

Date of Hearing: April 27, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2686 (Mullin and Gonzalez) – As Amended April 20, 2016

**AS PROPOSED TO BE AMENDED BY THE AUTHOR'S AMENDMENT DESCRIBED
IN COMMENT #1 BELOW**

SUBJECT: Elections: all-mailed ballot elections.

SUMMARY: Allows a county to conduct a legislative or congressional vacancy election as a mailed ballot election as part of a pilot project, subject to certain conditions, if more than half the voters in the county are permanent vote by mail (VBM) voters. Extends the sunset date, from January 1, 2021, to January 1, 2023, on an ongoing mailed ballot election pilot project in San Diego County, and broadens the scope of that pilot project. Specifically, **this bill:**

- 1) Extends the sunset date, from January 1, 2021, to January 1, 2023, on a previously authorized pilot project that allows San Diego County to conduct special elections as mailed ballot elections, subject to certain conditions, if the election is any of the following:
 - a) A special election to fill a vacancy in Congress or the Legislature, if the district in which the vacancy exists is located wholly within San Diego County;
 - b) A special election to fill a vacancy in the legislative body or governing body of local government agencies located wholly within San Diego County; or,
 - c) A special election to vote on a ballot measure for a local government agency located wholly within San Diego County.
- 2) Expands the San Diego pilot project to allow the following types of elections to be conducted under the pilot project:
 - a) Elections that are occurring in local government agencies that include territory that is outside of San Diego County, provided that only the San Diego County-portion of the election is conducted pursuant to the terms of the pilot project; and,
 - b) Local recall elections.
- 3) Allows a county, until January 1, 2023, to conduct a special election to fill a vacancy in Congress or the Legislature as a mailed ballot election as part of a pilot project that is generally subject to the same conditions as the San Diego pilot project, with the following differences:
 - a) Permits a special election to be conducted under the pilot project even if the congressional or legislative district is not wholly contained within the county.

- b) Provides that a county may only participate in the pilot program if the percentage of permanent VBM voters in the county equals or exceeds 50 percent of the total number of voters in the county, as determined at the most recent statewide general election.
 - c) Requires a county board of supervisors to transmit its resolution approving the county's participation in the pilot program to the Secretary of State (SOS) within 10 days of adopting the resolution. Requires the SOS to notify the Voting Accessibility Advisory Committee and the Language Accessibility Advisory Committee, as created under existing law, within 10 days of receiving the resolution from the county.
 - d) Requires the county elections official to consider proximity to public transportation when determining polling place locations.
 - e) Provides that participating in the pilot project does not preclude the use of a remote accessible VBM system.
- 4) Makes corresponding and technical changes.

EXISTING LAW:

- 1) Permits a special election in San Diego County, held before January 1, 2021, to be conducted by mailed ballot subject to all of the following conditions:
 - a) The special election is being held for any of the following purposes:
 - i) To fill a vacancy in the Legislature or in Congress, and the legislative or congressional district lies wholly within San Diego County;
 - ii) To fill a vacancy on the governing body of San Diego County, or of any city, school district, community college district, special district, or other district or political subdivision located wholly within San Diego County; or,
 - iii) To vote on a local measure, other than a recall, for San Diego County, or for any city, school district, community college district, special district, or other district or political subdivision located wholly within San Diego County.
 - b) The governing body of the jurisdiction, or the San Diego County Board of Supervisors in the case of a special election to fill a vacancy in the Legislature or in Congress, authorizes the use of mailed ballots for the election.
 - c) The election does not occur on the same date as a statewide primary or general election, or any other election conducted in an overlapping jurisdiction that is not consolidated and conducted wholly by mail.
 - d) Ballot drop-off locations, as specified, are provided such that there is at least one location per city (if the boundaries of the jurisdiction for which the election is being held overlap with the boundaries of a city) and at least one location for every 100,000 registered voters in unincorporated areas, and such locations are open during business hours to receive

voted ballots beginning not less than seven days before the election.

- e) The elections official provides for at least six hours of voting at a satellite location within the jurisdiction on at least one Saturday and Sunday after the ballots are delivered to voters.
- f) At least one polling place is provided per jurisdiction for which the election is being held, or the polling places are fixed in a manner so that there is one polling place for every 10,000 registered voters within the district, as specified, whichever results in more polling places. Provides that a polling place shall allow voters to request a ballot between 7 a.m. and 8 p.m. on the day of the election if they need replacement ballots for any reason.
- g) Polling places are established in accordance with existing state and federal accessibility requirements, and access to polling places is evenly distributed throughout the jurisdiction for which the election is being held.
- h) The elections official does the following for polling places that consolidate one or more precincts for which the elections official has obligations to recruit or attempt to recruit precinct board members who are fluent in a language in addition to English:
 - i) In the case of precincts covered by language requirements in federal law, the elections official ensures that the polling place is staffed by precinct board members who speak that language; and,
 - ii) In the case of precincts covered by language requirements in state law, the elections official makes reasonable efforts to ensure that the polling place is staffed by precinct board members who speak that language.
- i) Each voter receives all supplies necessary for the use and return of the mail ballot, including a return envelope for the voted ballot with postage prepaid.
- j) Each voter receives all of the following from the elections official:
 - i) A notice, translated into all languages as required by state and federal law, that informs voters of the following:
 - (1) That the election is being conducted by mail and that each eligible voter will receive a ballot by mail;
 - (2) The voter may cast a ballot in person at a satellite location; and,
 - (3) The voter may request the county elections official to send a ballot in a language other than English pursuant to state and federal law.

- ii) A list of the ballot drop-off, satellite, and polling place locations, and that list is posted on the Internet Web site of the county elections office; and,
 - iii) A postage-paid postcard that the voter may return to the elections official for the purpose of requesting a ballot in a language other than English.
- k) The elections official submits a voter education and outreach plan to the SOS that includes all of the following:
- i) Education and outreach meetings, and in-person educational workshops, related to providing voting materials and assistance in languages other than English, and ensuring the accessibility of the election process for individuals with disabilities.
 - ii) A toll-free voter assistance hotline, as specified, that is operational between the date that ballots are mailed to voters until 5 p.m. on the day after the special election.
 - iii) Public service announcements, as specified, informing voters of the upcoming election and promoting the voter assistance hotline.
 - iv) A voter education social media strategy, as specified.
- l) The voter education and outreach plan is posted on the Web sites of the SOS and of the elections official.
- m) Election results for the special election are reported by precincts, and the elections official maintains records of persons who voted in the election, as specified, for a minimum of 10 years.
- 2) Allows local elections held on no more than three different dates in Monterey, Sacramento, San Mateo, and Yolo counties to be conducted wholly by mail, as part of a pilot project lasting through January 1, 2018, subject to certain conditions.
- 3) Requires Monterey, Sacramento, San Diego, San Mateo, or Yolo County, if it conducts an election by mailed ballot pursuant to one of the pilot projects detailed above, to report to the Legislature and to the SOS regarding the success of the election, including, but not limited to, all of the following:
- a) Any statistics on the cost to conduct the election;
 - b) The turnout of different populations, including, but not limited to and to the extent possible, the population categories of race, ethnicity, language preference (for the San Diego pilot project only), age, gender, disability, permanent VBM status, and political party preference;
 - c) The number of ballots that were not counted and the reasons they were rejected;

- d) Voter fraud; and,
- e) Any other problems that became known to the county during the election or canvass.

Requires the report, whenever possible, to compare the election conducted under the pilot project to similar elections not conducted as mailed ballot elections in the same jurisdiction or comparable jurisdictions.

- 4) Permits an election to be conducted wholly by mail if the governing body authorizes the use of mailed ballots for the election, the election occurs on an established mailed ballot election date, and the election is one of the following:
 - a) An election in which no more than 1,000 registered voters are eligible to participate;
 - b) An election in a city, county, or district with 5,000 or fewer registered voters that is restricted to the imposition of special taxes, expenditure limitation overrides, or both;
 - c) An election on the issuance of a general obligation water bond;
 - d) An election in one of four specifically enumerated water districts; or,
 - e) An election or assessment ballot proceeding required or authorized by the state constitution under Proposition 218.
- 5) Authorizes a city with a population of 100,000 or less or a school district to conduct any special election held to fill a vacancy as a mailed ballot election.
- 6) Authorizes a district to conduct any election as a mailed ballot election on any date other than an established election date.
- 7) Permits every registered voter to request a VBM ballot for an election, and permits every registered voter to become a permanent VBM voter who automatically receives a VBM ballot for every election in which he or she is eligible to vote.

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

COMMENTS:

- 1) **Author's Amendment:** According to the author's staff, the most recent set of amendments contained a drafting error. It was the author's intent that those amendments would expand the San Diego pilot project to allow elections to be conducted as a part of, and pursuant to the terms of, the pilot project even in local government agencies that are only *partially* contained in San Diego County. Currently, the pilot project is limited to agencies that are *wholly* contained within the county. To accomplish that intent, the author is proposing to amend page 8, line 31 of the bill to add the words "or partially" after the word "wholly." This analysis reflects the proposed author's amendment.

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

California consistently faces a combination of low turnout and high cost when special elections are called due to a vacancy in the Legislature and Congress. AB 2686 establishes a pilot program that a county may opt-in to conduct a special election to fill a vacancy in the Legislature or Congress via all-mail-ballot, providing that the county had a permanent vote-by-mail...adoption rate of at least 50% in the last general statewide election.

By allowing the option to conduct these special elections by all-mailed-ballot, AB 2686 not only preserves the public's ability to choose their representative in the event of a vacancy, but also provides more flexibility for local jurisdictions in conducting special elections.

3) **Existing Mailed Ballot Pilot Projects:** Two years ago, the Legislature approved and the Governor signed AB 1873 (Gonzalez and Mullin), Chapter 598, Statutes of 2014, which allowed special elections in San Diego County to fill vacancies in the Legislature and Congress to be conducted by mailed ballot until 2020, subject to certain conditions. Last year, the Legislature approved and the Governor signed AB 547 (Gonzalez), Chapter 727, Statutes of 2015, which modified some of the conditions in the San Diego pilot project, extended the sunset date by a year, and significantly expanded the types of elections that are allowed to be conducted as mailed ballot elections pursuant to the pilot project.

In addition to the San Diego pilot project that was authorized by AB 1873, there is another ongoing pilot project authorized by the Legislature and the Governor to examine the use of mailed ballot elections for local elections. That pilot project was originally authorized by AB 413 (Yamada), Chapter 187, Statutes of 2011, which allows Yolo County to conduct local elections on not more than three dates as mailed ballot elections. AB 413 was intended to serve as a pilot project to evaluate the desirability of further expanding the circumstances under which elections are permitted to be conducted as mailed ballot elections. Yolo County conducted mailed ballot elections in March 2013 in the City of Davis and the Washington Unified School District as permitted by AB 413, and submitted its report on those elections in December 2013. Yolo County is permitted to conduct local elections as mailed ballot elections on two additional dates before the conclusion of the pilot project.

In 2014, legislation was enacted to allow San Mateo County to join Yolo County in participating in that ongoing pilot project (AB 2028 (Mullin), Chapter 209, Statutes of 2014), and last year, the pilot project was further expanded to include Monterey and Sacramento Counties (AB 1504 (Alejo), Chapter 730, Statutes of 2015). San Mateo County conducted an election under that pilot project in November 2015, but it has not yet submitted the required report from that election.

Given the fact that there are two separate, ongoing mailed ballot election pilot projects, and given the fact that only two sets of elections have been held under those pilot projects, the committee may wish to consider whether it is timely or warranted to create yet another mailed ballot pilot project.

- 4) **Counties Eligible to Participate:** This bill creates a new pilot project under which a county could conduct a special election to fill a vacancy in the Legislature or Congress as a mailed ballot election, but only if at least 50 percent of the voters in the county were signed-up as permanent VBM voters as of the most recent statewide general election. According to information from the SOS, at least 50 percent of the voters in the following counties were signed-up as permanent VBM voters at the November 2014 statewide general election: Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Inyo, Lake, Madera, Marin, Mariposa, Monterey, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Shasta, Solano, Sonoma, Stanislaus, Tehama, and Yuba. In addition, Sierra County already conducts all its elections by mailed ballot, as state law allows any precinct that has 250 or fewer registered voters to be designated as a mailed ballot precinct, and all precincts in Sierra County have 250 or fewer registered voters. Finally, just under 50 percent of voters were signed-up as permanent VBM voters in Tuolumne (48.71%) and Yolo (49.28%) counties as of the most recent statewide general election, so those counties may exceed the threshold for being able to participate in the pilot project by this November's general election.
- 5) **Special Vacancy Elections:** In order to promptly fill vacancies in the Legislature and in Congress, special elections to fill such vacancies typically are conducted in a shortened time period, and elections officials have less time to prepare than they do for regularly scheduled elections. The special primary election to fill a vacancy in the Legislature or Congress can occur as soon as 56 days (or as long as 131 days) after the vacancy occurs, and the deadline to file as a candidate in such a special election is the 53rd day before the special primary election. By contrast, in regularly scheduled elections, the deadline to file as a candidate for the Legislature or Congress falls no later than the 83rd day before the primary election, and ballots begin going out to overseas and military voters on the 60th day before the election. Furthermore, because vacancies in the Legislature or in Congress can occur due to the death of an officeholder or an unexpected resignation, special vacancy elections often cannot be anticipated in advance, so elections officials may not be able to prepare in advance for these elections.

While certain elections may be conducted as mailed ballot elections under existing law, most elections—particularly for the Legislature and Congress—are still conducted as traditional elections, where voters have the ability to vote at a polling place on election day. As a result, many voters who are accustomed to voting at a polling place may expect that there will be a neighborhood polling place at which they will be able to vote in a special election for the Legislature or Congress. If the number of such polling places is going to be significantly reduced, voter education and outreach efforts may be necessary to ensure that voters who traditionally would vote at a polling place are not negatively affected by this change in election procedure. Given the unpredictable need and expedited time frame for special elections, however, the ability of elections officials to do effective voter education and outreach may be limited. While the existing pilot project in San Diego County may help assess the degree to which effective voter education and outreach can be done in such circumstances, there is no guarantee that a vacancy will occur in a legislative or congressional district that is wholly located within San Diego County during the time period covered by the pilot project.

- 6) **Special Vacancy Elections in Multiple Counties:** The ongoing mailed ballot pilot projects that are described above are limited to elections that are conducted solely within the county that is participating in the pilot project. That condition ensures that all voters within a given district will be voting in accordance with the same rules and procedures. Without that condition, if there was a special election in a legislative or congressional district, or in a local jurisdiction, that included portions of two or more counties, and if one county decided to conduct the special election as a mailed ballot election but another county did not, some voters within the district would vote using the mailed ballot method authorized by the pilot project, while the remaining voters in the district would vote using a traditional polling place-model election.

The pilot project created by this bill would allow a county to conduct a special election to fill a vacancy in the Legislature or Congress as a mailed ballot election even if the legislative or congressional district is not wholly located within that county, and even if the county or counties that contain the rest of the district are not conducting the election as a mailed ballot election. Additionally, the author's amendment to this bill, as described above, would allow special elections in the ongoing pilot project in San Diego County to be conducted as mailed ballot elections even in situations where the district or jurisdiction is only partially contained within the county. As a result, if a special election was held as a mailed ballot election pursuant to this bill in a district or jurisdiction that included territory in more than one county, it is possible that some voters participating in the special election would vote pursuant to the conditions of the mailed ballot election pilot projects, while other voters in the same district or jurisdiction would not. The committee may wish to consider whether this disparate treatment of voters within the same district or jurisdiction is appropriate.

- 7) **Vote by Mail and Permanent Vote by Mail Voting:** Under state law, any voter can request a VBM ballot for any election, and any voter can become a permanent VBM voter. Permanent VBM voters automatically receive a ballot in the mail for every election, without the need to re-apply for a VBM ballot. As such, any voter who prefers to vote by mail has the ability to do so under existing law.

Among the arguments that supporters of mailed ballot elections frequently make in support of such elections is that mailed ballot elections are more convenient for voters. However, it is not clear whether this is the case. Any voter who finds it more convenient to vote by mail has the option to do so under existing law, and voters who want to vote by mail at every election can sign up for permanent VBM status. Some voters, due to physical disability or language issues, may prefer to vote at the polls in order to take advantage of access or help provided by electronic voting machines or bilingual poll workers.

- 8) **Arguments in Support:** In support of this bill, Urban Counties of California writes:

In recent years counties have conducted numerous special elections to fill a vacancy in Congress, State Senate, and Assembly which is very costly and results in low voter turnout. In 2013, counties conducted eight special elections due to a vacancy in the State Assembly and State Senate. In Los Angeles County alone the cost to conduct special elections in 2013 was approximately \$6.2 million. These elections require counties to have polling places and staff throughout the county

open for 12 hours, when often only a few voters show up to the polls. In California, the permanent absentee rolls continue to grow and many voters choose to vote by mail...

This bill would allow counties to conduct these types of elections by all-mail ballots under certain conditions which includes safeguards to ensure voters are not disenfranchised, including having at least one polling station available for every 10,000 registered voters, adequate public notice, and voter education and outreach.

9) **Concerns Raised:** While not taking an official position on this bill, the American Civil Liberties Union of California, Disability Rights California, and Asian Americans Advancing Justice—Los Angeles submitted a joint letter expressing concerns that if the San Diego pilot project is to be expanded, "further safeguards are needed to ensure voters are notified of the change, counties are sufficiently prepared to receive input from stakeholders, and counties with significant disparities in vote-by-mail are not...allowed to participate in the pilot." The letter indicates that the three organizations are "committed to working with [the author's] office" on amendments to require participating jurisdictions to notify voters at least four times by mail of the mailed ballot special election, to limit participation to counties that have active advisory committees for voter accessibility and language accessibility, and to prohibit participation by counties with significant disparities in permanent VBM use between all voters and protected classes of voters.

10) **Technical Amendments:** In order to correct a drafting error and to ensure that this bill is implemented properly in situations where a special election is being held in a district that covers only a portion of a county, committee staff recommends the following technical amendments to this bill:

On page 13, line 7 of the bill, after "county," insert:

or the portion of the county in which the special election is being held,

On page 13, line 18 of the bill, strike out "county." and insert:

county, or the portion of the county in which the special election is being held.

On page 14, line 31 of the bill, strike out "(7)" and insert:

(8)

On page 16, line 34 of the bill, strike out "jurisdiction" and insert:

county, or the portion of the county in which the special election is being held,

11) **Related Legislation:** SB 450 (Allen), which is pending in this committee, permits counties, beginning in 2018, to conduct elections in which every voter is mailed a ballot and vote centers and ballot dropoff locations are available prior to and on election day, in lieu of

operating polling places for the election, subject to certain conditions.

AB 2252 (Ting), which is pending on the Assembly Floor, allows a voter with disabilities to electronically receive and mark his or her VBM ballot using a remote accessible VBM system and establishes processes and procedures for the review and approval of remote accessible VBM systems by the SOS. AB 2252 was approved by this committee on a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Counties (prior version)
Rural County Representatives of California (prior version)
San Diego County
Urban Counties of California

Opposition

None on file.

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