

Date of Hearing: February 9, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
SB 29 (Umberg) – As Amended January 15, 2021

SENATE VOTE: 29-7

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 proclaimed or conducted prior to January 1, 2022. Specifically, **this bill:**

- 1) 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.
- 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 proclaimed or conducted prior to January 1, 2022.
- 3) Contains various findings and declarations.
- 4) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

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 begin mailing ballots and other required materials to voters no later than 29 days before the day of the election.
- 3) 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.
- 4) 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.
- 5) Provides that certain local elections may be conducted as all-mailed ballot elections, as specified.

- 6) Requires the SOS to establish a system that a county elections official may use to allow a voter to track the voter's VBM ballot through the mail system and as the ballot is processed by the county elections official.
- 7) Requires an elections official, if specified data from the United States Postal Service 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: According to the Senate Appropriations Committee:

- The fiscal impact of this bill would be driven by several factors, including (1) the number of elections conducted and proclaimed in 2021, and (2) the number of voters eligible to participate in these elections that are not presently permanent VBM voters.
- SOS indicates that its implementation of the bill would not result in new state costs. The SOS ballot tracking system has already been deployed and is maintained using federal funds.
- By requiring counties to mail a ballot to every registered voter and to use a ballot tracking system, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. Mailing costs for two elections currently scheduled in 2021 will total about \$300,000 (General Fund).

COMMENTS:

- 1) **Purpose of the Bill:** According to the author, "California conducted a safe, secure, and accurate November 2020 Presidential Election due, in large part, to SB 423 (2020) authored by Senator Umberg and AB 860 by Assemblymember Berman. The historic turnout for the 2020 election was 80.7% (as of early December) despite the pandemic. AB 860 and this year's successor, SB 29 will ensure that all eligible voters living in jurisdictions conducting elections in 2021 will be mailed a vote-by-mail ballot in order to give the option for individuals to vote at home if they wish."
- 2) **COVID-19 and the 2020 Presidential General Election:** According to information from the California Department of Public Health, at the time California conducted its March 3, 2020 statewide primary election, there were only 43 confirmed cases of COVID-19 in the state. As a result, voting in the primary was largely unaffected by the COVID-19 pandemic, though some county elections officials reported that they had a larger number of poll workers than usual who failed to show up on election day.

Following the primary election, the SOS's office established a working group to discuss the conduct of elections during the COVID-19 pandemic, and to develop recommendations for how to conduct the November 2020 presidential general election in light of the challenges posed by COVID-19. The working group included SOS, legislative, and gubernatorial staff, local elections officials, and representatives from numerous good government and voting rights groups, among others.

Among the issues that were discussed during the working group meetings were concerns that the COVID-19 pandemic would make voters less willing to vote in person, reduce the number of people willing to serve as poll workers, reduce the number of locations willing to serve as in-person voting locations, and require the use of different types of locations for in-person voting given the potential need to be able to accommodate physical distancing during in-person voting.

Those discussions helped inform consideration of two bills that subsequently were enacted to govern the conduct of the November 2020 presidential general election. AB 860 (Berman), Chapter 4, Statutes of 2020, required county elections officials to mail ballots to all active registered voters for the November 3, 2020 statewide general election, and required 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 that election, among other provisions. SB 423 (Umberg), Chapter 31, Statutes of 2020, authorized changes to in-person voting requirements for the November 3, 2020, statewide general election, and required the state and counties to conduct voter education and outreach campaigns to notify voters about voting in that election, among other provisions. Both AB 860 and SB 423 were applicable only to the November 2020 presidential general election. No other legislation has been enacted to make further accommodations for the conduct of elections in California while the COVID-19 pandemic remains ongoing. The provisions of this bill are based off two of the provisions of AB 860.

- 3) **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 precinct 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.
- 4) **2021 Elections:** Although California does not hold regularly-scheduled statewide elections in odd-numbered years, the provisions of this bill would apply to local elections and special elections that are held in the state this year. Two special elections to fill vacancies in the Legislature have already been scheduled for later this year.

A special primary election will be held in Senate District 30 on March 2, 2021, to fill the vacancy that occurred when former-Senator Holly Mitchell resigned from the Senate after being elected to the Los Angeles County Board of Supervisors. If no candidate receives a majority of the vote in that special primary election, a special runoff election will be held on May 4, 2021. Because Senate District 30 is located entirely in Los Angeles County, and

because Los Angeles County conducts elections pursuant to the CVCA, all active registered voters will receive a VBM ballot for that election even in the absence of this bill.

In Assembly District 79, a special primary election has been scheduled for April 6, 2021, to fill the vacancy that occurred when former-Assemblymember Shirley Weber resigned from the Assembly after being nominated and confirmed as Secretary of State. If no candidate receives a majority of the vote in that special primary election, a special runoff election will be held on June 8, 2021. The 79th Assembly District is located entirely in San Diego County, which does not conduct elections pursuant to the CVCA. Accordingly, nothing in state law currently requires or permits the county to mail a VBM ballot for that special election to every active registered voter.

- 5) **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, as described above, 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 have signed-up to track their VBM ballots using the SOS system.
- 6) **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.

One provision of this bill specifies 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. That provision is intended to clarify that this bill does not override requirements in existing law for elections officials to provide in-person voting opportunities. It is not intended to impose new in-person voting requirements beyond those in existing law. Accordingly, nothing in this bill is intended to require elections officials to establish polling places or vote centers for elections that may be conducted as all-mailed ballot elections under existing law, or to designate a polling place for an all-mailed ballot precinct.

- 7) **Arguments in Support:** In support of this bill, the Union of Concerned Scientists writes:

Given the ongoing COVID-19 pandemic we believe that the state must continue to protect the fundamental right of all eligible Californians to vote and guarantee

those living in jurisdictions conducting special elections this year will be mailed a VBM ballot.

No one should have to choose between their health and exercising their right to vote. SB 29 ensures that every voter is mailed a ballot for 2021 elections and is an important step in promoting resilience in the state's elections and ensuring that every California voter will have the opportunity to fill out their ballot in a safe manner. This is also an important measure to ensure the health and safety of poll and election workers.

8) **Arguments in Opposition:** In opposition to a prior version of this bill, Election Integrity Project California, Inc. (EIPCa) wrote:

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 VBM for any or all elections. Those who still feel too vulnerable to venture out to vote in person do not need the State to make their voting decisions for them. No one's health will be jeopardized by allowing voters to make their own choices. And doing so will protect legitimate voters from the cancellation of their legal ballots by those who are facilitated to double vote, vote from the grave, vote from another state, etc.

We urge you not to double down on the ill-advised AB 860 and its catastrophic impact on both election integrity and on voter confidence.

The Howard Jarvis Taxpayers Association writes that they oppose this bill unless it is amended "to require [bar code tracking] technology be employed to assist in the maintenance of accurate and current voter registration records and that the Secretary of State be required to collect and publicly report for each county, within 30 days of the election, the number of ballots mailed out, returned as undeliverable, returned completed, counted, and the number of ballots not counted and the reason."

9) **Related Legislation:** AB 37 (Berman), which is pending in this committee, requires elections officials to mail a ballot to every active registered voter and to make a ballot tracking system available for all future elections, as specified. Because AB 37 does not contain an urgency clause, it would not affect elections held in 2021.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO
California Teachers Association
Ignite
Orange County Employees Association
Peace and Freedom Party of California
Rural County Representatives of California
San Diego County
Union of Concerned Scientists

Opposition

Election Integrity Project California, Inc.
Howard Jarvis Taxpayers Association (unless amended)

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