

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 37 (Berman) – As Amended April 7, 2021

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Requires county elections officials to mail a ballot to every active registered voter, and to allow voters to use a vote by mail (VBM) ballot tracking system, for all elections. Specifically, **this bill:**

- 1) Requires county elections officials to mail a ballot to every active registered voter for any election, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.
- 2) Requires county elections officials to use the VBM ballot tracking system developed by the Secretary of State (SOS), or a system that meets or exceeds the level of service provided by the SOS's system, for any election and specifies that the system must be accessible to voters with disabilities.
- 3) Requires county elections officials to permit any voter to cast a ballot using a certified remote accessible vote by mail (RAVBM) system for an election.
- 4) Extends the deadline by which a VBM ballot that is voted on or before election day must be received by the county elections official in order to be counted from the 3rd day after election day to the 7th day after election day. Allow county elections officials to consider information from the United States Postal Service (USPS) or bona fide private mail delivery companies other than postmarks—such as Intelligent Mail Barcodes and tracking information—to determine if a ballot was mailed on or before election day.
- 5) Authorizes jurisdictions that have the necessary computer capability to begin processing VBM ballots on the 29th day before the election.
- 6) Makes conforming changes.

EXISTING LAW:

- 1) Provides that a registered voter may vote by mail by requesting a VBM ballot for a specific election or by becoming a permanent VBM voter.
- 2) Requires county elections officials to mail a ballot to every active registered voter for any election proclaimed or conducted prior to January 1, 2022, as specified, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.
- 3) Requires county elections officials to use the VBM ballot tracking system developed by the SOS, or a system that meets or exceeds the level of service provided by the SOS's system,

for any election proclaimed or conducted prior to January 1, 2022.

- 4) Requires county elections officials to begin mailing ballots and other required materials to voters no later than 29 days before the day of the election.
- 5) Authorizes any county, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every registered 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.
- 6) Permits an elections official, whenever there are 250 or fewer persons registered to vote in any precinct, to furnish each voter with a VBM ballot along with a statement that there will be no polling place for the election.
- 7) Provides that certain local elections may be conducted as all-mailed ballot elections, as specified.
- 8) Requires an elections official, if specified data from the USPS indicates that a voter has moved and left no forwarding address, or if a voter has moved out of the state, to update the status of the voter's registration to inactive. Requires the elections official to mail a forwardable notice to the address at which a voter is registered when that voter's registration is made inactive. Provides that voters with an inactive voter registration status do not receive election materials and are not included in calculations to determine the number of signatures required for qualification of candidates and measures, precinct size, or other election administration-related processes.

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

COMMENTS:

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

Notwithstanding the extraordinary circumstances surrounding the 2020 November general election, California voters are increasingly using VBM ballots to vote in elections. Since 2001, when state law was changed to allow any California voter to become a permanent vote by mail (PVBM) voter, California voters have increasingly used VBM ballots to vote in elections.

According to data from the Secretary of State's office, over 69% of voters (14.4 million) were registered as PVBM voters for the March 2020 primary election, and over 75% of voters (over 16.5 million) were registered as PVBM voters for the November 2020 general election. Additionally, 15 counties have chosen to conduct elections pursuant to the California Voter's Choice Act, which requires an elections official to mail every active registered voter a ballot, and three counties conduct elections entirely by mail. As a result, nearly 90% of California's registered voters already receive a ballot in the mail for each election in which they are eligible to vote.

Moreover, California made investments in improving voting by mail in advance of the November 2020 general election, including for equipment to help counties process a larger number of VBM ballots, ballot tracking systems, and convenient ballot drop off locations.

The November 2020 election in which elections officials mailed a ballot to all active registered voters was success. According to the SOS, over 17.5 million Californians voted in the November 2020 general election and over 86.5% (15 million) voted on the ballot that was mailed to them. Additionally, more than five million Californians signed-up to track their VBM ballots using California's ballot tracking system. It is important that California build on the success of the November 2020 election by continuing these policies that voters have come to expect.

- 2) **Previous Legislation:** 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, last year the Legislature approved and Governor Newsom signed bills that made significant changes to the way that the state conducted the November 2020 presidential general election. Those changes largely were enacted through two bills—AB 860 (Berman), Chapter 4, Statutes of 2020 and SB 423 (Umberg), Chapter 31, Statutes of 2020. Notably, those bills required that a mail ballot be sent to every active registered voter, provided voters in all counties with the ability to track their ballot, authorized changes to in-person voting requirements, and made other changes to facilitate the expected surge in voting by mail at the November election. The provisions of this bill are based off many of the provisions of AB 860.
- 3) **Current Vote by Mail Ballot Use in California:** 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. As a result, California voters have increasingly used VBM ballots to vote in elections. According to data from the Secretary of State's office, over 69% of voters (14.4 million) were registered as PVBM voters for the March 2020 primary election, and over 75% of voters (over 16.5 million) were registered as PVBM voters for the November 2020 general election.

Additionally, there are three counties (Alpine, Plumas, and Sierra), in which 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts. Moreover, fifteen counties have chosen to conduct elections pursuant to the California Voters Choice Act, (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) which requires an elections official to mail every active registered voter a ballot. As a result, nearly 90% of California's registered voters receive a ballot in the mail for each election in which they are eligible to vote.

- 4) **November 2020 Election Participation:** According to official election results compiled by the SOS, 17,785,151 Californians voted in the November 3, 2020 statewide general election—15,423,301 (86.7%) using a VBM ballot, and 2,361,850 (13.3%) voting in-person at a polling place or vote center. That represents a turnout of 80.67% of California's registered voters, and 70.88% of the estimated number of eligible California voters. As a percentage of eligible voters, California's turnout in the November 2020 election was the

highest turnout in a statewide election since the presidential general election in November 1952.

- 5) **All-Mailed Ballot Elections:** As detailed above, existing law permits certain local elections to be conducted as all-mailed ballot elections, where every active registered voter is furnished with a VBM ballot, and the elections official is not required to establish polling places or vote centers for in-person voting. Similarly, existing law allows elections officials to designate a precinct that has 250 or fewer registered voters as an all-mailed ballot precinct, where every active registered voter is furnished with a VBM ballot, but no polling place is established for the precinct. Although state law does not require elections officials to establish polling places on Election Day in these situations, voters in these situations are able to vote in-person at the office of the elections official.
- 6) **Ballot Tracking:** Three years ago, the Legislature approved and Governor Brown signed AB 2218 (Berman), Chapter 432, Statutes of 2018, which required the SOS to establish a system that a county elections official may use to allow a VBM voter to track and receive information about the voter's VBM ballot as it moves through the mail system and as the VBM ballot is processed by the county elections official. The SOS officially launched that system in February 2020. Twenty-five counties made that tool available to their voters for the March 3, 2020 statewide primary election and in accordance with AB 860 of 2020, the system was available for voters in all 58 California counties for the November 2020 presidential general election. According to information from the SOS, more than five million Californians signed-up to track their VBM ballots using the SOS system. This bill specifies that the system must be accessible. It is the position of the SOS that the current system is accessible, and therefore, the bill's requirement that the system be accessible is a codification of current practice that also ensures any future versions of the system will remain accessible.
- 7) **Other States:** According to the National Conference of State Legislatures, five states currently conduct all elections in which ballots are mailed to all registered voters: Colorado, Hawaii, Oregon, Washington, and Utah. At least 21 other states have laws that allow certain smaller elections, such as school board contests, to be conducted by mail.
- 8) **Vote by Mail Ballot Processing:** Elections Code section 15101 permits elections officials to begin processing VBM ballot return envelopes 29 days before the election, and authorizes any jurisdiction having the necessary computer capability to start processing VBM ballots 15 business days before the election.

This bill allows an elections official to begin processing VBM ballots 29 days before the election, instead of 15 business days before the election. With the expected increase in VBM balloting, elections officials believe that allowing them to begin processing VBM ballots earlier will help minimize overtime that otherwise would be needed for staff to process VBM ballots, and will allow them to process a larger number of VBM ballots before election day, thereby reducing the number of VBM ballots that need to be processed after the election.

- 9) **Remote Accessible Vote by Mail Voting:** In 2018, the Legislature approved and Governor Brown signed AB 1013 (Low), Chapter 906, Statutes of 2018, which requires a county elections official to permit a voter with a disability, or a military or overseas voter, to cast their ballot using a certified RAVBM system. While AB 1013 did not apply to counties conducting elections pursuant to the CVCA, the CVCA separately requires counties to have a

process to send or deliver a VBM ballot that voters with disabilities can read and mark privately and independently—a requirement that counties generally have met through the use of RAVBM systems.

Generally, RAVBM systems that are approved for use in California use electronic delivery to provide a voter with a ballot that the voter can mark using their own computer, including any assistive device that the voter uses with that computer. After marking the ballot, the voter must print and return the ballot by mail (existing law also permits military and overseas voters to return their ballot by facsimile transmission under certain circumstances); RAVBM systems that are approved for use in California are *not* permitted to transmit completed ballots electronically to the elections official.

Because RAVBM systems involve the electronic delivery of a blank VBM ballot from the elections official to the voter, these systems can significantly cut down on the time needed to get a ballot to a voter after that voter requests such a ballot.

- 10) **Arguments in Support:** In support of a prior version of this bill, the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO wrote:

The efficacy of our state’s government depends on the objectivity and accessibility of our elections. Schedule-related barriers are continually cited as one of the biggest obstacles to voter participation, even after recent reforms that made voting more accessible. Young voters, people of color and those for whom English is a secondary language are the groups most often disenfranchised by missing signatures or other technical errors that cause ballots to be rejected. AB 37 will require that every registered voter is mailed a trackable and postage-paid ballot, removing schedule-related barriers and increasing access to the ballot box. Additionally, AB 37 builds on a streamlined ballot tracking system that gives voters the opportunity to remedy errors and decrease the rate of rejected ballots.

Our democratic systems must evolve with technology and circumstance in order to best deliver on the promise of our constitution; AB 37 responds appropriately to the stress-tests that COVID-19 and political polarization have exacted on California institutions. The November 3, 2020 general election demonstrated the feasibility and efficacy of a universal vote-by-mail system, registering 70.88% turnout amidst a pandemic and threats of political violence. Vote-by-mail ballots played no small part in this remarkable turnout, and the tracking system allowed many voters to correct administrative errors and honest mistakes.

AFSCME believes that AB 37 will play a pivotal role in protecting the electorate and strengthening our democracy.

- 11) **Amendments Requested:** A coalition of organizations including the California League of Conservation Voters, the League of Women Voters of California, NextGen California, Asian Americans Advancing Justice California, Disability Rights California, California Calls, and ACLU California Action, sent a support if amended letter requesting the following requirements be added to the bill: 1) a voter education and outreach process that includes statewide and countywide messaging, community-based organization funding, and postage-paid postcard a voter may return to request a translated VBM ballot or a VBM in an

accessible format; 2) dropbox requirements; 3) provide the SOS with the authority to mandate VBM ballot envelope design; and, 4) require ballot tracking systems to include a notification to voters when a corrected or resubmitted signature was accepted.

12) Arguments in Opposition: In opposition to this bill, the Election Integrity Project California, Inc. (EIPCa) writes:

The most recent amendment to AB 37 mandates acceptance of mail-in ballots up to seven (7) days after the Election Day deadline. While a 3-day extension, legislated a few years ago, was reasonable in light of the fact that the “postmark = paid-on date” policy is standard with regard to the financial realm, and people are used to that standard being applied universally, an extension to seven days post-election is NOT...Vote by mail voters have at least three (3) weeks to fill out and mail a ballot, and post their ballot as early as necessary for timely arrival. Introducing an additional 4 days for “timely arrival” is a gift to would-be bad actors and a threat to election integrity.

EIPCa’s main objection to AB 37 lies in the continued disarray of VoteCal, the statewide voter database. This issue should be of prime importance to every legislator, and until it is resolved, no further laws that rely on VoteCal integrity should be passed...

As EIPCa argued in the hearings regarding AB 860, Californians already have the unrestricted right at any time to simply pick up the phone and request a vote by mail ballot for any or all elections. There is no need to send ballots to those who have not requested them, and certainly not to registrants no longer in a position to vote legitimately. All voters deserve protection from the potential cancellation of their legal ballots by those who are facilitated to double vote, vote from the grave, vote from another state, etc.

13) Related Legislation: SB 29 (Umberg), Chapter 3, Statutes of 2021, requires county elections officials to mail a ballot to every active registered voter, and to allow voters to use a VBM ballot tracking system, for all elections proclaimed or conducted prior to January 1, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action (if amended)
AFSCME, AFL-CIO (prior version)
Asian Americans Advancing Justice California (if amended)
Berkeley City Council (prior version)
CaliforniaHealth+ Advocates
California Calls (if amended)
California League of Conservation Voters (if amended)
California State PTA (prior version)
California Teachers Association (prior version)

CALPIRG Students
Disability Rights California (if amended)
League of Women Voters of California (if amended)
Los Angeles County Board of Supervisors (prior version)
NextGen California (if amended)
Orange County Employees Association
Five Individuals

Opposition

Election Integrity Project California, Inc.
Four Individuals

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