

Date of Hearing: March 15, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 398 (Pellerin) – As Introduced February 2, 2023

SUBJECT: Voting: replacement ballots.

SUMMARY: Allows an elections official to provide a replacement vote by mail (VBM) ballot to a voter without the need for the voter to provide a specified statement under penalty of perjury. Specifically, **this bill:**

- 1) Eliminates a requirement that a voter provide a statement under penalty of perjury that the voter failed to receive, lost, or destroyed their original VBM ballot before the elections official provides the voter with a replacement VBM ballot, and instead requires the elections official to provide a replacement ballot to any voter upon request.
- 2) Changes the terminology used to describe the ballot that is issued to a voter after the issuance of the original VBM ballot for that voter from a “second vote by mail ballot” to a “replacement ballot.”
- 3) Makes technical and conforming changes.

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 no later than 29 days before the election, as specified. (Elections Code §3000.5)
- 2) Requires an elections official to provide a second VBM ballot to any voter upon receipt of a statement under penalty of perjury that the voter failed to receive, lost, or destroyed their original ballot. (Elections Code §3014(a))
- 3) Requires an elections official to provide a second VBM ballot to the 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 voter’s representative, as specified. (Elections Code §3014(b))
- 4) Requires an elections official to keep a record of each VBM ballot sent to and received from a voter and to verify, prior to counting any duplicate ballot, that the voter has not attempted to vote twice. (Elections Code §3014(d))
- 5) Permits a voter who has declined to disclose a political party preference to request the ballot of a political party that has authorized a voter who has declined to disclose a political party preference to vote in its partisan primary election, as specified. Permits the voter to make that request through various means, including by telephone or by an application over the internet, if available. (Elections Code §13502)

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

COMMENTS:

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

During countywide elections, a county may receive thousands of replacement ballot requests for lost or damaged ballots. The current process for voters to send ballot replacement request forms and to have those forms reviewed is redundant and adds additional work for elections workers since election management systems are already designed to track votes, prevent double votes, and verify voter signatures. AB 398 simplifies the replacement ballot request system by removing the requirement for physical replacement ballot requests. This bill will reduce both the workload of elections officials and speed up the process for voters without compromising the integrity of our elections.

2) **Use of VBM Ballots in California Elections:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which authorized any voter to become a permanent VBM voter, among other provisions. 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. As an accommodation to facilitate voting at the 2020 general election during the height of the COVID-19 pandemic, the Legislature approved and Governor Newsom signed AB 860 (Berman), Chapter 4, Statutes of 2020, which required county elections officials to mail a ballot to every active registered voter for the November 3, 2020 statewide general election, among other provisions. The policy of requiring county elections officials to mail a ballot to all active registered voters ultimately was made permanent through the passage of AB 37 (Berman), Chapter 312, Statutes of 2021. At every statewide election held since California began mailing a ballot to every active registered voter, more than 86% of Californians who voted did so using a VBM ballot. The following chart details the historical use of VBM ballots by California voters in statewide elections since 2000:

Election	Total Ballots Cast	VBM Ballots Cast	% VBM Ballots
2000 Primary Election	7,883,385	1,842,891	23.4%
2000 General Election	11,142,843	2,732,947	24.5%
2002 Primary Election	5,286,204	1,378,413	26.1%
2002 General Election	7,738,821	2,096,094	27.1%
2003 Statewide Recall Election	9,413,377	2,775,785	29.5%
2004 Primary Election	6,684,421	2,293,321	34.3%
2004 General Election	12,589,683	4,105,179	32.6%

2005 Statewide Special Election	7,968,757	3,183,614	40.0%
2006 Primary Election	5,269,142	2,471,358	46.9%
2006 General Election	8,899,059	3,696,940	41.5%
2008 Presidential Primary Election	9,068,415	3,777,094	41.7%
2008 Primary Election	4,550,227	2,671,230	58.7%
2008 General Election	13,743,177	5,722,465	41.6%
2009 Statewide Special Election	4,871,945	3,029,736	62.2%
2010 Primary Election	5,654,993	3,278,224	58.0%
2010 General Election	10,300,392	4,989,852	48.4%
2012 Primary Election	5,328,296	3,471,570	65.2%
2012 General Election	13,202,158	6,753,688	51.2%
2014 Primary Election	4,461,346	3,096,104	69.4%
2014 General Election	7,513,972	4,547,705	60.5%
2016 Primary Election	8,548,301	5,036,262	58.9%
2016 General Election	14,610,509	8,443,594	57.8%
2018 Primary Election	7,141,987	4,834,975	67.7%
2018 General Election	12,712,542	8,302,488	65.3%
2020 Primary Election	9,687,076	6,982,750	72.1%
2020 General Election	17,785,151	15,423,301	86.7%
2021 Statewide Recall Election	12,892,578	11,733,429	91.0%
2022 Primary Election	7,285,230	6,647,212	91.2%
2022 General Election	11,146,610	9,755,188	87.5%

A voter’s ballot is classified as a VBM ballot if it was issued to the voter as a VBM ballot, even if the ballot is not ultimately returned by mail. According to information from the SOS, in recent statewide elections, more than a third of VBM ballots have been returned by voters through methods other than by mail, including VBM ballots that are returned to ballot drop boxes, ballot drop-off locations, polling places, and vote centers. For the November 2020 presidential general election, more than 60% of the VBM ballots cast were returned by a method other than by mail.

- 3) **VBM Ballot Applications, Replacement Ballots, and Previous Legislation:** Last year, the Legislature approved and Governor Newsom signed AB 2608 (Berman), Chapter 161, Statutes of 2022, which made 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. Among other provisions, AB 2608 repealed provisions of law related to applications for VBM ballots (including laws that that allowed elections officials to offer voters the ability to apply for VBM ballots electronically or by telephone) and consolidated provisions of law that govern the issuance of a second VBM ballot to a voter.

On September 29, 2022, the SOS issued a memorandum to county elections officials to address the changes made by AB 2608 and the procedures for requesting a replacement ballot. That memorandum recognized that AB 2608 repealed the law that allowed voters to apply for a VBM ballot by telephone, and noted that “[u]nder amended Elections Code section 3014, a second [VBM] ballot shall be provided to a ‘voter upon receipt of a statement under penalty of perjury that the voter has failed to receive, lost, or destroyed their original ballot.’” The memorandum went on to note that because Section 3014 of the Elections Code

requires a statement to be made under penalty of perjury, “our office is of the opinion that this request for a replacement ballot cannot be made telephonically.”

By repealing the requirement that a voter must provide a specified statement under penalty of perjury before the elections official can provide the voter with a replacement VBM ballot, and instead requiring the elections official to provide a replacement ballot to a voter upon request, this bill would allow elections officials to issue replacement ballots over the phone or through other means without the need for a written request that is signed by the voter.

Nothing in this bill, however, allows an elections official to issue a replacement ballot to a person other than the voter themselves without a written request from the voter. As detailed above, existing law requires a voter to submit a written request, on a form prescribed by the SOS, signed by the voter under penalty of perjury, if the voter wants a replacement ballot to be delivered to the voter’s representative. Nothing in this bill changes that existing requirement.

- 4) **Verification of Voter’s Identity and Suggested Amendments:** As described above, state law previously allowed voters to apply for a VBM ballot electronically or by telephone. In both cases, state law required the elections official to verify a voter’s personal identifying information before issuing a VBM ballot, and required that the applicant be notified that an application for a VBM ballot may not be made by a person other than the registered voter.

Additionally, existing state law allows a voter who has declined to disclose a political party preference to request to receive the ballot of a political party for a partisan primary election in certain circumstances. When such applications are made by phone, existing law similarly requires the elections official to verify a voter’s personal identifying information before issuing a party’s ballot to the voter, and requires that the applicant be notified that a request for a political party’s ballot may not be made by a person other than the voter.

The committee may wish to consider similar amendments to this bill, both to ensure that a voter’s identity is confirmed before they are issued a replacement ballot and to ensure that voters are aware of existing restrictions on requesting a replacement ballot for another voter. Specifically, the committee may wish to amend this bill as follows:

(1) Require a voter who requests a replacement ballot to provide the elections official with personal identifying information that matches the information contained on the voter’s affidavit of registration, including first and last name, residence address, and date of birth.

(2) Require the elections official, prior to issuing a replacement ballot, to advise the requestor that only the registered voter may request a replacement ballot, and that a request for a replacement ballot that is made by any person other than the registered voter is a criminal offense.

- 5) **Arguments in Support:** The sponsor of this bill, the California Association of Clerks and Election Officials, writes in support:

Under current law, elections officials are required to provide a second vote by mail voter ballot to any voter upon receipt of a statement under penalty of perjury that the voter has failed to receive, lost, or destroyed their original ballot. Without first receiving a statement under penalty of perjury from the voter, election officials are currently barred from issuing a replacement ballot, even if that voter has already contacted the election official to request a replacement ballot. In these instances, a voter may be subjected to a longer wait period as they work through all of the steps that are necessary to initiate the replacement ballot process.

AB 398 clears the way for elections officials to properly and more efficiently service voters by allowing election officials to quickly act on replacement ballot requests as they are received. Election officials will be able to initiate the replacement ballot process, in real time, as the voter makes the request. Additionally, AB 398 will treat voters equally by removing this same ballot replacement requirement for military and overseas voters thereby ensuring that they too have access to this same important service just like their domestic counterparts. Finally, as you may be aware, elections officials only count one ballot for each voter and have processes in the place to reject any additional ballots cast should a voter attempt to abuse the replacement ballot process to vote more than once.

- 6) **Related Legislation:** AB 626 (Pellerin), which is also being heard in this committee today, allows a voter to return their VBM ballot to an in-person voting location, without placing the ballot into a ballot identification envelope, if the ballot is returned to a vote center, as specified.
- 7) **Previous Legislation:** AB 2227 (Keeley), Chapter 753, Statutes of 2002, allowed local elections officials to permit voters to apply for VBM ballots (which were referred to as “absentee ballots” at the time) electronically. AB 530 (Quirk-Silva), Chapter 501, Statutes of 2013, permitted local elections officials to allow voters to apply for VBM ballots by telephone. The provisions of those two bills were repealed by AB 2608 (Berman), Chapter 161, Statutes of 2022, as described above.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials (Sponsor)
California Environmental Voters
Disability Rights California

Opposition

None on file.

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