* has closed many smaller processing plants across the country, adversely impacting the speed of processing. The Bipartisan Policy Center's report *New Realities of Voting by Mail* cautions "without realizing that voting by mail in 2016 is very different than in years past, voters are more likely to unwittingly disenfranchise themselves."

Business Reply Mail takes longer to reach recipients since "The Postal Service of 2016 does not operate under the same service standards as it did even one or two presidential cycles ago. Mail volume is down, and the USPS has adjusted its infrastructure accordingly. Delivery standards have also changed." This is problematic especially during the lead up to election day when a higher volume of ballots are expected.

Under SB 29 (Correa), Chapter 618, Statutes of 2014, ballots that are mailed by election day are able to be counted if they are received by the elections official by the third day after the election. While SB 29 may help protect against voters being inadvertently disenfranchised if ballots are delayed due to the use of Business Reply Mail under this bill, if delays in the return of VBM ballots nonetheless persist, the timeframe for ballots to be received that was established in SB 29 may need to be revisited to ensure that voters are not inadvertently disenfranchised.

- 6) **Impact of SB 450 Vote Center Model:** SB 450 (Allen), Chapter 832, Statutes of 2016, permits specified counties beginning in 2018, and all other counties beginning in 2020, 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. Counties in California that opt to conduct elections in accordance with SB 450 generally will be required to send VBM ballots to all registered

voters 28 days before election day. As counties implement SB 450, the number of voters who receive a ballot in the mail will increase, which may also increase the number of VBM ballots that are returned by mail. On the other hand, because SB 450 requires participating counties to make ballot drop-off locations available, an increasing number of voters may choose to return VBM ballots in person, rather than through the mail. In any case, SB 450 likely will increase the involvement of the postal system in elections conducted in the state, but SB 450 did not require the return postage on VBM ballots to be prepaid. AB 216 will help address this by providing prepaid envelopes to voters so they can return their ballots.

- 7) **State Mandates:** The last six state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates, including VBM programs. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2017-18 fiscal year. This bill adds another elections-related mandate by requiring local elections official to prepay the return postage for VBM ballots.
- 8) **Previous Legislation:** This bill is similar to AB 800 (Gomez) of 2015, AB 1519 (De La Torre) of 2009, and SB 117 (Murray) of 2005, which were all held on the Assembly Appropriations Committee's suspense file, and to SB 1062 (Block) of 2014, which was held on the Senate Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

Advancement Project
American Civil Liberties Union of California
California Labor Federation
California League of Conservation Voters
California Professional Firefighters
California State Association of Letter Carriers
California Voter Foundation
Disability Rights California
Equal Justice Society
Service Employees International Union, California State Council

Opposition

None on file.

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