

Date of Hearing: August 31, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 562 (Fong) – As Amended: August 29, 2012

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (May 23, 2011) SENATE: 28-9 (August 31, 2012)
(vote not relevant)

SUBJECT: Vote by mail ballots and election results statements.

SUMMARY: Allows vote by mail (VBM) ballots to be counted if they are cast by election day and received by the elections official no later than three days after the election.

The Senate amendments delete the Assembly version of the bill, and instead:

- 1) Make various findings and declarations about recent and forthcoming closures of United States Postal Service (USPS) facilities, and the impact that those closures may have on the delivery of VBM ballots.
- 2) Provide that a VBM ballot is timely cast if it is received by the voter's elections official no later than three days after election day and either of the following is satisfied:
 - a) The ballot is postmarked on or before election day; or,
 - b) If the ballot has no postmark, a postmark with no date, or an illegible postmark, the VBM ballot identification envelope is signed and dated on or before election day.
- 3) Allow counties to continue to use envelopes and other official election materials that do not take into account the provisions of this bill until the supply of those materials is exhausted.
- 4) Extend the deadline for elections officials to prepare a certified statement of the results of an election from 28 days after the election to 31 days after the election.
- 5) Add an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Provides that a VBM ballot must be received by the elections official from whom it was obtained, or by a precinct board in that jurisdiction, no later than the close of polls on election day in order for that ballot to be counted.
- 2) Require a VBM ballot identification envelope to include specified information, including the following:

- a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope;
 - b) The signature of the voter; and,
 - c) The date of signing.
- 3) Require the elections official to prepare a certified statement of the results of an election and to submit that statement to the governing body within 28 days of the election.

AS PASSED BY THE ASSEMBLY, this bill added the Wood Memorial to the group of specific stake races which are exempt from the 32-race per day limit on imported races, as defined.

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

COMMENTS:

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

Earlier this year, the Assembly Elections and Redistricting Committee and the Senate Elections and Constitutional Amendments Committee held a joint oversight hearing to discuss recent and forthcoming USPS facility closures and the impact on voters and the upcoming presidential elections. During the hearing, state and county elections officials testified about the impact that recent post office and processing facility closures had on their jurisdictions and on local elections, as well as the anticipated challenges with more closures expected.

One of the most significant impacts those closures have had on the election process is that there have been significant delays in mail delivery in some circumstances. Elections officials from counties that were previously served by closed facilities have indicated that some first class mail took five to seven days to arrive after closures of USPS facilities, compared to the usual delivery time of one to three days.

Existing law requires a voted VBM ballot to be received by either the elections official who issued the ballot or a polling place in the county before the closing of the polls on election day. Due to the USPS facility closures, however, voters who mail their ballots within a reasonable timeframe could, through no fault of their own, find themselves disenfranchised due to delays in mail delivery.

Six USPS mail processing facilities in California already have been closed since the last statewide general election, and two more are scheduled to be closed before this year's presidential general election.

This bill seeks to mitigate against the negative impacts of USPS facility closures and to protect voters' right to vote by allowing ballots that are postmarked or signed and dated by election day to be counted, as long as those ballots are received by the elections official by the third day after the election.

- 2) Florida Law: The issue of counting VBM ballots received after election day gained increased attention during the aftermath of the 2000 Presidential Election in Florida. VBM ballots cast in Florida that are received from overseas are counted if received up to 10 days after the election, provided that the ballot is signed and dated or postmarked on or prior to election day. That provision of Florida law is the result of a consent decree, entered into in 1982 due to concerns that overseas voters did not have sufficient time between the primary and general election (which were only a month apart) to receive, vote, and return their ballots.
- 3) Breaking New Ground: If this bill passes, it will represent the first time that California state law explicitly has allowed any ballot which was received after election day to be counted. Florida's experience with counting ballots that arrive after election day shows that adopting such a policy can result in unequal treatment of votes. In a review of overseas VBM ballots that were counted in Florida in 2000, the New York Times found that hundreds of ballots that arrived after election day and were postmarked after the election were improperly counted.
- 4) 2010 Primary Election Ballots in Riverside County: In Riverside County, 12,563 VBM ballots were discovered at a local post office the day after the June 8, 2010 statewide primary election. These ballots were eventually accepted by the county elections official, but only after a superior court judge ruled that they should be counted. In this instance, the voters had mailed their ballots in time for normal delivery but county elections officials, who previously and routinely visited certain post offices to collect VBM ballots, did not visit the post office that actually had these ballots. While a plain reading of the applicable statute would have resulted in these ballots being rejected, the presiding judge ordered that the ballots be counted based on a provision of the California Constitution which reads "A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted."
- 5) VBM Ballot Deadlines in Other States: Each state has its own deadlines for the return of mail ballots. In some states, the deadline varies depending on whether the individual submitting the ballot is a civilian living in the United States (US), or a military or overseas voter covered under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

According to information from the National Association of Secretaries of State, three states require mail ballots from civilians living in the US to be returned prior to election day in order to be counted, while 36 states (including California) require such ballots to be received by election day. Eleven states and the District of Columbia allow mail ballots from civilians living in the US to arrive after election day and still be counted as long as the ballot is postmarked (or in some cases, signed and dated) by election day.

For active duty military and overseas citizens who are covered under UOCAVA, one state requires mail ballots to be returned prior to election day in order to be counted, and 32 states (including California) require ballots to be received by election day. Seventeen states and the District of Columbia allow mail ballots from voters who are covered under UOCAVA to arrive after election day and still be counted. Most of those states require the ballot to be postmarked (or in some cases, signed and dated) by election day.

- 6) State Mandates: The 2011-2012 and 2012-2013 state budgets suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all six existing elections-related mandates. This bill adds another mandate on counties.
- 7) Related Legislation: SB 348 (Correa) of the current legislative session would have allowed VBM ballots to be counted if they were postmarked by election day and received by the elections official no later than six days after the election. SB 348 was approved by the Senate Committee on Elections & Constitutional Amendments, but subsequently was held on the Senate Appropriations Committee's suspense file.
- 8) Prior Version: The prior version of this bill, which was approved by the Assembly, dealt with horse racing. Those provisions were removed from this bill in the Senate, and the current contents were added. As a result, this bill has been re-referred to this committee pursuant to Assembly Rules 77.2.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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