

Date of Hearing: April 11, 2018

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Marc Berman, Chair

AB 2218 (Berman) – As Introduced February 12, 2018

**SUBJECT:** Vote by mail ballot tracking.

**SUMMARY:** Requires the Secretary of State (SOS), no later than January 1, 2020, to establish a system that allows a vote by mail (VBM) voter to track and receive information about his or her VBM ballot as it moves through the mail system and as the VBM ballot is processed by the county elections official. Specifically, **this bill:**

- 1) Requires the system established by the SOS, at a minimum, to allow a voter to register to receive information via email or text message from the county elections official about the status of his or her VBM ballot, including all of the following information:
  - a) A notification when the ballot has been delivered by the county elections official to the United States Postal Service (USPS).
  - b) A notification of the date, based on information from the USPS, that the voter's ballot is expected to be delivered to the voter.
  - c) A notification if the voter's ballot is returned as undeliverable to the county elections official by the USPS.
  - d) A notification when the voter's completed ballot has been received by the county elections official.
  - e) A notification that the voter's completed ballot has been counted, or, if the ballot cannot be counted, a notification of the reason why the ballot could not be counted and instructions of any steps that the voter can take in order to have the ballot counted.
  - f) A reminder of the deadline for the voter to return his or her ballot if the county elections official has not received a voter's completed ballot by specified dates as determined by the county elections official.
- 2) Requires the SOS to make the system available for use by each county.
- 3) Permits a county elections official to use the system developed by the SOS for the purpose of complying with a provision of state law that requires a county elections official to establish a free access system that allows a VBM voter to learn if his or her VBM ballot was counted and, if not, the reason why the ballot was not counted.

**EXISTING LAW:**

- 1) Permits any voter to apply for, and receive, a VBM ballot. Permits any voter to become a permanent VBM voter, who will automatically receive a VBM ballot for each election in which he or she is entitled to vote.
- 2) Permits counties, pursuant to the California Voter's Choice Act (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.
- 3) Requires each county elections official to establish a free access system that allows a VBM voter to learn if his or her VBM ballot was counted and, if not, the reason why the ballot was not counted. Requires this free access system to be available to a VBM voter upon completion of the official canvass of election results and for 30 days after the completion of the official canvass.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

In all but one statewide election since 2010, a majority of California voters cast their votes using VBM ballots, and as of November 2016, 51% of registered voters in California were signed-up as permanent VBM voters. Furthermore, the number of voters who receive their ballots in the mail will continue to increase as recent policy changes are implemented. In particular, every voter who lives in a county that is conducting elections pursuant to the California Voter's Choice Act (SB 450 (Allen) of 2016) will receive a ballot by mail, even if the voter did not request to receive a VBM ballot.

While California law requires elections officials to maintain a free-access system that allows each VBM voter to learn if his or her ballot was counted, other jurisdictions have adopted more extensive VBM ballot tracking and notification systems that can help improve voter participation and reduce the number of VBM ballots that are invalidated.

The Denver Elections Department, for instance, uses Intelligent Mail Barcodes provided by the United States Postal Service as the backbone for its Ballot TRACE (Tracking, Reporting, and Communication Engine) system. Ballot TRACE allows a voter to sign-up to receive text messages or email notifications to track the progress of his or her ballot as it is mailed to the voter and returned to the elections official. It also allows elections officials to send reminders to voters who have not returned their ballots as election day approaches, and it allows elections officials to quickly contact voters who need to provide additional information in order to have their VBM ballots counted (e.g., if a voter forgot to sign his or her VBM ballot return envelope).

AB 2218 would require the Secretary of State, by January 1, 2020, to establish a system for use by county elections officials that would allow each VBM voter to sign-up to receive information by email or text message about the status of his or her VBM ballot. County elections officials would also be able to use this system to deliver important information about steps voters can take to ensure that their ballots are counted.

- 2) **Vote by Mail Data:** Since California law was amended in 2001 to allow any voter to become a permanent VBM voter (known at the time as a "permanent absentee voter"), the percentage of voters who vote using a ballot that was mailed to them generally has increased from election cycle-to-election cycle. In fact, in each statewide election going back to the 2012 primary election, a majority of ballots cast in the election were cast on a VBM ballot. In the 2016 statewide general election, 57.8% of votes were cast on a VBM ballot, including a majority of the ballots in 55 of the state's 58 counties.

The percentage of voters who cast VBM ballots is expected to continue to climb in future elections as recent policy changes are implemented. Specifically, 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. Five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) are expected to conduct elections under this system in 2018, while additional counties may begin using this system in 2020. Voters in counties conducting elections under the CVCA, however, also will have additional options for returning the ballots that are mailed to them other than returning those ballots by mail. Specifically, the CVCA requires participating counties to install a number of VBM ballot drop boxes, depending on the number of registered voters in the county, and voters will be able to drop off their completed ballots at any vote center in the county.

- 3) **Vote by Mail Ballot Tracking Options:** As VBM voting has increased, the state has taken a number of steps to make it easier for voters to receive information about the status of their VBM ballots. Starting in 2008, California required county elections officials to give VBM voters a mechanism for determining whether their voted VBM ballots were *received* by the elections official, and subsequent legislation required elections officials to have a means for VBM voters to determine if their ballots were *counted*, and if not, the reason why their ballots weren't counted. Since the 2016 general election, California voters have also been able to look up the status of their VBM ballot on the SOS's My Voter Status website. Some counties provide voters with even more information about the status of their VBM ballots. Sacramento County's system, for example, provides a voter with the date that their VBM ballot was mailed, and additionally allows a voter to look up the status of his or her VBM ballots dating back to the November 2014 general election.

Generally, the rationale behind these efforts to expand VBM tracking options has been to give voters a greater comfort level in casting VBM ballots, and to provide voters with tools to ensure that their VBM ballots can be counted. For example, if a voter learns that the elections official mailed his or her ballot a week ago and the voter has not yet received the ballot, that voter may contact the county elections official to have a replacement ballot sent. If a voter learns that his or her completed VBM ballot was unable to be counted because it

arrived too late, that voter may return his or her VBM ballots earlier in future elections to protect against those votes being disqualified.

Notwithstanding all the steps that California has taken to make it easier for VBM voters to track their ballots, other jurisdictions outside of California have gone farther, and have established systems that allow voters to track their ballots the same way that a person might track a package. As mentioned in the author's statement above, these systems generally make use of Intelligent Mail Barcodes provided by the USPS. By using a unique barcode on each envelope when VBM ballots are mailed to voters, and by preprinting a unique barcode on each VBM ballot return envelope that voters use to mail back their VBM ballots, elections officials are able to track VBM ballots as they move through the USPS both when the ballots are in transit to the voter and when the voter returns the ballot using the USPS. That information allows elections officials to provide even more detailed information to voters about the status of their VBM ballots, and may allow elections officials to more quickly and easily identify problems with the delivery of VBM ballots.

For example, Denver, Colorado's Ballot TRACE system allows a voter to sign up to receive a text or email notification on the day that he or she is expected to receive a VBM ballot in the mail. If a voter's ballot is returned to the elections official as undeliverable, the official can use that notification system to contact the voter and to update the voter's address. If a significant number of ballots were mailed by voters but are not received in a timely manner by the elections official, the official and the USPS may be able to use the tracking information to identify where those ballots went missing. As election day approaches, elections officials can use the notification system to send reminders to voters who have not yet returned their VBM ballots. If the elections official receives a VBM ballot that was not signed by the voter as required by state law, the official can use the system to notify the voter promptly of the steps that he or she can take to ensure that the ballot can be counted.

- 4) **Disqualification of VBM Ballots:** Historically, there have been three main reasons why a VBM ballot that was completed and returned to the elections officials may not be counted. First, many VBM ballots are received by the elections office after the deadline for ballots to be received. Second, many VBM ballots cannot be counted because the voter forgot to sign the VBM ballot return envelope, as required by law. Finally, many VBM ballots are disqualified because the signature on the VBM ballot return envelope does not match a signature that is part of the voter's registration record. According to information provided to the US Election Assistance Commission (EAC) by California county elections officials through the EAC's biennial Election Administration and Voting Survey, approximately 0.7% of the VBM ballots that were completed and returned by California voters to county elections officials in the November 2016 general election were unable to be counted. Of the VBM ballots that were disqualified, approximately 45% were disqualified for having a non-matching signature, about 25% were disqualified because the voter failed to sign the VBM ballot return envelope, about 23% were disqualified because the ballot arrived after the deadline, and about 8% were disqualified for various other reasons.
- 5) **Arguments in Support:** In support of this bill, the American Civil Liberties Union of California Center for Advocacy and Policy writes:

AB 2218 builds on current state law that has required since 2014 county elections officials to develop a free-access system that allows VBM voters to learn if their ballot was counted and, if not, why not. This helps give voters peace of mind that their VBM ballots were received and their votes counted. While these free-access systems provide useful information to voters, other jurisdictions have adopted more extensive tracking and notification systems that can help improve voter participation and reduce invalidated VBM ballots....

Such a system could help reduce the number of ballots rejected for signature mismatch. In California, thousands of eligible voters are disenfranchised each election cycle — with approximately 33,000 to 45,000 ballots rejected in the November 2016 general election alone due to a perceived signature mismatch. Asian-American voters, Latino voters, and voters born outside the United States are disproportionately disenfranchised by perceived signature mismatches. A San Francisco judge held [in March] that California elections officials must notify voters before rejecting their mail-in ballots over signature concerns.

- 6) **Previous Legislation:** SB 1725 (Bowen), Chapter 687, Statutes of 2006, required election officials to establish procedures by March 1, 2008, to track and confirm the receipt of voted VBM ballots and to make this information available by means of online access using the county's elections division Web site, or if none is available, by means of a toll-free telephone number.

SB 589 (Hill), Chapter 280, Statutes of 2013, requires each county elections official to establish a free access system that allows a VBM voter to learn whether his or her VBM ballot was counted and, if not, the reason why the ballot was not counted.

AB 2089 (Quirk) of 2016, would have required a county elections official to notify a voter if his or her VBM ballot was not counted. AB 2089 was vetoed by Governor Brown. In his veto message, the Governor stated that he believed the bill was unnecessary due to the existence of the free access system required by SB 589.

- 7) **Related Legislation:** SB 759 (McGuire), which is awaiting referral to a policy committee by the Assembly Rules Committee, requires an elections official who has rejected a VBM ballot on the basis that the signature on the VBM ballot envelope does not match the signature on the voter's registration, to offer that voter the opportunity to verify his or her signature before certification of the election. To ensure that VBM voters are able to verify their signatures in such a situation, SB 759 additionally requires the elections official to notify the voter by mail, email, or telephone of the opportunity to verify his or her signature and to have his or her ballot counted.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California Center for Advocacy and Policy  
California Association of Nonprofits  
Secretary of State Alex Padilla

**Opposition**

None on file.

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