

Date of Hearing: May 8, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1873 (Gonzalez and Mullin) – As Amended: April 22, 2014

FOR VOTE ONLY

SUBJECT: Mail ballot elections.

SUMMARY: Allows special elections to fill vacancies in the Legislature and Congress to be conducted entirely by mailed ballot. Allows any county election to fill a vacancy on the board of supervisors or any city special election to be conducted entirely by mailed ballot. Specifically, this bill:

- 1) Permits a special election held to fill a vacancy in the Legislature or in Congress to be conducted entirely by mailed ballot subject to all of the following conditions:
  - a) The board of supervisors of each county that lies in whole or in part within the district authorizes the use of mailed ballots for the election through the adoption of a resolution;
  - b) The election does not occur on the same date as a statewide primary or general election, or any other election conducted in an overlapping jurisdiction that is not consolidated and conducted wholly by mail;
  - c) At least one ballot dropoff location is provided per city, and is open during business hours to receive voted ballots beginning 21 days before the date of the election;
  - d) The number of dropoff locations in unincorporated areas is based on the number of registered voters in those areas, divided by 100,000 and rounded to the next whole number, with not less than one location selected;
  - e) On at least one Saturday and Sunday after the date the elections official first delivers ballots to voters, the elections official allows any voter to vote the ballot at the office of the elections official. Provides that the elections official shall determine the hours of operation provided that the office is open for a minimum of six hours on each designated Saturday and Sunday;
  - f) At least one polling place is provided per city or the polling places are fixed in a manner so that there is one polling place for every 100,000 residents within the district, as determined by the annual city total population rankings by the Demographic Research Unit of the Department of Finance, on the 88<sup>th</sup> day prior to the day of the election, whichever results in more polling places. Provides that a polling place shall allow voters to request a ballot between 7 a.m. and 8 p.m. on the day of the election if they have not received their ballots in the mail or if they need replacement ballots for any reason;
  - g) Upon the request of the city, county, or district, the elections official may provide additional ballot dropoff locations and polling places;

- h) The elections official delivers to each voter all supplies necessary for the use and return of the mail ballot, including an envelope for the return of the voted mail ballot with postage prepaid;
  - i) The elections official delivers to each voter, with either the sample ballot or with the voter's ballot, a list of the ballot dropoff and polling place locations, and posts that list on the Internet Web site of the county elections office;
  - j) Provides that a ballot is timely cast if it is received by the voter's elections official no later than three days after election day and either of the following is satisfied:
    - i) The ballot is postmarked or is time stamped or date stamped by a bona fide private mail delivery company on or before election day; or,
    - ii) If the ballot has no postmark, a postmark with no date, or an illegible postmark, the vote by mail (VBM) ballot identification envelope is signed and dated on or before election day.
  - k) Allows jurisdictions that have the necessary computer capability to begin processing VBM ballots on the 10<sup>th</sup> business day prior to the election, instead of the seventh business day prior to the election.
- 2) Allows any municipal special election to be conducted entirely by mailed ballot. Allows a special election to fill a vacancy on a county board of supervisors to be conducted entirely by mailed ballot. Repeals a provision of law that prohibits specified all-mailed ballot elections in cities and districts from being consolidated with other elections, and instead provides that in a consolidated election in which boundaries overlap, all of the jurisdictions within the overlapping boundaries must agree to conduct the election as an all-mailed ballot election.
- 3) Makes corresponding changes.

EXISTING LAW:

- 1) Permits an election to be conducted wholly by mail if the governing body authorizes the use of mailed ballots for the election, the election occurs on an established mailed ballot election date, and the election is one of the following:
  - a) An election in which no more than 1,000 registered voters are eligible to participate;
  - b) An election in a city, county, or district with 5,000 or fewer registered voters that is restricted to the imposition of special taxes, expenditure limitation overrides, or both;
  - c) An election on the issuance of a general obligation water bond;
  - d) An election in one of four specifically enumerated water districts; or,
  - e) An election or assessment ballot proceeding required or authorized by the state constitution under Proposition 218.

- 2) Authorizes a school district or city with a population of 100,000 or less to conduct an all-mail ballot election to fill a vacancy in a special election.
- 3) Authorizes a district to conduct any election as an all-mailed ballot election on any date other than an established election date.
- 4) Provides that whenever there are 250 or fewer people registered to vote in any precinct, the elections official may deem the precinct as an all-mail ballot precinct. Provides that no precinct may be divided solely in order to create an all-mail precinct.
- 5) Provides that once a legislative or congressional vacancy occurs, the Governor has 14 days to issue a proclamation declaring the date of the special election. Requires the special run-off election to occur between 126 and 140 days after the date of the proclamation with the special primary election occurring the ninth Tuesday preceding the special run-off, except as specified. Permits the special runoff election to be held up to 180 days after the date of the Governor's proclamation if it will allow either the special runoff or special primary to coincide with an existing state or local election involving at least half the voters in the affected jurisdiction.
- 6) Permits Yolo County, as part of a pilot program lasting through January 1, 2018, to conduct elections on up to three dates as all-mailed ballot elections, subject to certain conditions and reporting requirements.

FISCAL EFFECT: Keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Assembly Bill 1873, known as the Voting Ought To be Easy (VOTE) Act, seeks to improve two major shortcomings with special elections in California – the widespread non-participation by voters in these low-profile electoral contests and the costliness of operating a special election on taxpayers. Together, the apparent inefficiency of the special election status quo has invited well-meaning but risky alternatives that undermine the public's right to an election and our State government's system of checks and balances. AB 1873 allows county and local governments the opportunity to avoid the low participation and high costs involved in special elections by conducting these special elections entirely by mail ballot, a process which has shown to majorly reduce costs and increase access to democracy. In exchange, the county or local government opting in to the mail-only election process agrees to several measures that further expands voter access. These conditions include providing postage-paid envelopes for return ballots and honoring any ballot received with a postmark by Election Day, similar to tax forms postmarked by April 15 are still "on time." Our democracy flourishes when more eligible voters participate and AB 1873 helps move our state in that direction for special elections.

- 2) Vote by Mail and Permanent Vote by Mail Voting: Under state law, any voter can request a VBM ballot for any election, and any voter can become a permanent VBM voter. Permanent

VBM voters automatically receive a ballot in the mail for every election, without the need to re-apply for a VBM ballot. As such, any voter who prefers to vote by mail has the ability to do so under existing law.

Among the arguments that supporters of all-mailed ballot elections frequently make in support of such elections is that all-mailed ballot elections are more convenient for voters. However, it is not clear whether this is the case. Any voter who finds it more convenient to vote by mail has the option to do so under existing law, and voters who want to vote by mail at every election can sign up for permanent VBM status. Some voters, due to physical disability or language issues, may prefer to vote at the polls in order to take advantage of access or help provided by electronic voting machines or bilingual poll workers.

- 3) Yolo County Pilot Project: In 2011, the Legislature approved and the Governor signed AB 413 (Yamada), Chapter 187, Statutes of 2011, which created a pilot program allowing Yolo County to conduct local elections on not more than three dates as all-mailed ballot elections. AB 413 was intended to serve as a pilot project to evaluate the desirability of further expanding the circumstances under which elections are permitted to be conducted as all-mailed ballot elections. Yolo County conducted all-mailed ballot elections last March in the City of Davis and the Washington Unified School District as permitted by AB 413, and submitted its report on those elections last December. The pilot project in Yolo County was authorized following a prior pilot project in Monterey County that failed to provide useful information about the impacts of all-mailed ballot elections because the report filed by Monterey County as part of the pilot project lacked much of the information that was necessary to evaluate the impacts of the pilot project.

The report prepared in connection with the first two elections conducted in Yolo County under the pilot project found that turnout at the all-mailed ballot elections conducted as part of the pilot project was not significantly different than similar polling place elections held in the two jurisdictions in prior years. The study also found that turnout rates broken down by age, ethnic background, party preference, and permanent VBM status was consistent and similar between the polling place and the all-mailed ballot elections. The study found that data provided on the cost to conduct all-mailed ballot elections was inconclusive in determining whether there are significant savings to moving to all-mailed ballot elections. However, the study also cautioned that Davis—one of the jurisdictions in which the pilot was conducted—"is a relatively affluent, homogenous community with a higher level of educational achievement than most other areas of the state" and so the results "are not necessarily applicable to other, dissimilar communities." The report also noted that the effects of all-mailed ballot elections on turnout would not necessarily be similar in general elections.

Yolo County is permitted to conduct local elections as all-mailed ballot elections on two additional dates before the conclusion of the pilot project. The committee may wish to consider whether it is desirable to expand the circumstances under which elections can be conducted entirely by mail prior to the completion of the pilot project that the Legislature authorized in an effort to get better information about the impacts of such elections.

- 4) Special Vacancy Elections: In order to promptly fill vacancies in the Legislature and in Congress, special elections to fill such vacancies typically are conducted in a shortened time period, and elections officials have less time to prepare than they do for regularly scheduled

elections. Furthermore, because vacancies in the Legislature or in Congress can occur due to the death of an officeholder or an unexpected resignation, special vacancy elections often cannot be anticipated in advance, so elections officials may not be able to prepare in advance for these elections.

While certain elections may be conducted as all-mailed ballot elections under existing law, most elections—particularly for Legislature and Congress—are still conducted as traditional elections, where voters have the ability to vote at a polling place on election day. As a result, many voters who are accustomed to voting at a polling place may expect that there will be a neighborhood polling place at which they will be able to vote in a special election for Legislature or Congress. If such polling places are not going to be provided, voter education and outreach efforts may be necessary to ensure that voters who traditionally would vote at a polling place are not negatively affected by this change in election procedure. Given the unpredictable need and expedited time frame for special elections, however, the ability of elections officials to do effective voter education and outreach may be limited. The committee may wish to consider whether it is desirable to allow the use of a balloting method—all-mailed ballot elections—with which many voters are not familiar for special vacancy elections, given that the abbreviated schedule for such elections limits the ability to do education and outreach.

- 5) United States Postal Service Facility Closures and Mail Delays: In 2012, this committee and the Senate Elections and Constitutional Amendments Committee held a joint oversight hearing to discuss United States Postal Service (USPS) facility closures and the impact on voters and upcoming elections. During the hearing, state and county elections officials testified about the impact that recent post office and processing facility closures had on their jurisdictions and on local elections, as well as the anticipated challenges with more closures expected.

According to testimony from elections officials, one of the most significant impacts those closures had on the election process is that there had been significant delays in mail delivery in some circumstances. Elections officials from counties that were previously served by closed facilities indicated that some first class mail took five to seven days to arrive after closures of USPS facilities, compared to the usual delivery time of one to three days. Since that hearing, the USPS has announced further plans for changes in mail delivery procedures that also have the potential to delay mail delivery. Finally, the USPS and Congress have considered proposals to end Saturday mail delivery as a way to cut costs.

The committee may wish to consider whether it is appropriate to permit all-mail ballot elections to be used in a broader range of circumstances when closures and operational changes by the USPS may result in mail delivery delays, and otherwise make mail delivery less reliable.

- 6) Arguments in Support: The sponsor of this bill, the County of San Diego, writes in support:

Under existing law, county jurisdictions are mandated to prepare and conduct special elections to fill a vacancy in the office of a State Senator or Member of the Assembly, or to fill a vacancy in the office of United States Senator or Member of the United States House of Representatives. Charter counties and cities may conduct all-mail ballot elections for local special elections should there be a

clause in their charters that permit them such authority. In contrast, general law cities, and those who do not have direction in their charter, are governed by state voting procedures, which have strict limits on when local special elections can be carried out as all-mail ballot elections.

As you are aware, election trends indicate a consistently low voter turnout for special elections, which may have only a single issue or candidate on the ballot. The number of mail ballots cast throughout California is growing and prevailing as the preferred method of voting. By allowing special elections to be conducted by means of an all-mail ballot election, not only may voter participation increase but there will be a reduction in election costs which ultimately saves taxpayer dollars. In addition, all-mail ballot special elections provide convenience to voters, while still providing many opportunities for civic engagement.

7) Arguments in Opposition: Asian Americans Advancing Justice-Los Angeles (Advancing Justice-LA), which has an oppose unless amended position, writes:

Advancing Justice-LA supports both legislative and grassroots efforts to make it easier for voters to vote by mail (VBM). We are aware that across the state, the proportion of voters signing up for permanent VBM status has trended upward over the past decade. However, we believe it is premature for the state to authorize jurisdictions to make VBM the primary balloting option for voters in the absence of information explaining why California ranks poorly relative to other states with respect to VBM rejection rates and VBM return rates....

Additionally, although the overall proportion of VBM voters in the state has increased over time, available data highlight sizable age, racial and ethnic, and other disparities between VBM voters and polling place voters, as well as significant variations by region. For example, a report by the California Civic Engagement Project at the UC Davis Center for Regional Change found that in the 2012 general election, the proportion of youth voters (defined as ages 18-23) who voted by mail was 25 percentage points lower than the proportion of voters 64 years or older who voted by mail.

Among racial and ethnic lines, the report found that statewide, the rate of VBM usage among Latino voters was 14 percentage points lower than the rate for all voters as a whole, and that this gap was larger in regions such as Southern California (encompassing Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties). The report found that the rate of VBM usage among Asian American voters was above that of the general population; however, from voter research that Advancing Justice-LA has conducted, we know that the rate of VBM usage varies by Asian American ethnic group. For example, among Los Angeles County voters during the 2008 general election, Asian Indian (22%), Cambodian (27%), and Filipino American (26%) voters used the VBM balloting process at rates near or below the countywide average (24%). Advancing Justice-LA's belief is that policymakers should first consider the potential challenges and disparities in VBM usage noted above before enacting legislation that permits jurisdictions to make VBM balloting the primary option for voters, whether in regularly scheduled elections or special vacancy elections...

Even accepting the notion that all-mail ballot elections may create increased turnout, we believe that the unintended consequences of making VBM the primary option for diverse electorates will impede the achievement of increased turnout unless adequate mitigation measures are taken. These unintended consequences pertain to accessibility and education and include the following:

- *Reduction in availability of language assistance available at polling places under federal law, and availability of in-person assistance in general...*
- *Reduction in availability of language assistance available at polling places under state law...*
- *Large amount of voter education required to switch to all-mail system...*

- 8) Related Legislation: AB 2028 (Mullin), which is also being heard in this committee today, would authorize San Mateo County to participate in the ongoing all-mailed ballot pilot project that is being conducted in Yolo County, as described above.

SCA 16 (Steinberg), which is pending in the Senate Appropriations Committee, would permit the Governor to fill a Legislative vacancy by appointment, as specified.

AB 2273 (Ridley-Thomas), which is pending in the Assembly Appropriations Committee, would require the state to reimburse counties for the costs of special elections held to fill vacancies in Congress and the Legislature, for all elections held on or after January 1, 2013. AB 2273 was approved by this committee on a 7-0 vote.

SB 942 (Vidak) would require the state to reimburse counties for the costs of special elections held to fill vacancies in Congress and the Legislature, for all elections held between January 1, 2008 and December 31, 2014. SB 963 (Torres) is identical to AB 2273. Both bills are pending in the Senate Appropriations Committee.

- 9) Previous Legislation: SB 304 (Kehoe) of 2011 would have authorized elections in San Diego County to be conducted wholly by mail until January 1, 2016, if specified conditions were satisfied. SB 304 was never heard in committee.

SB 1102 (Liu) of 2010 would have permitted a special primary or run-off election to fill a legislative or congressional vacancy to be conducted wholly by mail provided that the board of supervisors of each county within the affected jurisdiction authorized the all-mail ballot election. SB 1102 was never brought up for vote on the Senate Floor.

AB 1681 (Yamada) of 2010 was similar to AB 413. AB 1681 was vetoed by Governor Schwarzenegger, who expressed concern that "with limited options to vote in-person citizens—especially poor, elderly, and disabled voters—would not have sufficient opportunity to vote."

AB 1228 (Yamada) of 2009 was similar to AB 1681, except that AB 1228 would have allowed both Yolo and Santa Clara Counties to participate in the all-mail ballot pilot project.

AB 1228 was vetoed by Governor Schwarzenegger for the same reasons stated in his veto message of AB 1681 above.

10) Prior Vote: This bill previously failed passage in this committee on May 6, 2014 on a 3-3 vote, and was granted reconsideration.

REGISTERED SUPPORT / OPPOSITION:

Support

County of San Diego (sponsor)  
California Association of Clerks and Election Officials (if amended)  
California State Association of Counties  
California State Association of Letter Carriers  
County of San Bernardino  
Rural County Representatives of California  
San Mateo County Board of Supervisors  
Sonoma County Board of Supervisors  
Urban Counties Caucus

Opposition

American Civil Liberties Union of California (unless amended)  
Asian Americans Advancing Justice-Los Angeles (unless amended)  
Disability Rights California (unless amended)  
Lawyers Committee for Civil Rights of the San Francisco Bay Area (unless amended)  
Mexican American Legal Defense and Educational Fund (unless amended)

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