

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1836 (Jones) – As Amended: March 11, 2014

SUBJECT: Vote by mail ballots.

SUMMARY: Requires a person who is returning a vote by mail (VBM) ballot for another voter to sign a roster and to provide specified information when returning that ballot. Specifically, this bill:

- 1) Requires a VBM identification envelope to contain the residence address of any person who has been authorized by the voter to return the VBM ballot.
- 2) Requires an elections official to provide each polling place with a blank roster for recording the following information from each person returning a VBM ballot:
 - a) The name of the VBM voter;
 - b) The name of the person authorized by the voter to return the VBM ballot;
 - c) The signature of the person authorized by the voter to return the VBM ballot;
 - d) The residence address of the person authorized by the voter to return the VBM ballot;
and,
 - e) The relationship to the voter of the person authorized by the voter to return the VBM ballot.
- 3) Requires the voter or person authorized by the voter to return the VBM ballot, before returning a VBM ballot to an elections official or a member of the precinct board, to fill in the information required above and requires the person authorized by the voter to return the VBM ballot to present proof of his or her identity and residency that must match his or her name and residence address printed on the identification envelope.
- 4) Requires that the proof of identity and residency consist of a current and valid photographic identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the person. Requires an elections official or precinct board member, if a person is unable to present proof of his or her identity or residency, to contact the voter to verify that the person is authorized to return the voter's VBM ballot. Prohibits a voter's VBM ballot from being counted unless the person returning the ballot presents proof of identity and residency or the elections official or precinct board member verifies that the person is authorized to return the ballot.
- 5) Requires the roster to be preserved with other elections documents.

EXISTING LAW:

- 1) Requires that an application for a VBM ballot be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election.
- 2) Permits a VBM voter who is unable to return his or her VBM ballot to designate his or her spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the VBM voter to return the voter's VBM ballot to the elections official from whom it came or to the precinct board at a polling place within the jurisdiction.
- 3) Prohibits a VBM ballot from being returned by a paid or volunteer worker of a general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest the individual designated to return the ballot is performing a service. Provides this prohibition does not apply to a candidate or candidate's spouse.
- 4) Requires a VBM identification envelope to contain spaces, which must contain the name, relationship to the voter, and signature of the person who is authorized to return the VBM ballot for another voter. Provides that a VBM ballot shall not be counted if it is not delivered pursuant to existing law.
- 5) Provides that any person who votes more than once, attempts to vote more than once, or impersonates or attempts to impersonate a voter at an election is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year.
- 6) Provides that every person who defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

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

COMMENTS:

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

As we seek to expand voter participation and make it ever easier for people to register and vote, we also increase opportunities for fraud. Therefore, while the goal of increasing the participation of the electorate is important, it must also be balanced with the other safeguards to protect the integrity of our voting system.

This concern was voiced by former Gov. Gray Davis when he vetoed a bill that would have allowed VBM voters' co-workers or friends to return their ballots to the polls. Gov. Davis noted that "this bill would weaken the most important safeguard against fraud by allowing virtually anyone to handle an official ballot on behalf of the voter."

Governor Davis' concerns about the susceptibility of VBM ballots to fraud were also shared by the National Commission on Federal Election Reform in 2001, a bi-partisan

commission of election experts co-chaired by former Presidents Jimmy Carter and Gerald Ford. The Commission issued a number of recommendations for reforming the electoral process in the U.S, but it specifically discouraged the growing use of no-fault absentee balloting.

“Growing use of absentee voting has turned this area of voting into the most likely opportunity for election fraud now encountered by law enforcement officials. These cases are especially difficult to prosecute, since the misuse of a voter’s ballot or the pressure on voters occurs away from the polling place or any other outside scrutiny. These opportunities for abuse should be contained, not enlarged.”

The Commission noted that VBM ballots increase opportunities for ballot box stuffing schemes, one of the oldest and most frequently practiced forms of vote fraud, citing cases in which persons had fraudulently voted absentee ballots without the knowledge of voters, or had voted them on behalf of vulnerable persons such as nursing home residents.

In California, a policeman for the City of Bell informed the FBI and the Secretary of State that city officials had ordered off-duty police officers to provide VBM ballots to voters and to instruct residents how to vote. He also asserted that ballots were filled out for people who were dead. Other Bell residents complained that city officials walked door-to-door encouraging them to fill out VBM ballots. In one case, a woman said she signed papers she had been told were election paperwork, but when she went to the polls on Election Day, records showed that she had already voted absentee. Two other voters said that two council members came to their homes urging them to fill out VBM ballots. The voters did – and a few weeks later the council members collected the ballots, saying that they would personally submit them.

The illegal VBM ballot harvesting in Bell was especially harmful to its citizenry because VBM ballots supplied most of the votes cast in a 2005 special election that cleared the way for Bell City Council members to significantly increase their own salaries. The high salaries subsequently paid to top administrators — including nearly \$800,000 for the former city manager — sparked widespread outrage and criminal charges.

Further, in 2001, a court annulled the results of a Compton City Council election after it found that the winning candidate had illegally registered non-citizens to vote, told them how to vote, was present when they voted, harvested their VBM ballots, and then delivered the ballots to the polls. This vote fraud never would have been uncovered except for the fact that the incumbent mayor contested the related mayoral election, which was on the same ballot, after losing by less than 300 votes.

Although current law limits the persons who may deliver a VBM voter’s ballot to the polls and prohibits candidates and campaigns from doing this, these safeguards are impossible to enforce in actual practice. When third parties show up at a polling place with one or two, or even a boxful of VBM ballots, they are not asked who they are, whether they were authorized by the voter, or whether they are working for a campaign. As we have seen, illegal VBM harvesting is most likely to be performed by persons associated with political candidates and parties.

AB 1836 cannot stop all the forms of fraud associated with VBM ballots. But it will go a long way to prevent the kind of illegal VBM ballot harvesting schemes we have seen in Bell and Compton, by ensuring that persons who deliver VBM ballots to polling places are properly authorized by the voters in question to handle their ballots. It will also provide a paper trail as to the identity of these persons, should any questions arise regarding their qualifications.

- 2) Current Practice: Under current law, a person that is unable to return his or her VBM ballot is permitted to designate his or her spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the VBM voter to return the voter's VBM ballot to the elections official from whom it came or to the precinct board at a polling place within the jurisdiction. Additionally, existing law requires the designated person to provide his or her name, relationship to the voter, and his or her signature on the VBM identification envelope and provides that a ballot shall not be counted if it is not delivered in compliance with the law. This bill makes changes to this practice and requires a designated person, when returning the VBM ballot to a polling place, to also fill out a roster and provide his or her name, the name of the VBM voter, the signature of the authorized person, the residence address of the authorized person, and his or her relationship to the voter. In addition, an authorized person must also show proof of identity and residency. This bill prohibits a voter's VBM ballot from being counted unless the person returning the ballot presents proof of identity and residency. Moreover, if the authorized person is unable to show proof of identity and residency, this bill prohibits the ballot from being counted unless the elections official or precinct board member verifies that the person is authorized to return the ballot. In other words, this bill could require a VBM ballot to be rejected through no fault of the voter if the person who is returning the VBM ballot fails to comply with any of the provisions of this bill.
- 3) Existing Penalties: Current law provides for a variety of safeguards in law to protect against voter fraud and abuse. Existing law makes it a felony for any person who defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than the candidate for whom he or she intended or desired to vote. As mentioned above, current law also provides that a VBM ballot returned by an authorized voter will not be counted unless the designated person provides his or her name, signature and relationship to the voter on the VBM ballot identification envelope.

Moreover, once the ballot is received by the elections official, California law requires the elections officials to compare the signature on a VBM ballot envelope with the signature on that voter's affidavit of registration before the VBM ballot may be counted. If those signatures do not match, the ballot will not be counted. A person who casts a fraudulent VBM ballot at an election can be charged with a number of different felonies, any one of which is punishable by up to three years in state prison.

Furthermore, the Legislature has taken steps recently to address the potential for fraud in connection with VBM ballots. For example, many elders in state-licensed or state-subsidized facilities or programs have physical and cognitive impairments or conditions that may limit their ability to independently cast a vote. As a result, many elders choose to vote via VBM ballot. As a result of the high use of VBM ballots in this population, some questions and concerns have arisen regarding the influence elders are receiving from caregivers in the receipt, completion, and return of their ballots. In response to those concerns, the Legislature

approved and the Governor signed AB 547 (Gatto), Chapter 260, Statutes of 2011, which makes it a misdemeanor for a person who is providing care or direct supervision to an elder in a state-licensed or state-subsidized facility or program to coerce or deceive the elder into voting for or against a candidate or measure contrary to the elder's intent or in the absence of any intent of the elder to cast a vote for or against that candidate or measure.

- 4) Is There a Problem? In the background information provided by the author's office, the author argues that the current election system is susceptible to fraud and abuse, especially for VBM ballots. According to the author, due to the separation of both ballot and voter from the polling place, a VBM ballot is vulnerable to the possibility of voter coercion and intimidation. The author provides three examples specific to California that the author argues demonstrate the need for this bill. According to the author, a House of Representatives investigation revealed that a 1996 congressional election in Orange County included 748 votes that had been cast illegally, including 624 votes cast by non-citizens and 124 invalid VBM ballots. In addition, in 2001 a court annulled the results of Compton City Council election after it found that the winning candidate had illegally registered non-citizens, told them how to vote, was present when they voted, harvested their VBM ballots, and then delivered the ballots to the polls. Finally, it was alleged that in 2009 illegal VBM ballot harvesting took place in the City of Bell, where allegedly ballots were filled out for people who were dead, voters were told how to vote and then their ballots were collected and returned.

While these examples may demonstrate that VBM ballot harvesting occasionally occurs, in violation of state law, it is unclear whether the three examples demonstrate that this sort of election fraud is a widespread problem throughout the state of California. According to information provided by the Secretary of State's Election Fraud Investigation Unit, from 1994 to 2010, there has been 1 conviction for fraudulent VBM voting, 0 convictions for fraudulent handling of ballots, and 0 convictions for corruption of voters.

Additionally, the examples provided involve complicated multifaceted election schemes to thwart voters and commit voter fraud. As a result, it is unclear whether this bill, which only addresses VBM ballots returned at the polls, would have prevented this type of election abuse from occurring and ultimately be an appropriate remedy.

Finally, even if VBM ballot harvesting is a significant problem, as alleged by the author, the committee may wish to consider whether this bill is an appropriate response to such a problem. Should a VBM voter who completes a ballot in accordance with existing law be disenfranchised due to improper conduct of a person who returns that voter's ballot, even if the voter was not involved in that improper conduct?

- 5) Logistical Issues: This bill adds a variety of new requirements to the VBM process that has the potential to create new barriers for an eligible voter who is trying to cast his or her VBM ballot. Moreover, due to the likelihood for increased voter confusion as a result of these new requirements, there will likely be significant delays in processing voters and subsequently increased wait times at polling places. To the extent that this bill results in longer lines at polling places, this bill could result in reduced voter participation by those voters who are not willing or able to wait in the longer polling place lines.

Furthermore, this bill does not provide any detail as how or when an elections official or

precinct board member must contact the voter and verify that the person is authorized to return the voter's VBM ballot, when an authorized voter is unable to present proof of identity and residency. Current law requires a county elections official to certify elections results no later than 28 days after election day. This new requirement adds new duties and tasks to elections officials that could negatively impact the elections officials' ability to certify election results on time.

- 6) Arguments in Opposition: The California Association of Clerks and Election Officials writes in opposition:

Current law provides that if a ballot is received in a timely manner and the signature matches the signature on file for voter whose name appears on the ballot, then the ballot is to be tallied. This is true for ballots returned by mail or personal delivery by the voter or an authorized third party. This bill would place an additional burden upon those voters unable to personally mail or return their voted ballot who must, in order to cast their votes, rely upon their ability to secure a third party to return it in their stead. Our concern is that this could lead to a decrease in participation among these voters...

While we share the Assembly Member's concern for security and integrity of elections, we do not believe this bill would improve the effectiveness of existing controls and security measures. If passed, this bill would result in voters being treated unequally and has the potential to disenfranchise eligible voters and decrease voter participation. It would increase costs and cause congestion at the poll place, negatively impacting voting at the polls.

- 7) State Mandates: The last three state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2014-15 fiscal year. This bill adds another elections-related mandate by requiring county elections officials to provide blank rosters at polling places and record information, as specified, from an authorized person returning a VBM ballot as well as verify with the VBM voter that the person is authorized to return the ballot if an authorized voter is unable to show proof of identity and residence. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.
- 8) Previous Legislation: AB 876 (Garcia) of 2006, would have required a person who is returning a VBM ballot for another voter to sign a roster and to provide specified information when returning that ballot. AB 876 (Garcia) failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Asian Americans Advancing Justice – Los Angeles
California Association of Clerks and Election Officials
California Professional Firefighters

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