

Date of Hearing: March 13, 2019

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Marc Berman, Chair

AB 17 (Salas) – As Introduced December 3, 2018

**SUBJECT:** Elections: vote by mail ballots.

**SUMMARY:** Prohibits an employer from requiring or requesting an employee to bring their vote by mail (VBM) ballot to work or to vote their VBM ballot at work. Provides that an employer who violates these provisions will be subject to a civil fine of up to ten thousand dollars (\$10,000) per election and permits an action for a civil fine under these provisions to be brought by the Secretary of State (SOS) or any public prosecutor with jurisdiction.

**EXISTING STATE LAW:**

- 1) Provides that voting shall be secret.
- 2) Permits any registered voter to apply for and receive a VBM ballot.
- 3) Permits a voter, without loss of pay, to take time off work to vote at a statewide election, as specified.
- 4) Requires an employer, not less than 10 days before every statewide election, to post conspicuously at the place of work, a notice to employees advising them of the ability to take paid leave to vote in a statewide election, as specified.
- 5) Provides that any person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment for 16 months or two or three years, as specified.
- 6) Provides that any person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment for 16 months or two or three years, as specified.
- 7) Prohibits a person, directly or through another person, to give, offer, or promise any office, place, or employment to any voter in order to induce that voter at any election to refrain from voting, vote for any particular person, or refrain from voting for any particular person, as specified. Provides that a violation of these provisions is punishable by imprisonment for 16 months or two or three years.
- 8) Prohibits a person, directly or through another person, to receive, agree, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment for themselves or another person for voting, agreeing to vote, refraining from voting, or agreeing to refrain from voting for any particular person or measure; for remaining away from the polls; for refraining or agreeing to refrain from voting; or for inducing any other person to

remain away from the polls, refrain from voting, or vote or refrain from voting for any particular person or measure. Provides that a violation of these provisions is punishable by imprisonment for 16 months or two or three years.

**EXISTING FEDERAL LAW:**

- 1) Provides that no person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for doing either of the following:
  - a) Voting or attempting to vote; or,
  - b) Urging or aiding any person to vote or attempt to vote.
- 2) Provides that whoever intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, at any election held solely or in part for the purpose of electing such candidate, shall be fined or imprisoned for not more than one year, or both.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

California Elections Code does not prohibit employers from requesting or requiring employees to bring their vote by mail ballot into work or vote their vote by mail ballot at work. This practice undermines election integrity by interfering with a voter's right to a free and unconstrained vote for a candidate or issue of their choice. AB 17 will address voter suppression and protect ballot integrity by prohibiting an employer from requiring or requesting that an employee bring their vote by mail ballot into work or vote their vote by mail ballot at work.

- 2) **Current Voting Protections:** Existing state and federal laws include a variety of safeguards to protect against VBM ballot intimidation or coercion. Additionally, state law includes extensive penalties for misconduct in connection with VBM ballots. For instance, criminal penalties are possible for coercing or intimidating a voter to vote or refrain from voting in an election, or vote or refraining from voting for a particular person or measure, as specified; for coercing or deceiving elders in casting a vote, as specified; for soliciting the vote of a vote by mail voter while the voter is voting, as specified; and for providing any valuable consideration to a person in exchange for that person voting or refraining from voting for a particular person or measure, as specified.
- 3) **Is There a Problem?** Notwithstanding the author's concern about the lack of state law to prohibit employers from requesting or requiring employees to bring their VBM ballots into work, or to vote those ballots at work, the committee has not been provided with any information that indicates that employers in California are making such requests of their

employees. Furthermore, the committee is not aware of any cases of VBM ballot abuse or intimidation of this type that have been prosecuted in California. According to the SOS's office, over the past two years the Election Fraud Investigation Unit has not received any formal complaints of voter intimidation or other election violations from the public regarding their employer or employers in general.

- 4) **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-to-election. 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 ballots were cast on a VBM ballot, including a majority of the ballots in 55 of the state's 58 counties.

In the 2018 statewide general election, the percentage of voters who cast VBM ballots increased and approximately 65% of ballots were cast using VBM ballots. Part of the increase may be attributed to the implementation of vote centers in five counties.

Specifically, SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the California Voter's Choice Act, which permitted 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. Last year Madera, Napa, Nevada, Sacramento, and San Mateo counties conducted elections under this system. The percentage of VBM ballots may increase again as additional counties are permitted to begin using the vote center model in 2020.

- 5) **Arguments in Support:** In support, the California Teachers Association writes:

[California Teachers Association] believes our voting systems must be free of procedures resulting in the loss of the right to vote by any citizen. The proposal sets in motion the opportunity to unfairly "influence" votes cast and/or election outcomes. Secret ballots are the corner-stone of our American democracy and we should do all within our power to ensure voting privacy.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Conference Board of the Amalgamated Transit Union  
California Conference of Machinists  
California Teachers Association  
California Teamsters Public Affairs Council  
Engineers and Scientists of CA, IFPTE Local 20, AFL-CIO  
Inlandboatmen's Union of the Pacific  
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO  
SAG-AFTRA  
UNITE-HERE, AFL-CIO  
United Farm Workers  
Utility Workers of America

**Opposition**

None on file.

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