

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 423 (Umberg & Berman) – As Amended July 27, 2020

SENATE VOTE: (vote not relevant)

SUBJECT: November 3, 2020, statewide general election.

SUMMARY: Authorizes changes to in-person voting requirements for the November 3, 2020 statewide general election, and requires the state and counties to conduct voter education and outreach campaigns to notify voters about voting in that election. Specifically, **this bill:**

- 1) Provides that this bill applies only to the November 3, 2020 statewide general election.
- 2) Permits the following adjustments to in-person voting requirements for the purposes of the November 3, 2020 statewide general election:
 - a) In the case of a county that conducts the November election pursuant to the California Voter's Choice Act (CVCA), as specified, provides that the county is not required to have its vote centers open before the third day prior to the election.
 - b) In the case of a county that does *not* conduct the November election pursuant to the CVCA, as specified, permits the county to comply with the following procedures in lieu of the procedures for in-person voting that would otherwise be applicable in the county under existing law:
 - i) While maintaining separate geographical precincts under the existing limits on number of voters provided in existing law, establishing consolidated precinct boards, located within the same physical polling place, at a maximum ratio of no less than one consolidated precinct board location per 10,000 registered voters.
 - (1) Requires the consolidated polling locations to be open from Saturday, October 31, 2020, through Monday, November 2, 2020, for at least eight hours each day at regular hours convenient for members of the public. Requires the consolidated polling locations to be open from 7 a.m. to 8 p.m. on the day of the election.
 - (2) Requires the elections official to take into consideration the boundaries of state legislative, congressional, county supervisorial, and any other affected local legislative districts when establishing the consolidated polling places.
 - (3) Requires the elections official to ensure that the consolidated polling places are equitably distributed across the county to afford maximally convenient options for all voters and are established at accessible locations as near as possible to established public transportation routes.
 - (4) Requires the consolidated polling place to be located within the boundary of one of the precincts it serves.

- (5) Requires consolidated polling places to comply with accessibility requirements in state and federal law, and to be equipped with at least three voting machines that are accessible to voters with disabilities, as specified.
 - (6) Requires the elections official to provide each consolidated polling place with enough ballots, provisional ballots, and provisional ballot envelopes to ensure every voter can be accommodated, as necessary.
- ii) Providing at least two ballot drop-off locations within the county or at least one location for every 15,000 registered voters, whichever results in more locations, as specified. Requires all locations to be open at least during regular business hours beginning not less than 28 days before the day of the election, and on the day of the election. Requires at least one location to be an exterior drop box that is available for a minimum of 12 hours per day. Encourages counties to maximize the number of locations that are exterior drop boxes or that are located in buildings that are likely to be considered essential businesses that will remain open to the public notwithstanding any physical distancing measures that are in place.
 - iii) Providing at least one location, open at least during regular business hours beginning 28 days before the day of the election, at which a voter may do any of the following:
 - (1) Return, or vote and return, the voter's vote by mail ballot.
 - (2) Register to vote, update the voter's registration, and vote, as specified.
 - (3) Receive and vote a provisional ballot, as specified.
 - (4) Receive a replacement ballot upon verification that a ballot for the same election has not been received from the voter by the county elections official. Permits the elections official to issue a provisional ballot if the official is unable to determine if a ballot for the same election has been received from the voter.
 - (5) Vote a regular, provisional, or replacement ballot using accessible voting equipment, as specified.
 - iv) Requires the elections official, in determining the locations of consolidated polling places and ballot drop-off locations, to consider proximity to communities with historically low vote by mail usage. Requires counties additionally to consider other criteria, to the extent that data is readily available, that apply to counties conducting elections pursuant to the CVCA when those counties are determining the locations of vote centers and ballot drop-off locations.
 - v) Requires the county elections official, prior to finalizing the consolidated polling place and ballot drop-off locations, to publicly notice the proposed locations in all legally required languages for the county, post a copy of those locations on the elections official's internet website, and accept public comments on the proposed locations for at least 10 days. Requires the elections official, following the public comment period, to consider any comments the official receives, and to adjust locations in response to the comments to the extent the official deems appropriate.

- 3) Requires each county to conduct a voter education and outreach campaign in all legally required languages for the county notifying voters about mail ballots, early voting opportunities, accessible voting options, and where and how to remedy voting related problems.
- 4) Urges each county to provide drive-through ballot drop-off or voting locations. Provides that if a voter is waiting in a vehicle, the voter is considered “in line” for the purposes of keeping the polls open a sufficient time to enable them to vote pursuant existing law.
- 5) Permits an elections official to establish a vote center, polling place, or consolidated polling place in a location where the primary purpose is the sale and dispensation of alcoholic beverages.
- 6) Requires the Secretary of State (SOS) to establish a process to consider requests from counties to adjust or partially waive the minimally required number, location, or operational duration, of vote centers, consolidated polling places, or ballot drop-off locations provided by this bill or by the CVCA. Requires the process to include review and modification, denial, or granting of a county’s request in a timeframe to be determined by the SOS.
 - a) Requires a county, prior to requesting a modification or waiver, to develop a draft plan that includes a written analysis of in-person voting needs in that county. Requires the analysis to identify how the county’s proposed levels of in-person voting are designed to safely accommodate the anticipated demand for voting services, as specified, to include a report on efforts made to secure the otherwise required number of voting locations and election personnel, and to include a discussion of how the elections official will ensure that there will not be a disparate impact on any protected class of voters with regard to availability of voting locations and machines. Requires the county to consider specified criteria, including the needs of individuals who do not have a history of voting by mail, in determining in-person voting locations that will be made available pursuant to the plan.
 - b) Requires the county elections official to publicly notice its draft plan, post a copy of the draft plan on the elections official’s internet website, and accept public comments on the draft plan for at least 10 days. Requires the elections official, following the public comment period, to consider any public comments received and to amend the draft plan in response to the public comments to the extent the official deems appropriate before adopting a final plan and submitting it to the SOS along with the request for a modification or partial waiver. Requires a county that submits a request for a modification or partial waiver to post that request on the elections official’s website.
 - c) Prohibits the SOS from granting a waiver or modification to a county unless the county elections official can demonstrate all of the following:
 - i) The official made best efforts to secure the required in-person voting locations.
 - ii) The plan will not have a negative disparate impact on voters with disabilities or on any protected class of voters, as defined.
 - iii) The plan will not reduce in-person voting locations below a number of locations necessary to safely and efficiently accommodate the anticipated demand for in-person

voting services.

- d) Requires the SOS to post a copy of its response to a county's request for a modification or partial waiver on the SOS's website.
- 7) Requires the SOS to conduct a statewide voter education and outreach campaign regarding new procedures in place for the November 3, 2020, statewide general election, including, but not limited to, procedures relating to voting by mail, newly consolidated polling places and services provided therein, available language assistance, voter registration, conditional voter registration and voting, and accessible vote by mail voting.
- 8) Requires the SOS to establish a strike team to assist counties as needed to acquire suitable voting locations as well as other assets necessary for the safe and successful conduct of the November 3, 2020, statewide general election. Requires the strike team to include members of the SOS's legal and investigative divisions as well as Deputy Attorneys General provided for this purpose by the Department of Justice. Requires the strike team to assist with the enforcement of state elections laws, as specified. Requires the strike team to seek to ensure that the November 3, 2020, statewide general election is conducted in a manner that is as consistent as possible with state and federal voting rights laws.
- 9) Encourages the SOS to work with health officials, elections officials, and other stakeholders to establish guidelines for the use of personal protective equipment (PPE) by individuals at in-person voting locations. Provides that the guidelines may include requiring that individuals who are physically present at voting locations wear PPE when they are required by state or local health guidelines, ensuring that elections officials have sufficient PPE for use at in-person voting locations, and procedures to ensure that voters are not turned away from using in-person voting locations due to a lack of access to the necessary PPE.
- 10) Makes various findings and declarations.
- 11) Provides for the provisions of this bill to be repealed as of January 1, 2021.
- 12) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Requires county elections officials to mail a ballot to every registered active voter for the November 3, 2020 statewide general election, as specified.
- 2) Requires precinct boundaries to be fixed in a manner so that the number of voters in the precinct does not exceed 1,000 on the 88th day prior to the day of election, except as specified. Requires an elections official, at least 29 days prior to an election, to designate a polling place for each precinct, except as specified. Requires each polling place to be open from 7 a.m. to 8 p.m. on the day of the election, except as specified.
- 3) Permits counties, pursuant to the CVCA, to conduct elections in which every 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.

- a) Requires, at a regularly scheduled election conducted pursuant to the CVCA, that vote centers be open in accordance with the following:
 - i) From the 10th day through the fourth day prior to the election, requires at least one vote center for every 50,000 registered voters, with no fewer than two vote centers, each open for at least eight hours per day.
 - ii) From the third day prior to the election through election day, requires at least one vote center for every 10,000 registered voters, with no fewer than two vote centers. Requires each vote center to be open for at least eight hours per day on the days prior to election day, and from 7 a.m. to 8 p.m. on election day.
 - b) Requires, at a regularly scheduled election conducted pursuant to the CVCA, that drop-off locations be open during regular business hours beginning not less than 28 days before the election, and on the date of the election. Requires at least one drop-off location to be provided for every 15,000 registered voters, with no fewer than two drop-off locations. Requires at least one drop-off location to include an accessible, secured, exterior drop box that is available for a minimum of 12 hours a day including regular business hours.
- 4) Requires state and county elections officials, pursuant to various provisions of federal and state law, to provide voting materials in languages other than English in specified circumstances.
 - 5) Requires a polling place to be kept open for a sufficient time after its scheduled closing time as necessary to ensure that voters are able to vote if they are in the polling place or in line at the door to the polling place at the scheduled closing time.
 - 6) Prohibits a place where the primary purpose of the establishment is the sale and dispensation of alcoholic beverages from being used as a polling place.
 - 7) Provides, pursuant to Executive Order N-67-20, issued by Governor Newsom on June 3, 2020, that in light of the State of Emergency existing in California as a result of the threat of COVID-19, all of the following shall apply to the November 3, 2020 statewide general election, among other provisions:
 - a) Provides, in the case of a county that conducts the election pursuant to the CVCA, that the following provisions are applicable for the November 3, 2020 statewide general election:
 - i) The county is not required to have its vote centers open before the third day prior to the election.
 - ii) The county elections official is not required to conduct in-person meetings or workshops in connection with the preparation of election administration plans as long as a draft of the plan is posted on the elections official's website, as specified, and the official accepts public comment on the draft plan for at least 10 days.

- b) Permits a county that does not conduct elections pursuant to the CVCA, and that is unable to comply with the in-person voting requirements in existing law, to comply instead with the following requirements:
- i) At least one polling place per 10,000 registered voters is made available for voting during the following hours:
 - (1) From Saturday, October 31, 2020, through Monday, November 2, 2020, for at least eight hours each day, as specified; and
 - (2) On Tuesday, November 3, 2020, from 7 a.m. until 8 p.m.
 - ii) At least the following number of vote by mail (VBM) ballot drop-off locations are made available starting no later than 9 a.m. on Tuesday, October 6, 2020, and continuing during regular business hours through the close of voting on Tuesday, November 3, 2020:
 - (1) At least one VBM ballot drop-off location per 15,000 registered voters; and
 - (2) Not less than two VBM ballot drop-off locations regardless of the number of registered voters.
 - iii) At least one VBM ballot drop-off location is fully accessible to the public for at least twelve hours each day (during regular hours convenient for members of the public) between Tuesday, October 6, 2020 and Tuesday, November 3, 2020, inclusive.

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

COMMENTS:

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

We have no idea to what degree the COVID-19 pandemic will still pose a threat to public health when California conducts the November 3, 2020, general election. Fortunately, Governor Newsom has already issued an Executive Order regarding in-person voting options almost identical to SB 423 making it possible for the state and counties to begin taking action to ensure that the election is held in a manner that is accessible, secure, and safe.

SB 423 will codify and expand upon the Governor's Executive Order so that there will be no debate or confusion as to the Legislature's intent to provide California's large and diverse electorate with vital in-person voting options.

While AB 860 by Assembly Member Berman ensures that every registered California voter will receive a ballot in the mail this November, SB 423 guarantees access to in-person voting opportunities for those voters who may need to use accessible voting equipment, need language assistance, homeless and other California voters who never received their vote-by-mail ballot or lost or

damaged their ballot, eligible persons still needing to register to vote, as well as others.

SB 423 will ensure ample and early in-person voting opportunities in a manner that is consistent with public health guidance and requirements while simultaneously recognizing that counties may face COVID-19 related challenges when it comes providing polling places or vote centers the way they have in prior elections.

As we have already seen in some other states, a massive reduction in voting locations would result in longer lines and larger and potentially unsafe gatherings on Election Day. SB 423 will ensure that will not be the case in California.

SB 423 will also provide numerous convenient locations for voters who simply want to drop-off their ballots as well as a statewide voter education and outreach campaign regarding these new procedures.

- 2) **COVID-19 and Elections & Secretary of State Working Group:** 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).

Since California held its statewide primary election, however, at least 16 states either postponed their scheduled primary elections or switched them to mailed ballot elections due to concerns that conducting in-person voting during the spread of COVID-19 could threaten the health and safety of voters, election workers, and the public generally.

The Secretary of State'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 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. The provisions of this bill were informed by the SOS working group discussions.

- 3) **Related Legislation:** AB 860 (Berman), Chapter 4, Statutes of 2020, requires county elections officials to mail ballots to all active registered voters for the November 3, 2020 statewide general election, among other provisions. AB 860 was approved by this committee on a 6-0 vote, and was approved by the Assembly on a 68-5 vote.
- 4) **Governor's Executive Orders:** On May 8, 2020, Governor Newsom issued Executive Order N-64-20, which requires each county's elections official to send VBM ballots for the

November 3, 2020 general election to all registered voters. The Executive Order noted that “it is unknown to what degree COVID-19 will pose a threat to public health in November, and California and its counties must begin taking action now—to procure supplies, secure polling places, enlist volunteers, and draw up plans, among other steps—to ensure that the November 3, 2020 General Election is held in a manner that is accessible, secure, and safe.” Subsequent to the enactment of AB 860, the Governor indicated that Executive Order N-64-20 has been superseded by AB 860, and the Governor and SOS have indicated that they will not rely upon Executive Order N-64-20 in connection with the November 2020 election.

On June 3, 2020, Governor Newsom issued Executive Order N-67-20, which established minimum levels of in-person voting opportunities that must be available for the November 3, 2020 general election in counties that are unable to comply with the in-person voting requirements in existing law, among other provisions. Generally speaking, Executive Order N-67-20 requires counties that are unable to comply with the in-person voting requirements in existing law to provide at least one in-person voting location for every 10,000 registered voters for the three days before the election and on election day, and requires counties to provide at least two VBM ballot drop-off location or one drop-off location for every 15,000 registered voters, whichever resulted in more locations. Those requirements are similar to requirements that exist for counties that conduct elections pursuant to the CVCA, though the CVCA also requires in-person voting to be available from the 10th day before the election through the fourth day before the election. The CVCA also requires higher levels of service at in-person voting locations and requires the preparation of an election administration plan that involves extensive public outreach and input.

The provisions of this bill mirror some of the requirements found in Executive Order N-67-20, and impose additional requirements and make other accommodations governing the conduct of this November’s statewide general election.

- 5) **Pending Lawsuit Challenging Executive Order N-67-20:** On June 12, 2020, Sutter County Superior Court Judge Perry Parker issued an order in the case of *James Gallagher et al. v. Gavin Newsom* (Case No. CVCS20-0000912) granting interim declaratory relief and a temporary restraining order suspending Executive Order N-67-20 “as an impermissible use of legislative powers in violation of the California Constitution and the laws of the State of California.” Five days later, the Court of Appeals for the Third Appellate District issued a stay of the temporary restraining order issued by the Superior Court, and precluded the Superior Court from issuing further injunctive relief pending further order of the appellate court (*Newsom v. The Superior Court of Sutter County*, Case No. C092070). On July 10, 2020, the Court of Appeals issued a peremptory writ of mandate directing the Sutter County Superior Court to vacate its order granting interim declaratory relief and its temporary restraining order suspending the Governor’s executive order, and ordering the Superior Court to enter a new and different order that denies the application for relief. The case remains pending in the Sutter County Superior Court.
- 6) **California Voter’s Choice Act:** SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the CVCA, which permits counties to conduct elections in which all voters are mailed ballots, and voters have the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Fourteen specified counties were permitted to conduct elections under this system in 2018, though only five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) did so. All counties are permitted to conduct elections

under the CVCA beginning this year. Fifteen counties (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) conducted this year's primary election pursuant to the CVCA, and are expected to do so again for this November's general election.

Counties that conduct elections pursuant to the CVCA are not required to establish polling places for elections, but instead must establish vote centers. Vote centers are polling locations at which any registered voter in a county can cast a nonprovisional ballot, regardless of the voter's precinct. CVCA counties must open some vote centers beginning 10 days before the election, and generally must open a larger number of vote centers from the third day before the election through election day. The CVCA also requires counties to establish a specified number of ballot drop-off locations that are available beginning 28 days before each election, and requires counties to conduct robust voter education and outreach campaigns to educate voters about their options for voting under the CVCA.

- 7) **Funding for the November 3, 2020 Statewide General Election:** The state budget for the 2020-21 fiscal year, as approved by the Legislature and signed by Governor Newsom, gave the SOS the authority to spend \$65.5 million in federal funds for state and local costs associated with preventing, preparing for, and responding to COVID-19 for the 2020 federal election cycle. Additionally, the state budget included a legislative augmentation of \$35 million in general fund money for state and local costs associated with conducting the November 2020 election during the COVID-19 pandemic. Finally, a budget trailer bill provided flexibility to permit counties to use voting system replacement money that was included in the state budget in the 2018-19 and 2019-20 fiscal years to cover costs reasonably related to the administration of an election during the COVID-19 pandemic, and temporarily removed the requirement that most counties must provide matching funds in order to receive their share of those state funds.
- 8) **County Plans for the November 3, 2020 Statewide General Election:** In June, the SOS surveyed county elections officials to request information about how each county intended to offer in-person voting for the November 3, 2020 statewide general election in light of the Governor's executive orders related to that election, as described above, and in light of the provisions of this bill related to the conduct of the November election. Counties were asked whether they planned to implement vote centers, traditional polling places, consolidated polling places (with each voter assigned to a specific polling place based on the address at which the person is registered to vote), or consolidated voting locations with vote center-like features (with each voting location able to serve *any* voter in the county, regardless of the address at which the person is registered to vote).

In response to that survey, all 15 counties that conducted the primary election pursuant to the CVCA indicated that they would have vote centers for the November general election. Nine counties (Colusa, Del Norte, Imperial, Inyo, Monterey, Shasta, Siskiyou, Solano, and Tehama) indicated that they intended to use traditional polling places, three counties (Humboldt, Kings, and Tulare) responded that they intended to use consolidated polling places, and nine counties (San Joaquin, San Luis Obispo, Santa Barbara, Santa Cruz, Stanislaus, Sutter, Trinity, Ventura, and Yolo) responded that they intended to use consolidated voting locations with vote center-like services. In three counties (Alpine, Plumas, and Sierra), all of their precincts are small enough that they are deemed all-mail ballot precincts. Finally, 18 counties (Alameda, Glenn, Kern, Lake, Lassen, Marin,

Mendocino, Merced, Modoc, Mono, Placer, Riverside, San Benito, San Bernardino, San Diego, San Francisco, Sonoma, and Yuba) were still considering multiple options for in-person voting, and one county (Contra Costa) did not respond to the survey.

9) **Arguments in Support:** In support of this bill, the NARAL Pro-Choice California writes:

As California continues to respond to the COVID-19 pandemic, California must conduct the November 2020 General Election guided by the twin principles of safety and access. Indeed, as we saw in Wisconsin, these principles are inseparably linked. Reducing access reduces safety. Physical distancing requires a robust number of in-person voting locations and extra time. SB 423 sets forth requirements for in-person voting locations, drop box locations, and early voting, thereby ensuring that Californians will be able to receive in-person assistance if they never received a ballot, lost or damaged their ballot, need language assistance or assistance due to physical disability, are homeless, or need to register to vote or update their existing registration on election day.

Amid such a pivotal reckoning in our nation's history, the importance of SB 423 cannot be overstated. Not only have communities of color been disproportionately impacted by the COVID-19 crisis, but Black and brown voters also continue to be systematically disenfranchised in states across the country. As one of the most racially-diverse states in the U.S., California has both an opportunity and a moral responsibility to set a national standard for ensuring that the voices — and votes — of people of color are heard and counted in the 2020 election.

REGISTERED SUPPORT / OPPOSITION:

Support

AAPIs for Civic Empowerment Education Fund
American Civil Liberties Union of California
Anti-Defamation League
Asian Americans Advancing Justice – California
Bay Rising
Black Women for Wellness
California Calls
California Common Cause
California Donor Table
California Environmental Justice Alliance
California Federation of Teachers
California Labor Federation
California League of Conservation Voters
California Professional Firefighters
California School Employees Association
California Teachers Association
Center for Community Action and Environmental Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Courage California
Disability Rights California

Inland Empire United
League of Women Voters of California
Million Voters Project
NARAL Pro-Choice California
Power California
Secretary of State Alex Padilla
SEIU California
Union of Concerned Scientists
Approximately 4,500 individuals indicating support via various petitions

Opposition

None on file.

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