

Date of Hearing: June 25, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

SB 362 (Padilla) – As Amended: April 8, 2013

SENATE VOTE: 30-7

SUBJECT: Voting procedures: natural disasters.

SUMMARY: Authorizes an emergency worker, as defined, to cast a ballot outside of his or her precinct upon the declaration of an out-of-state emergency by the Governor and the issuance of an executive order, as specified. Specifically, this bill:

- 1) Makes the following findings and declarations:
 - a) Natural disasters outside California can affect a state resident's ability to vote. Earthquakes, hurricanes, and other disasters can destroy or damage election infrastructure, including the electrical and telecommunications grid and polling places, disrupt the delivery of vote by mail (VBM) ballots by the United States Postal Service, and displace election officials and interrupt their duties.
 - b) California residents volunteer to help victims of natural disasters, including their family members. California voters, such as firefighters, police officers, National Guardsmen, utility workers, and average citizens travel to areas affected by disasters for extended periods of time to help with recovery efforts that can include other states and countries. Disasters and volunteer efforts can occur close to an election and affect a volunteer's ability to vote.
 - c) Currently, neither the Governor, the Secretary of State (SOS), nor county elections officials have the authority to establish procedures and guidelines to specifically allow residents affected by an out-of-state disaster to vote.
- 2) Defines an emergency worker, for the purposes of this bill, to mean a person who is officially engaged in responding to the proclamation of an out-of-state emergency and whose vocation has been identified in an executive order relating to the state of emergency.
- 3) Requires an elections official, upon the declaration of an out-of-state emergency by the Governor and the issuance of an executive order authorizing an emergency worker, as defined, to cast a ballot outside of his or her home precinct, to issue a VBM ballot to an emergency worker upon request using a process to be determined by the elections official.
- 4) Provides that in order to be counted, a VBM ballot cast pursuant to this bill shall be received by the elections official no later than three days after election day and postmarked on or before election day or time-stamped or date-stamped by a private mail delivery company on or before election day.

- 5) Requires an elections official, upon receipt of the returned ballot, to process the ballot in accordance with existing law.
- 6) Permits a VBM ballot to be sent to the emergency worker via electronic mail or facsimile.

EXISTING LAW:

- 1) Provides that, upon the declaration of a state of emergency by the Governor and the issuance of an executive order authorizing an emergency worker to cast a ballot outside of his or her home precinct, elections officials in the counties included in the executive order shall, upon demand, issue to an emergency worker a provisional ballot that may be identical to the provisional ballot offered to other voters in the county, using a process to be determined by the elections official.
- 2) Requires an elections official to transmit for processing any ballot cast, including any materials necessary to process the ballot, to the elections official in the county where the voter is registered to vote.
- 3) Designates the SOS as the chief elections officer of California.
- 4) Permits the Governor, during a state of war or a state of emergency, to suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency.
- 5) Permits the Governor, during a state of war emergency or state of emergency, to make, amend, and rescind orders and regulations that have the force and effect of law. Requires all orders, regulations, amendments, or rescissions be issued in writing and take effect immediately upon their issuance. Requires the orders and regulations to have no further force or effect once the state of war emergency or state of emergency has been terminated.

FISCAL EFFECT: According to the Senate Appropriations Committee, unknown costs but likely less than \$25,000 (General Fund).

Actual costs are unknown and will depend on the extent and frequency of the disaster, whether the disaster occurs during an election period, and the number of personnel who are not already registered as vote-by-mail voters. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

Last November we saw how a natural disaster outside of California can affect our voters. Hurricane Sandy made landfall on the east coast a week before election the 2012 Presidential Election.

Immediately, volunteers from the California Utilities Emergency Association were called in to help. The association represents almost 90 cities, state agencies, and public &

private utilities. These volunteers had little time to prepare special arrangements to vote. And many had missed the deadline to apply for an absentee ballot.

Neither the Governor nor the Secretary of State nor County Election Officials had the authority to allow the volunteers to vote under special circumstances. Hundreds of California disaster relief volunteers were unable to vote. SB 362 will change that.

Under current law, the Governor can declare a state of emergency and authorize certain voting benefits to emergency workers assisting within California. Current law does not provide any process for California emergency workers helping outside the state. SB 362 will apply the current process for in-state disasters to out-of-state disasters.

- 2) Out-of-State Emergencies: As mentioned above, Hurricane Sandy, which occurred during the 2012 November general election, was an eye-opening experience that prompted many states to question and consider whether they were ready and prepared for the next emergency. In times of emergencies, having clear direction on what is permitted and what is not can be helpful. For instance, according to the background material provided by the author, in the aftermath of Hurricane Sandy, the Los Angeles Department of Water & Power, SoCal Edison, San Diego Gas & Electric, Pacific Gas & Electric, the California Red Cross, and the California Emergency Management Urban Search and Rescue Team, and many other California residents went to New York and New Jersey to volunteer. Many of the California volunteers had little time to prepare special arrangements to vote and the deadline to apply for a VBM ballot had already passed. Consequently, the California Utilities Emergency Association (CUEA), which oversees California's national relief efforts, found that several hundred utility workers were unable to vote.

Current law provides that, upon the declaration of a state of emergency by the Governor and the issuance of an executive order authorizing an emergency worker to cast a ballot outside of his or her home precinct, elections officials in the counties included in the executive order shall, upon demand, issue to an emergency worker a provisional ballot that may be identical to the provisional ballot offered to other voters in the county, using a process to be determined by the elections official. However, the author's statement points out that current law does not provide the Governor, the SOS, or county elections officials with the authority to allow out-of-state volunteers to vote under special circumstances. The provisions of this bill will address this issue and require an elections official, upon the declaration of an out-of-state emergency by the Governor and the issuance of an executive order authorizing an emergency worker, as defined, to issue a VBM ballot, upon request, to an emergency worker using a process determined by the elections official. In addition, this bill allows the VBM ballot to be sent to the emergency worker via electronic mail or facsimile. Providing county elections officials with the flexibility to send a VBM ballot via email or fax and allowing emergency workers extra time for their ballot to be received by the elections official will ensure California volunteers are not disenfranchised.

- 3) Efforts on the Federal Level: To support state efforts aimed at establishing sound administrative election practices in emergency conditions, the members of the National Association of Secretaries of State (NASS), earlier this year, created the NASS Task Force on Emergency Preparedness for Elections. The task force is a national initiative, formed in the wake of Hurricane Sandy. The effort, which includes chief state election officials from twenty-two states and the District of Columbia, will focus on identifying laws and practices

that enhance the ability of state election officials to prepare for, and respond to, emergency situations. The task force also works closely with other stakeholder organizations, including the National Emergency Management Association and the Federal Emergency Management Agency. Secretary of State Debra Bowen is a member of the newly formed task force. According to the NASS website, the task force convened a conference call in March of this year to determine the range of issues that will be researched. Emergency planning and response issues that arose due to Hurricane Sandy included emergency voting/absentee ballot procedures, state-local/municipal information sharing and emergency communications, equipment shortages, emergency authority issues, and continuity of elections. Additionally, the task force is planning to release a white paper early next year.

4) Arguments in Support: VerifiedVoting.org writes in support:

SB 362 would facilitate the process of maintaining the voting rights of emergency workers who leave the state during an emergency in order to provide aid in an official capacity. This bill would allow a vote by mail ballot to be transmitted to an emergency worker by email or fax, while the worker would return the ballot by mail. The framework and procedures set up by this bill would preserve the security of the worker's ballot while still ensuring that he or she is able to vote and have his or her ballot counted.

- 5) 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 six existing elections-related mandates. Additionally, the 2013-2014 state budget that was approved by the Legislature earlier this month suspended three additional newly identified elections-related mandates. This bill adds another mandate on local elections officials. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.
- 6) Previous Legislation: AB 1440 (Swanson), Chapter 395, Statutes of 2009, allows emergency personnel who are officially engaged in responding to a state of emergency after a disaster such as fire or an earthquake to vote in an election by casting a provisional ballot within any county in California.
- 7) Related Legislation: AB 214 (Skinner), which is pending in the Senate Appropriations Committee, would require the SOS, by December 31, 2014, in consultation with county elections officials, to establish procedures and guidelines for voting in the event of a natural disaster or other state of emergency. AB 214 passed out of this committee on a 5-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

American Red Cross
California Professional Firefighters
California State Council of the Service Employees International Union
National Council of Jewish Women, California
Pacific Gas and Electric
PowerPAC.org
Rock the Vote
Sacramento Municipal Utility District
San Diego Gas & Electric Company
Secretary of State Debra Bowen
Southern California Gas Company
VerifiedVoting.org

Opposition

None on file.

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