

Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 2608 (Berman) – As Amended March 28, 2022

AS PROPOSED TO BE AMENDED

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Repeals various provisions of the Elections Code related to vote by mail (VBM) ballot applications, and makes various conforming changes to reflect the fact that state law requires that every active registered voter be mailed a ballot for every election in which the voter is eligible to vote. Specifically, **this bill:**

- 1) Repeals provisions of law that specify the process for applying for a VBM ballot or for returning completed VBM ballot applications; the format, contents, and processing of VBM ballot applications; and the preservation of VBM ballot applications after an election. Makes corresponding changes by repealing provisions of law that establish fines and criminal penalties for misconduct related to VBM ballot applications.
- 2) Repeals provisions of law that govern the application for permanent VBM status and the processing and maintenance of the list of permanent VBM voters.
- 3) Repeals a requirement that a VBM ballot identification envelope contain a space for the relationship to the voter of a person who is authorized to return that voter's VBM ballot. Makes other technical and conforming changes to the contents of the VBM ballot identification envelope. Permits county elections officials to continue using existing supplies before printing new identification envelopes that reflect the changes made by this bill.
- 4) Requires an elections official to provide a second VBM ballot to a voter's representative upon receipt of a written request, on a form prescribed by the Secretary of State (SOS), signed by the voter under penalty of perjury, requesting that a ballot be provided to the representative. Prohibits a ballot from being provided to the representative until the elections official compares the signature on the written request with the signature or signatures in the voter's registration record and the authorized representative signs an acknowledgment of receipt of the voter's ballot. Repeals two related provisions of law that establish procedures for a voter's VBM ballot to be provided to an authorized representative of the voter for delivery to the voter.
- 5) Specifies that for the purpose of determining the number of VBM ballot drop-off locations that are required in counties that do not conduct elections pursuant to the California Voter's Choice Act (CVCA), the determination shall be made based on the number of registered voters in the jurisdiction as determined on the 88th day before the election.
- 6) Deletes a requirement that, when a voter who has declined to disclose a political party preference requests the ballot of a political party in a partisan primary election, the voter must personally affix the name of the political party for which the voter is requesting a ballot. Requires the SOS to prepare and distribute to county elections officials a uniform application

for a voter who has declined to disclose a political party preference to request a political party's ballot at the next partisan primary election if the political party has so authorized.

- 7) Makes technical, clarifying, and conforming changes.
- 8) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Requires an elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate. Requires the elections official to begin mailing VBM ballots not later than 29 days before the election, as specified.
- 2) Provides all of the following with respect to applications for VBM ballots:
 - a) Requires an application for a VBM ballot 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, except as specified.
 - b) Requires the SOS to prepare a uniform VBM ballot application, and a uniform electronic application for a VBM ballot, as specified.
 - c) Requires a VBM ballot application to inform the voter that if the voter has declined to disclose a preference for a political party, the voter may request a VBM ballot for a particular political party for a partisan primary election, if that political party has adopted a party rule authorizing that vote, as specified. Requires the application to contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the _____ Party." Requires the name of the political party to be personally affixed by the voter.
- 3) Requires a county elections official, prior to each partisan primary election, to mail to every voter who has declined to disclose a preference for a political party and whose name appears on the permanent VBM voter list, a notice and application regarding voting in the primary election. Requires the notice to inform the voter that the voter may request a VBM ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the SOS, authorizing that vote. Requires the application to contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the ____ Party." Requires the name of the political party to be personally affixed by the voter.
- 4) Permits an elections official to deliver a voter's VBM ballot to the voter's spouse, child, parent, grandparent, grandchild, or sibling, or a person residing in the same household as the voter, but prohibits the ballot from being delivered to someone under 16 years of age. Requires the person who is receiving the voter's VBM ballot to sign a statement attested to under penalty of perjury that provides the name of the voter and the person's relationship to the voter, and affirms that the person is 16 years of age or older, and is authorized by the voter to deliver the VBM ballot.

- 5) Permits a voter who, after the deadline for requesting a VBM ballot, is unable to go to the polls, to request in a written statement, signed under penalty of perjury, that a ballot be delivered to the voter. Requires the elections official to deliver this ballot to the voter's authorized representative who presents this written statement to the elections official. Requires the elections official to compare the signature on the request with the signature on the voter's affidavit of registration before that VBM ballot is canvassed.
- 6) Permits a voter who is unable to return the voter's completed VBM ballot to designate another person to return the ballot to the elections official who issued the ballot, to the precinct board at a polling place or vote center within the state, or to a VBM ballot drop-off location. Requires that the VBM ballot identification envelope contain spaces for the name, signature, and relationship to the voter of the person authorized by the voter to return that voter's ballot.
- 7) 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 drop-off location for every 30,000 registered voters within the jurisdiction where the election is held, whichever results in more drop-off locations. Provides, notwithstanding this requirement, that a jurisdiction with fewer than 30,000 registered voters have at least one drop-off location, and that the elections official make a reasonable effort to provide a drop-off location in the jurisdiction where the election is held.
- 8) Requires a county elections official, prior to each partisan primary election, to mail a notice and application regarding voting in the primary election to every voter who is a permanent VBM voter and who has declined to disclose a preference for a political party. Requires the notice to inform the voter that the voter may request a VBM ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the SOS, authorizing these voters to vote in their primary. Requires the notice to contain a toll-free telephone number, established by the SOS, which the voter may call to access information regarding which political parties have adopted such a rule. Requires the application to contain a checkoff box with a conspicuously printed statement that reads substantially similar to the following: "I have declined to disclose a preference for a qualified political party. However, for this primary election only, I request a vote by mail ballot for the ____ Party." Requires the name of the political party to be personally affixed by the voter.
- 9) Makes it an infraction, punishable by a \$200 fine, for a person to willfully submit a VBM ballot application electronically for another voter.
- 10) Makes it a misdemeanor for an individual, group, or organization to knowingly distribute a VBM ballot application that does not conform to state law.
- 11) Makes it a misdemeanor for a person to willfully do any of the following:
 - a) Interfere with the prompt delivery of a completed VBM ballot application;
 - b) Retain a completed VBM ballot application, without the voter's authorization, for more than three days excluding weekends and state holidays, or by the deadline for return of applications, whichever is earlier; or,

- c) Deny an applicant the right to return the applicant's own completed VBM ballot application to the local elections official having jurisdiction over the election.

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

COMMENTS:

- 1) **Author's Amendments:** In an effort to reduce confusion and to facilitate the effective administration of elections, the author has proposed amendments to add an urgency clause to this bill so that it may be implemented in advance of the 2022 general election. Amendments to add an urgency clause to a bill, however, cannot be adopted through pre-committee author's amendments. Accordingly, this bill is being heard in committee today as proposed to be amended by the author to add an urgency clause. This analysis reflects those proposed author's amendments. In accordance with Joint Rule 58, the Assembly Rules Committee approved the addition of an urgency clause to this bill at its hearing on March 31, 2022.

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

We have learned that when voters get a ballot in the mail, they vote. After our experiment in November 2020 resulted in the highest voter turnout in California since Harry Truman was president, I was pleased to author AB 37, to ensure that every active registered voter in California will receive a ballot in the mail before every future election. Now that we have transitioned to mailing a ballot to every active registered voter, there are a number of references in the code that are either obsolete or necessitate clarification. AB 2608 would make those necessary updates.

- 3) **VBM Ballot Use in California 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 permanent VBM voter. Since that time, California voters have increasingly used VBM ballots to vote in elections. At the 2000 statewide general election (the last statewide election held before AB 1520 was enacted), 24.5% of Californians who voted in that election did so using a VBM ballot. By contrast, since 2012, a majority of ballots cast in every California statewide election were VBM ballots.

Subsequent changes to California's election laws have further contributed to an increasing use of VBM ballots in elections. SB 450 (Allen), Chapter 832, Statutes of 2016, also known as the CVCA, permits counties to opt-in to conducting elections in which every voter receives a VBM 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 elections, subject to certain conditions. Five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) conducted elections under this system in 2018, and 15 counties (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) did so in 2020. More recently, California has taken steps to ensure that every voter—including voters who reside in counties that are not participating in the CVCA—receives a ballot in the mail for each election in which the voter is eligible to participate. That policy was first enacted as an accommodation to facilitate voting in 2020 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. Notably, AB 860 (Berman), Chapter 4, Statutes of 2020, required county elections officials to mail a ballot to every active registered voter for the November 3, 2020 statewide general election, among other provisions. SB 29 (Umberg), Chapter 3, Statutes of 2021, continued that policy for all elections conducted in 2021. AB 37 (Berman), Chapter 312, Statutes of 2021, made that policy permanent for all future elections, and made other changes to VBM processes, procedures, and requirements, including requiring that counties provide VBM ballot drop-off locations for all elections that they conduct.

Because the requirement to mail a ballot to every active registered voter originally was a temporary accommodation for the 2020 general election, corresponding changes were not made to related provisions of California law, such as laws providing for VBM ballot applications. Since AB 37 was based on that prior legislation, it similarly did not make many related conforming or clean-up changes. As described in more detail above, this bill would make many such conforming, clarifying, and clean-up changes to reflect the policy changes enacted through AB 37.

- 4) **Ballot Drop-Off Locations:** One provision of AB 37 required that county elections officials provide VBM ballot drop-off locations at all elections, including elections that are not conducted pursuant to the CVCA. The number of drop-off locations required by AB 37 depends on the number of registered voters in the jurisdiction where the election is being held, but AB 37 did not specify the date on which the number of registered voters was to be determined. This bill requires that the number of drop-off locations be based on the number of registered voters *as of the 88th day before the election*. This timeline is consistent with the timeline for determining the number of drop-off locations that are required in elections conducted pursuant to the CVCA.
- 5) **No Party Preference (NPP) Voters and Primary Elections:** Under California's presidential primary system, a voter who is registered with a political party receives a ballot for that party's presidential primary election. A voter who declined to disclose a political party preference when registering to vote (also known as an NPP voter) has the option of requesting the ballot of a political party that has notified the SOS that it will allow those voters to participate in its presidential primary election. (For the 2020 statewide primary election, the American Independent Party, Democratic Party, and Libertarian Party all allowed NPP voters to participate in their presidential primary election.) This is commonly referred to as a "crossover" ballot. An NPP voter who does not request a crossover ballot receives a nonpartisan ballot that does not list candidates for president.

For an NPP voter who goes to a vote center or polling place to vote in-person, existing law generally requires that the voter be notified of the crossover ballot options before being provided with a ballot. For an NPP voter who is a permanent VBM voter, the voter is mailed an application for a crossover ballot before ballots are mailed for a presidential primary election. Additionally, VBM ballot applications include an option for an NPP voter to request a crossover ballot. Finally, when VBM ballots are mailed to NPP voters at a presidential primary election, any voter who has not already requested a crossover ballot for that election is provided with a notice informing the voter of the right to request a crossover ballot and the options for doing so.

Because AB 37 requires that every active registered voter be mailed a ballot for every

election in which the person is eligible to vote, this bill updates the procedure for NPP voters to request a crossover ballot by requiring that *all* NPP voters be mailed an application for a crossover ballot before ballots are mailed for a presidential primary election. Additionally, any NPP voter who does not request a crossover ballot will receive a notice with the ballot that is mailed to the voter that informs the voter of the right to request a crossover ballot and the process for doing so.

- 6) **VBM Ballots and Voters' Authorized Representatives:** Two different provisions of existing law expressly authorize a voter to designate a representative to pick-up a VBM ballot for the voter—one provision that applies generally (Elections Code Section 3009(b)) and one provision that applies after the deadline for requesting a VBM ballot by mail (Elections Code Section 3021). The procedures in these provisions of law differ slightly, including differences in who may be authorized to pick-up a ballot for the voter and in the documentation that is required from the voter and the voter's authorized representative. This bill consolidates those into a single procedure, found in Elections Code Section 3014(b), under which a voter may designate any person to pick up a ballot for the voter. The voter would need to designate the authorized representative in a written statement signed under penalty of perjury, and the authorized representative would be required to sign an acknowledgment of receipt of the voter's ballot.

Furthermore, state law allows a voter to designate another person to return the voter's VBM ballot, and requires the VBM ballot identification envelope to include a space for the name, signature, and relationship to the voter of that designated person. The requirement for the identification envelope to include the authorized representative's relationship to the voter was established at a time when California law allowed a person to return another voter's ballot only if that person had a specified relationship with the voter. Subsequently, state law was amended to allow a voter to designate *any person* to return the voter's ballot. As a result, the relationship between the voter and the designated person is no longer relevant under state law. This bill makes a corresponding change to state law by deleting the requirement for the VBM ballot identification envelope to include a space for that relationship to be provided.

- 7) **Suggested Amendments to Other Code Sections Referencing VBM Ballot Applications:** In addition to the code sections that this bill amends, committee staff has identified two other sections of the Elections Code that reference VBM ballot applications and that should be amended to reflect the policy changes made by AB 37.

Specifically, committee staff recommends that the following provisions be added to this bill:

- a) Amend Section 3021.5 of the Elections Code as follows:

3021.5. (a) Upon the declaration of an out-of-state emergency by the Governor and the issuance of an executive order authorizing an out-of-state emergency worker to cast a ballot outside of his or her home precinct, a county elections official shall, upon request of an out-of-state emergency worker pursuant to this chapter, issue a vote by mail ballot to the out-of-state emergency worker using a process to be determined by that elections official. The process shall include all of the following:

~~(1) Authorization for an out-of-state emergency worker to request a vote by mail ballot after the close of the vote by mail ballot application period specified in Section~~

3001.

~~(2)~~ (1) Authorization for a vote by mail ballot and accompanying voting materials to be sent to an out-of-state emergency worker by mail, facsimile transmission, or electronic transmission, as requested by the out-of-state emergency worker. An elections official may use reasonable facsimiles of the county voter information guides sent to voters as vote by mail ballots.

~~(3)~~ (2) A requirement that an out-of-state emergency worker mark the vote by mail ballot provided to him or her, place it in the vote by mail ballot identification envelope, and return the vote by mail ballot to the elections official from whom it was obtained. If no identification envelope is provided, the envelope used to return the vote by mail ballot to the elections official shall include the information required by subdivision (a) of Section 3011 and a statement signed under penalty of perjury that the voter is an out-of-state emergency worker.

(b) In order to be counted, a vote by mail ballot cast pursuant to this section shall be received in compliance with Section 3020.

(c) An elections official shall receive and canvass vote by mail ballots cast pursuant to this section by the same procedure as for all other vote by mail ballots cast pursuant to this chapter.

b) Amend Section 10704 of the Elections Code as follows:

10704. (a) Except as provided in subdivision (b), a special primary election shall be held in the district in which the vacancy occurred on the 9th Tuesday or, if the 9th Tuesday is the day of or the day following a state holiday, the 10th Tuesday preceding the day of the special general election at which the vacancy is to be filled. Candidates at the primary election shall be nominated in the manner set forth in Chapter 1 (commencing with Section 8000) of Part 1 of Division 8, except that nomination papers shall not be circulated more than 73 days before the primary election, shall be left with the county elections official for examination not less than 53 days before the primary election, and shall be filed with the Secretary of State not less than 53 days before the primary election.

(b) A special primary election shall be held in the district in which the vacancy occurred on the 10th Tuesday preceding the day of the special general election at which the vacancy is to be filled if both of the following conditions apply:

(1) The 10th Tuesday preceding the day of the special general election is an established election date pursuant to Section 1000.

(2) A statewide or local election occurring wholly or partially within the same territory in which the vacancy exists is scheduled for the 10th Tuesday preceding the day of the special general election.

~~(c) An application for a vote by mail ballot for a special election shall be made and processed in the manner required by Section 3001.~~

~~(d)~~ (c) The sample ballot for a special election shall contain a written explanation of the election procedure for voter-nominated office as specified in subdivision (b) of Section 9083.5. Immediately after the explanation shall be printed the following: “If one candidate receives more than 50% of the votes cast at the special primary election, he or she will be elected to fill the vacancy and no special general election will be held.”

~~(e)~~ (d) On the ballot for a special election, immediately below the instructions to voters, there shall be a box not less than one-half inch high enclosed by a heavy-ruled line the same as the borderline. This box shall be as long as there are columns for the ballot and shall be set directly above these columns. Within the box shall be printed the words “Voter-Nominated Office.” Immediately below that phrase within the same box shall be printed the following:

“All voters, regardless of the party preference they disclosed upon registration, or refusal to disclose a party preference, may vote for any candidate for a voter-nominated office. The party preference, if any, designated by a candidate is selected by the candidate and is shown for the information of the voters only. It does not imply that the candidate is nominated or endorsed by the party or that the party approves of the candidate.”

8) **Suggested Amendments to Correct Code References:** This bill repeals and amends various provisions of the Elections Code, but does not always update cross-references to those sections accordingly. To update those cross-references to reflect the changes proposed by this bill, committee staff recommends the following additions to this bill:

a) Amend Section 8002.5 of the Elections Code as follows:

8002.5. (a) A candidate for a voter-nominated office shall indicate one of the following upon his or her declaration of candidacy, which shall be consistent with what appears on the candidate’s most recent affidavit of registration:

(1) “Party Preference: _____ (insert the name of the qualified political party as disclosed upon your affidavit of registration).”

(2) “Party Preference: None (if you have declined to disclose a preference for a qualified political party upon your affidavit of registration).”

(b) The selection made by a candidate pursuant to subdivision (a) shall appear on the primary and general election ballot in conjunction with his or her name, and shall not be changed between the primary and general election.

(c) Regardless of the party preference, or lack of party preference, of the candidate or the voter, any qualified voter may vote for any candidate for a voter-nominated office if the voter is otherwise entitled to vote for candidates for the office to be filled. Nothing in Section 2151, ~~3006, 3007.5, 3205, or 13102~~ 13102, or 13502 shall be construed to limit the ability of a voter to cast a primary election ballot for any candidate for a voter-nominated office, regardless of the party preference, or lack of party preference, designated by the candidate for inclusion upon the ballot pursuant to this section, provided that the voter is otherwise qualified to cast a ballot for the office at issue.

(d) A candidate designating a party preference pursuant to subdivision (a) shall not be deemed to be the official nominee of the party designated as preferred by the candidate. A candidate's designation of party preference shall not be construed as an endorsement of that candidate by the party designated. The party preference designated by the candidate is shown for the information of the voters only and may in no way limit the options available to voters.

(e) All references to party preference or affiliation shall be omitted from all forms required to be filed by a voter-nominated candidate pursuant to this division in the same manner that such references are omitted from forms required to be filed by nonpartisan candidates pursuant to Section 8002, except that the declaration of candidacy required by Section 8040 shall include space for the candidate to list the party preference disclosed upon the candidate's most recent affidavit of registration, in accordance with subdivision (a).

b) Amend Section 18403 of the Elections Code as follows:

18403. Any person other than an elections official or a member of the precinct board who receives a voted ballot from a voter or who examines or solicits the voter to show his or her voted ballot is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months or two or three years, or in a county jail not exceeding one year, or by both that fine and imprisonment. This section shall not apply to persons returning a vote by mail ballot pursuant to ~~Sections~~ Section 3017 ~~and 3021~~ or persons assisting a voter pursuant to Section 14282.

9) **Technical Amendments:** Committee staff recommends the following amendments to correct drafting errors in this bill:

On page 11, line 33, strike out "applying for and".

On page 16, line 5, strike out "shall be" and insert "that is".

On page 18, line 8, after the comma, insert "after the seventh day prior to the date of the election,".

On page 18, line 24, strike out "service," and insert "service after the seventh day prior to the date of the election, but before 5 p.m. on the day before the day of the election,".

On page 22, line 7, after "partisan" insert "primary".

10) **Arguments in Support:** In support of this bill, the California Association of Clerks and Election Officials (CACEO) writes:

[The CACEO] Elections Legislative Committee is pleased to support Assembly Bill 2608 (Berman), which provides much needed updates to ensure continued administration of Assembly Bill 37 (2021, Chapter 312) requirements.

AB 2608 provides elections officials clarification on what should be included in

the County Voter Information Guide and other notices to voters, as well as update polling place procedures and supplies that supports this new voting model.

As every active registered voter in the state will now automatically receive a vote by mail ballot in the mail, updates outlined in AB 2608 are needed to minimize confusion for California voters while decreasing unnecessary expenses for California counties.

11) **Related Legislation:** SB 504 (Becker), Chapter 14, Statutes of 2022, repealed provisions of state law that required a voter registration affidavit to contain a space to permit an affiant to apply for permanent VBM status, that required the county voter information guide to include an application for a VBM ballot, and that required the exterior of the county voter information guide to contain a notification that the guide includes a VBM ballot application, among other provisions. SB 504 was approved by the Assembly on a 62-0 vote. SB 504 contains an urgency clause, and went into effect on March 31, 2022 after being signed by Acting Governor Eleni Kounalakis.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials

Opposition

None on file.

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