

Date of Hearing: May 13, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 363 (Steinorth) – As Amended May 6, 2015

**SUBJECT:** Closing of the polls.

**SUMMARY:** Authorizes county elections officials, on election day, to begin accounting and processing polling place ballots during the day, instead of waiting until the closing of the polls, as specified. Specifically, **this bill:**

- 1) Authorizes a precinct board, when accounting for ballots at the closing of the polls, as specified, to either account for the ballots at a polling place or to be performed by the elections official at a central counting place, instead of only allowing a precinct board to account for ballots at a polling place.
- 2) Permits a county elections official, before the closing of the polls instead of at the close of the polls, to direct a precinct board to seal the ballot container and record on forms prescribed by the elections official the information needed for the reconciliation of ballots, as specified.
- 3) Allows a county elections official to direct a precinct board to seal the ballot container prior to the closing of the polls in accordance with existing law. Permits a county elections official, as soon as the container is sealed, to direct at least two elections officials to remove the sealed ballot container of voted untallied ballots from the polling place and, in the presence of any bystanders, to deliver the container to a receiving center or central counting place as directed. Allows a county elections official, upon receipt of a container at a receiving center or central counting place, to process the voted untallied ballots. Prohibits the tally of ballots or release of any results prior to the closing of the polls. Provides that the procedures described shall not be construed as relieving a precinct board of its responsibility to account for ballots in accordance with existing law.
- 4) Makes other technical changes.

**EXISTING LAW:**

- 1) Requires members of a precinct board to account for ballots delivered to them by returning a sufficient number of unused ballots to make up, when added to the number of official ballots cast and the number of spoiled and canceled ballots returned, the number of ballots given to them.
- 2) Requires members of a precinct board, as soon as the polls are closed, to remove the voted ballots from the ballot container and take them out of the secrecy envelopes or detach them from the secrecy stubs. Requires the precinct board to count the number of ballot cards in each group, and certify the number of ballots cast on the voting roster, as specified. Requires the precinct board, if there is any discrepancy between the number of voters listed in the roster and the number of ballots voted, to note this fact with an explanation of the difference signed by all the members of the precinct board.

- 3) Requires precinct board members to group voted ballot cards and voted separate write-in ballots, as directed by the elections official, and place them in containers. Requires the board to place spoiled and void ballots, if any, in containers as directed by the elections official. Requires all the containers to be placed in one or more boxes and sealed and delivered as soon as possible to the receiving centers or central counting places with the unused ballots, supplies, and other materials as directed by the elections officials.
- 4) Prohibits the removal of a ballot container from a polling place or the presence of any persons assembled at the polling place until all the ballots are counted and prohibits the ballot container from being opened until after the polls are closed.

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

**COMMENTS:**

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

AB 363 will improve election efficiency by allowing for ballots to be picked up from Election Day polling places and processed at a central counting location before the polls are closed. In doing so, election results will be reported much sooner on election night, and counties will save taxpayer dollars by reducing overtime costs. Further, this bill will give election officials the option to modify current ballot reconciliation procedures in an attempt to make them more effective and secure.

Existing law allows for absentee ballots which have been dropped off at polling places to be transported prior to the close of polls, but inconsistently, the law does not allow for early pick-up of ballots which had been cast at the polling place. Allowing for early pick-up of all ballots will make a critical difference in geographically expansive counties, within which it may take hours to transport ballots from a remote polling location to the counting location.

AB 363's improved ballot reconciliation process will make results more accurate and secure, because reconciliation will take place in a controlled environment, under the supervision of election professionals. If a discrepancy is found by the elections official, he/she has the authority to investigate further, as opposed to poll workers who have no authority to act upon any inconsistencies. Voters may feel more secure in knowing that their voted ballot cannot be tampered with, because the ballot box will be sealed and quickly moved to the counting location, rather than counted and handled by poll workers at the polling place.

This practice exists in many other counties in the United States and has proven to be highly effective and secure.

- 2) **Closing of the Polls Procedures:** Existing law establishes procedures for processing ballots following the closing of the polls on election day. Specifically, once the polls close, current law requires members of the precinct board to account for ballots delivered to them whether voted, unused, spoiled, or canceled. This process is commonly known as ballot reconciliation. Existing law prohibits a ballot container from being opened until after the polls are closed and further prohibits the removal of a ballot container from a polling place

until all ballots are counted. Once reconciliation is completed ballot containers are allowed to be delivered to their assigned receiving center or central counting location for processing.

This bill creates and authorizes county elections officials to utilize an additional reconciliation procedure. First, this bill permits the ballot reconciliation process to begin before the polls close, instead of after the polls close. Second, this bill allows ballot containers to be transported to a receiving center or central counting place for ballot reconciliation and processing before the polls close. These are significant departures from current practice which prohibits the removal of a ballot container from a polling place until all ballots are counted and further prohibits a ballot container from being opened until after the polls are closed. According to the author and the proponents of this bill, this new procedure is a much needed option for county elections officials, especially those counties that are geographically expansive. Proponents contend that the new ballot reconciliation process outlined in this bill will expedite ballot processing by allowing ballots to be processed and transported to counting locations prior to the closing of the polls as well as provide for more timely results, reduce election administrative costs, and increase overall election efficiency.

- 3) **Security Concerns:** As mentioned above, current law only allows ballot reconciliation to begin once the polls close. This bill instead permits ballot reconciliation to begin before the polls close and allows county elections officials to collect and transport voted ballots to receiving centers or central counting locations multiple times on election day. This bill, however, does not place any limitations on how many times throughout election day ballot containers may be transported. As a result, ballots may be transported multiple times and ballot reconciliation will need to occur each time. Because this bill does not place any limitations on how many times ballot containers may be transported, the ability to identify and correct any error during ballot reconciliation may be challenging.

Moreover, this bill does not contain any security measures to ensure the secure delivery and transfer of the ballots to the receiving center or central counting place. If an elections official chooses to utilize the option to transport ballot containers before the polls close, the bill only requires that there are at least two elections officials to remove the sealed ballot containers of voted ballots from the polling place, and in the presence of any bystanders, deliver the container to a receiving center or central counting place. The bill does not contain any security requirements beyond those provisions.

While an argument can be made that placing a limitation on the number of times ballots may be transported in statute may be too prescriptive, the lack of security requirements is still concerning. The committee may wish to consider whether the lack of security measures may lead to mishandling of voted ballots. Furthermore, the author and the committee may wish to consider whether the bill should be amended to require the Secretary of State (SOS) to adopt regulations to ensure ballot containers are securely transported.

- 4) **Greater Transparency?** Many counties, especially large counties, encounter late reconciliation issues partly due to the size of the county which requires elections staff to be on the road for hours driving to remote polling places to pick up ballot containers and then delivering them back to a central processing location. Due to their large geographical size, these large counties are unable to report election night reports until late into the morning of the day after election day. Moreover, while current law requires the reconciliation process to

be open to the public, in practice, once the polls close many individuals are not around to monitor and ensure ballot reconciliation is done properly. This bill, which permits the reconciliation of ballots to be accomplished at a central counting location, may provide more transparency by making it easier for the public to ensure ballots are properly being handled as the ballots will be reconciled, processed, scanned, and tabulated at the same place at certain times throughout the election day.

As mentioned above, this bill permits ballot reconciliation to begin before the polls close and allows county elections officials to collect and transport voted ballots to receiving centers or central counting locations multiple times on election day. However, this bill, does not prescribe when the new reconciliation process will occur nor does the bill contain any public notice requirements to ensure the public is made aware of when and where the reconciliation process will occur during election day. The committee may wish to amend the bill to require the elections official to provide a public announcement to ensure the public is made aware of when and where ballots are being processed.

- 5) **Logistics:** This bill permits ballot reconciliation to begin before the polls close and allows county elections officials to collect and transport ballot containers to receiving centers or central counting locations multiple times on election day. What happens once a ballot container is removed from a polling place? Is it replaced with a new ballot container? Will polling places be required to have more ballot containers now that this bill allows for a ballot container to be removed during election day? The committee may wish to amend the bill to resolve this issue.
- 6) **Related Legislation:** SB 417 (Stone), authorizes the precinct board of a county with a geographic area of at least 2500 square miles to remove the ballot container or containers from the polling place while the polls remain open only to facilitate the early delivery of ballots to the receiving centers or central counting places. SB 417 also requires the SOS to adopt regulations for the secure delivery and transfer of the ballots to the receiving center or central counting place. SB 417 is pending on the Senate Appropriations Committee's suspense file.
- 7) **Arguments in Support:** In support, the California Association of Clerks and Election Officials, writes:

Many large counties' final election night reports are late into the morning of the day after the election due to technological, logistical, and geographic limitations. This bill does not require election officials without such challenges to change any current procedures.

The bill permits the sealing and delivery of ballot containers to a central location where the containers will be opened and the ballots will be processed. The complex and time consuming reconciliation of the ballots cast would be performed centrally with greater accuracy. This would have the dual effect of speeding up the return of ballots on Election Night as well as reducing the time required to complete the count and produce a final unofficial report of results. A further benefit would be a reduction in labor and overtime costs.

We appreciate your recognition of the challenges faced by large counties that count ballots centrally. This bill represents a viable solution for many until new voting

technology, without these constraints and limitations, is authorized and fielded in the state.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

County of San Bernardino (sponsor)  
California Association of Clerks and Election Officials  
California State Association of Counties  
Rural County Representatives of California  
Santa Clara County Board of Supervisors  
Urban Counties Caucus

**Opposition**

None on file.

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