

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

SB 485 (Becker) – As Amended June 22, 2023

AS PROPOSED TO BE AMENDED

SENATE VOTE: (vote not relevant)

SUBJECT: Elections: election worker protections.

SUMMARY: Expands an existing crime that makes it a felony to interfere with the officers conducting an election or canvass, or a voter exercising their right to vote. Specifically, **this bill:**

- 1) Expands an existing crime that makes it a felony to interfere in any manner with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their right of voting at an election, in order to prevent the election or canvass from being fairly held and lawfully conducted, to specifically include interfering with any of the following:
 - a) An elections official or their staff, including temporary workers and volunteers, in their performance of any duty related to conducting an election or canvass.
 - b) A member of a precinct board, in their performance of any duty related to assisting with conducting an election or canvass.
 - c) A voter lawfully exercising their rights of voting at an election.
- 2) Provides that for purposes of these provisions, the term “conducting an election or canvass” includes the election observation process governed by the Elections Code and applicable regulations adopted by the Secretary of State (SOS), and the term “voting at an election” includes voting in person at a polling place or at the office of the elections official, including satellite locations, and voting by mail and returning a voted ballot pursuant to existing law.
- 3) Provides that for the purposes of a law that makes it a felony to threaten or use violence, or to arrange for someone else to do so, to influence a person who is voting at any election, as specified, that the term “voting at any election” includes voting in person at a polling place or at the office of the elections official, including satellite locations, and voting by mail and returning a voted ballot pursuant to existing law.
- 4) Makes conforming changes.

EXISTING LAW:

- 1) Provides that the SOS is the chief elections officer of the state, and shall administer the provisions of the Elections Code. Requires the SOS to see that elections are efficiently conducted and that state election laws are enforced. (Government Code §12172.5(a))

- 2) Makes it a felony for a person to interfere with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted. (Elections Code §18502)
- 3) Makes it a felony for a person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, or to hire or arrange for another person to do so, 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, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election. (Elections Code §18540)
- 4) Makes it a crime punishable by imprisonment in county jail or in state prison for a person to knowingly challenge a person's right to vote without probable cause or on fraudulent or spurious grounds; to engage in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting; or to fraudulently advise any person that the person is not eligible or registered to vote when in fact that person is eligible or is registered, or who violates a provision of existing law relating to challenges of voters at a polling place. Makes it a felony to conspire to violate these provisions. (Elections Code §18543)
- 5) Makes it a crime punishable by a fine, by imprisonment in county jail or in state prison, or by both a fine and imprisonment, for a person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place, or to hire or arrange for another such person do so, without written authorization of the appropriate city or county elections official. (Elections Code §§18544, 18545)
- 6) Makes it a misdemeanor for a member of the public to willfully engage in any attempt to ascertain the identity and ballot choices of a voter while observing the processing of vote by mail ballots, the semifinal official canvass, the official canvass, or a recount, as specified. (Elections Code §18562.5)
- 7) Requires the SOS to promulgate regulations establishing guidelines for county elections officials relating to the processing of vote by mail ballots and elections observers, as specified. (Elections Code §3026)
- 8) Defines the term "elections official" to mean any of the following: (a) A clerk or any person who is charged with the duty of conducting an election; or, (b) A county clerk, city clerk, registrar of voters, or elections supervisor having jurisdiction over elections within any county, city, or district within the state. (Elections Code §320) Defines the term "elections official," for the purposes of provisions of law related to intimidation of voters, to mean the county elections official, registrar of voters, or city clerk. (Elections Code §18546)
- 9) Defines the term "precinct board" to mean the board appointed by the elections official to serve at a single precinct or a consolidated precinct, or vote center; when used in relation to

proceedings taking place after the polls have closed to include any substitutive canvassing and counting board that may have been appointed to take the place of the board theretofore serving; or, as a member of the precinct board and includes an election officer. (Elections Code §339)

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

- 1) **New Bill:** This bill recently was amended at the request of the author to delete its prior contents and add the current provisions. As a result, prior votes and analyses are not relevant. The current version of this bill proposes policy changes that have not been heard in an Assembly or Senate policy committee during this legislative session.
- 2) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed an amendment to delete section 2 of this bill, which would make it a felony to use of or threaten to make use of any force, violence, or tactic of coercion or intimidation to prevent or attempt to prevent an elections official or their staff, a poll worker, or the SOS or their staff from performing any duty related to conducting an election or canvass, as specified. This analysis reflects those proposed amendments.
- 3) **Purpose of the Bill:** According to the author:

Recent surges in election misinformation created unprecedented attention on elections and election officials. This attention has led to negative outcomes for poll workers across the country, including here in California. Increased use of social media has facilitated the rapid dissemination of unverified information, fostering a surge in dangerous election misinformation. Consequently, this has fueled democratic division and skepticism towards electoral processes, prompting a wave of uncertainty and mistrust among the public.

Among those burdened by this surge in distrust have been election workers and other parties that conduct elections including volunteers. Unproven claims of fraud, tampering, or election interference have created undue barriers for election workers including threats to their personal safety and mental health.

The escalating hostility and acrimonious discourse surrounding elections have taken a toll on elections officials and their staff. This strain on the election's workforce impedes their ability to effectively serve Californians and their communities. Concerns for personal safety and the well-being of their families prompt some individuals to leave the election profession altogether.

This bill clarifies the parties involved in an election and expansive voting definitions as it relates to contact free voting like mail in voting or ballot drop boxes. Election workers play an integral role in our democracy and we must ensure their safety and wellbeing is protected from election interference and misinformation.

- 4) **Current Protections in California:** As described above, many provisions of existing law seek to protect election workers and voters from bad actors. For instance, current law makes it a felony for a person to interfere with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted. However, according to the author and sponsor, the applicability of the term “officers holding an election” is unclear and this bill seeks to clarify who encompasses an “officer” by clearly stating the elections official and their permanent staff, temporary workers and volunteers who conduct certain tasks during the election and canvass. Additionally, the author and sponsor state that the applicability of the phrase “holding an election or conducting a canvass” is also unclear. Thus this bill defines what it means to “conduct an election or canvass” and what the phrase “voting in an election” includes.
- 5) **Is Current Law Insufficient?** The author and sponsor believe this bill is necessary to ensure existing protections provide safety for election officials and other key election workers. The author and sponsor provided the following examples to demonstrate how the provisions of this bill will address certain instances that have occurred during California elections:
- A rally by a political party circled a polling place and prevented voters from accessing the location. Additionally, voters in at least one county reported organized groups setting up surveillance cameras at drop box locations. According to the author and sponsor, this bill addresses this behavior by expanding what it means to interfere with a voter who is “voting at an election” to specifically include dropping a ballot off at a dropoff location.
 - A warning that individuals were posting on social media disruptive actions to prevent election workers from collecting ballots from drop boxes, such as placing live poisonous snakes, reactive chemicals, or other substances into drop boxes. This bill addresses this behavior by expanding current law to include interference with elections officials and their staff, including temporary workers and volunteers while performing their election related duties.
 - During the pandemic there were situations where people refused to wear a mask and became irate at poll workers for enforcing mask mandates. Additionally, there were reports of misinformation that stated sharpies caused ballots to be unread by tabulators, and reports of observers taking sharpies from the hands of voters. This bill addresses this behavior by expanding existing law to include interfering with a poll worker while assisting with the conduct of an election or a canvass.

According to the author and sponsor, this bill provides more specificity to allow law enforcement to engage and address menacing, threatening, and obstructive behavior of individuals towards elections officials and their job duties. However, it is unclear whether current law fails to provide sufficient protections for all of those who are involved in administering an election. At least some of the conduct described above appears to be illegal under existing law. It is unclear whether the lack of a law enforcement response to those situations was due to an insufficient level of specificity in the law, in light of the fact that existing law is fairly broad and thus could be interpreted to protect *all* election workers from

interference with bad actors.

On the other hand, it could be argued that the provisions of this bill may be helpful in light of recent election reforms and changes in way voters are choosing to return their ballots.

- 6) **Recent Surveys:** In 2022, the Democracy Fund/Elections & Voting Information Center at Reed College conducted a national survey of local election officials. The goal of the survey was to lift up local election officials' voices in national, regional, and state conversations about election administration, integrity, and conduct. According to the survey, local election officials showed that nearly a quarter of them experienced threats of violence, harassment or other instances of abuse as the result of their work.

Additionally, a 2023 survey conducted by the Brennan Center for Justice reached out to local election officials and reported that nearly one in three election officials have been harassed, abused, or threatened because of their job, and more than one in five are concerned about being physically assaulted on the job in future elections. Additionally, more than half of survey respondents expressed concern the attacks will make it more difficult to retain or recruit election workers in future elections.

- 7) **Federal Level Response:** In July 2021, the US Department of Justice (DOJ) established the Election Threats Task Force in partnership with US attorneys' offices and the Federal Bureau of Investigation (FBI) to provide a federal resource for reporting, evaluating, and investigating threats against election workers. In August 2022, the task force announced that of the more than 1,000 cases it had reviewed, a handful of federal cases had been charged, but only one sentence had been handed down. Moreover, 58% of all potentially criminal threats reviewed were found to be in states where election results were challenged following the 2020 election—including Arizona, Colorado, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.

Additionally, funding has been provided at the federal level for improved security. Last year, the US Election Assistance Commission (EAC) voted unanimously to allow states to use federal Help America Vote Act funds to improve personal security of election officials and provide physical security services and social media threat monitoring to state or local election officials. Earlier this year, the Department of Homeland Security announced a change in its Homeland Security Grant Program. Specifically, in fiscal year 2023, states must dedicate at least three percent of the money they receive to election security needs.

Furthermore, there is federal legislation pending in Congress that could help support and protect election workers. Specifically, the Election Worker Protection Act (S.1318) provides grants for state and local governments to help recruit and retain poll workers and protect election workers' personal information. The bill also expands federal penalties for threatening, intimidating, or doxxing (online harassment that involves sharing a person's private information) election workers. The Support Our Elections Workers Act (S. 1609) directs the EAC to establish a program to make grants to states to provide increased pay for election workers, and for other purposes as specified.

- 8) **State Level Responses:** According to the National Conference of State Legislatures (NCSL), after the 2020 US presidential election, election officials faced an unprecedented level of threats to their safety and security. Since 2020, state policymakers from both parties have confronted the harassment of election workers, including threats of violence, from a variety of angles, including by revising existing statutes and passing stand-alone protections. For instance, last year two states (California and Oregon), expanded their address confidentiality programs to include election workers.

According to NCSL, states are also revising their statutes to criminalize threats against election workers. For instance, in 2021, Arizona and Kansas made it illegal to impersonate an election official, and Washington enhanced criminal penalties for harassment of election workers, placing them in the same protected category as judicial workers. Additionally, last year Vermont expanded its definition of “criminal threatening” to include offenses in polling locations and against election officials, making election-related harassment crimes easier to prosecute. This year, New Mexico and Oklahoma criminalized intimidation of state and municipal election workers. Moreover, in Colorado, doxxing protections were extended to include immediate family members of election officials. In Maine, legislation required de-escalation training for election officials and annual reporting of election threats to the Legislature.

- 9) **Elections Observers:** Elections observers are groups and individuals that observe the conduct of various aspects of California elections. Existing law requires the SOS to promulgate regulations establishing guidelines for county elections officials relating to the processing of vote by mail ballots and elections observers, as specified. The SOS is currently developing regulations to clearly set forth the rights and responsibilities of the election observers and the county elections officials and to provide uniform guidance to election observers and county elections officials for the observation process. It is anticipated that having clear guidance with respect to the observation process - in the form of these regulations - will aid elections officials in addressing tense situations with election observers that have appeared more frequently in the past few elections.

The proposed regulations were submitted to the Office of Administrative Law and the proposed text of the regulations has been updated twice based upon public comments received during earlier public comment periods. A new public comment period is underway, and will run through July 17, 2023.

- 10) **Previous Legislation:** SB 1131 (Newman), Chapter 554, Statutes of 2022, allows individuals who face threats or acts of violence or harassment because of their work for public entities (including election workers) to participate in an existing address confidentiality program for reproductive health care service providers, employees, volunteers, and patients. SB 1131 additionally allows employees and contractors of state or local election officials who face life-threatening circumstances to have their voter registration information made confidential. SB 1131 was approved by this committee on a 5-1 vote, and was approved on the Assembly Floor on a 62-0 vote.
- 11) **Arguments in Support:** The sponsor of this bill, Secretary of State Shirley N. Weber, Ph.D., writes;

This measure is necessary to provide for the safety of election officials and other key election workers by expanding the definition of an "election officer" to all individuals involved in election proceedings.

Widespread misinformation and attempts to interfere with the democratic process have fueled alarming instances of threatening and violent behavior toward election workers. Intimidation towards workers and voters include physical[] assaults, blocking drop boxes, verbal and online threats, and planned disruptive actions via social media, which have been partially coordinated through online forums.

Frequent violence and threats have resulted in nationwide shortages of election workers as they fear for their safety. Many locations have been forced to invest unanticipated expenditures to implement secondary safety measures such as reinforced doors and panic buttons. The current landscape calls for measures to ensure the safety and well-being of California elections workers and voters. It is crucial to address the challenges posed by misinformation, electoral manipulation, and threats to the integrity of elections.

12) **Double Referral:** This bill has been double-referred to the Assembly Committee on Public Safety.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Shirley N. Weber, Ph.D. (Sponsor)

Opposition

None on file.

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