

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 286 (Stern) – As Amended July 3, 2017

SENATE VOTE: 28-12

SUBJECT: Elections: voting.

SUMMARY: Permits a voter who is unable to surrender his or her vote by mail (VBM) ballot to receive and cast a regular (i.e., non-provisional) ballot if the elections official is able to verify that the voter has not returned the VBM ballot and ensures that the VBM ballot is not counted. Makes various, mostly minor or technical, changes to state election laws to facilitate the conduct of elections using vote centers in lieu of polling places, and to facilitate the use of electronic poll books and ballot on demand printers. Specifically, **this bill:**

- 1) Permits a voter who has been issued a VBM ballot, and who goes to a polling place, a vote center, or an office or satellite office of the elections official where voting is permitted, but who is unable to surrender his or her VBM ballot, to vote a non-provisional ballot if the precinct board, vote center election board, or elections official does both of the following:
 - a) Verifies that the voter has not returned the VBM ballot; and,
 - b) Notates the voter's record to ensure that the VBM ballot is not cast or tabulated after the person votes at the polls.
- 2) Defines the term "polling place" to include vote centers, thereby making laws governing polling places generally applicable to vote centers, except as specified.
 - a) Generally exempts vote centers from existing requirements that elections officials publish and post lists of the polling place for each precinct, and of the names of the election workers assigned to each precinct, and instead requires elections officials to include a list of all vote center locations in the county voter information guide.
 - b) Exempts elections conducted using vote centers from a provision of law that allows voters present at a polling place to appoint election workers if no workers are present at the time that the polling place opens.
 - c) Exempts elections conducted using vote centers from a provision of law that allows the Governor to order a new election in a precinct if the election was prevented in that precinct due to the loss or destruction of ballots.
- 3) Defines and standardizes various terms, including terms used to describe the election workers who operate and serve voters at polling places (sometimes referred to as "poll workers"), and terms used to describe official lists of registered voters at an election.
- 4) Makes various minor changes to reflect the fact that in-person voting may be available on days prior to election day, and in locations other than at precinct-based polling places.

- 5) Makes various minor and conforming changes to reflect the fact that vote centers and other polling locations may use voting systems and methods for in-person voting that do not involve the use of pre-printed paper ballots. Establishes procedures for election workers to reconcile the number of ballots cast at vote centers with the supplies provided by the elections official.
- 6) Provides that loitering near or disseminating visible or audible electioneering information at VBM ballot drop boxes constitutes "electioneering" under existing law.
- 7) Allows election information from electronic poll books to be preserved in an electronic format. Provides flexibility in the format of rosters and voter lists provided by the elections official for use at polling places, and reduces the number of copies of such rosters and lists that the elections official must provide to each polling place. Requires elections officials to provide access to voter lists at vote centers. Allows jurisdictions that use electronic poll books to use printouts or electronic notifications in order to comply with existing requirements to identify those voters who have voted at a polling place.
- 8) Makes other minor, technical, and conforming changes.

EXISTING LAW:

- 1) Allows any voter to request and vote a VBM ballot.
- 2) Provides that a VBM voter who returns to his or her home precinct on election day may vote at the precinct only if the voter surrenders the VBM ballot that was issued to the voter. Requires that a voter who is unable to surrender his or her VBM ballot be issued a provisional ballot. Requires the provisional ballot to be counted if the voter did not cast the VBM ballot and the voter's signature on the provisional ballot envelope matches the signature on the voter's registration.
- 3) 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.
- 4) Permits a voter who is otherwise qualified to register to vote to complete a conditional voter registration, as defined, and to cast a provisional ballot during the 14 days immediately preceding an election or on election day at the office of the elections official. Permits the county elections official to offer conditional voter registration at satellite offices of the county elections official.
- 5) Defines an "electronic poll book" to mean an electronic list of registered voters that may be transported to the polling location. Requires the SOS to adopt and publish electronic poll book standards and regulations governing the certification and use of electronic poll books.
- 6) Defines a "ballot on demand system" to mean a self-contained system that allows users to do both of the following on an as-needed basis:
 - a) Manufacture and finish card stock; and,

- b) Finish unfinished ballot cards into ballot cards.
- 7) Requires the SOS to adopt regulations governing the manufacture, finishing, quality standards, distribution, and inventory control of ballot on demand systems.
- 8) Prohibits a person, at any time that a voter may be casting a ballot, from doing any electioneering, as defined, within 100 feet of a polling place, elections official's office, or satellite office of the elections official.

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

COMMENTS:

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

SB 286 would permit VBM voters who lose or never received their ballots to vote a regular, non-provisional ballot at their home polling place, a vote center, or the registrar's main or satellite office when it can be verified that their VBM ballot has not been received and they can be flagged in the voter records as having cast a ballot.

As counties begin to implement the vote center model for elections under the California Voter's Choice Act or otherwise utilize electronic poll books at regular polling places, this bill will reduce the reliance on expensive, time-consuming provisional ballots while still maintaining election integrity.

Since moving to the vote center model this policy has allowed Colorado to dramatically reduce the number of provisional ballots cast. Solano County estimates that this policy would reduce by 50% the number of provisional ballots in California counties that participate.

SB 286 would also amend numerous code sections so that they conform to the California Voter's Choice Act of 2016.

- 2) **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 are permitted to conduct elections under this system in 2018, while the remaining counties may use this system beginning in 2020.

Because the CVCA generally requires counties that conduct elections pursuant to its provisions to mail ballots to all registered voters, the CVCA likely will increase the use of VBM ballots. Furthermore, the CVCA eliminates the requirement for counties to establish polling places for elections, but instead requires counties to establish vote centers. Vote centers are polling locations at which any registered voter in a county can cast a regular (i.e., non-provisional) ballot, regardless of the voter's precinct. In order to verify the registration of voters, determine the correct ballot type for each voter, and ensure that a voter has not already cast a ballot, vote centers must have a mechanism to verify voter registration

information. In addition, vote centers are required to offer same day voter registration for voters in the jurisdiction. In most jurisdictions, these requirements are likely to be met through the use of electronic poll books that can communicate with county and state election systems in real-time.

- 3) **Conditional Voter Registration:** AB 1436 (Feuer), Chapter 497, Statutes of 2012, permits "conditional voter registration," under which a person is allowed to register to vote and vote at the office of the county elections official at any time, including on election day, if certain requirements are met. AB 1436, which went into effect on January 1 of this year, did not require conditional voter registration to be available at polling places. Counties that choose to conduct elections under the CVCA, however, are required to make conditional voter registration available at every vote center.
- 4) **Updating the Elections Code to Reflect New Voting Methods and Procedures:** Many provisions of state elections law are written to reflect the way that elections traditionally have been conducted in California; namely, voters either can vote by VBM ballot, or can vote at their assigned polling places on election day. With the implementation of the CVCA and the availability of conditional voter registration, however, the manner in which many Californians vote will change. While it is likely that a significant portion of California voters will continue to vote using VBM ballots that are mailed to them, it is also likely that there will be a significant increase in the number of voters who cast a ballot in-person prior to election day, and at locations other than precinct-based polling places. This bill makes various conforming changes to the Elections Code to reflect new voting methods and procedures that are available under the CVCA and conditional voter registration. These conforming changes, which were developed in part through discussions between the SOS and county elections officials, seek to ensure that the state's election laws serve their intended purposes as the CVCA and conditional voter registration are implemented.
- 5) **Provisional Voting and Vote by Mail Ballots:** A provisional ballot is a regular ballot that is placed in a special envelope prior to being put in the ballot box. Provisional ballots are generally cast by voters who believe they are registered to vote even though their names are not on the official voter registration list at the polling place, and by VBM voters who did not receive their ballots or do not have their ballots with them, and who instead want to vote at a polling place.

Provisional ballots are counted after elections officials have confirmed that the voter is registered to vote in the county and did not already vote in that election. Provisional ballots may be cast at any polling place in the county in which the voter is registered to vote, however, only the contests that the voter is eligible to vote for will be counted if the voter casts the provisional ballot at a polling place other than the one designated for the voter's home precinct. Because of the research that elections officials must conduct in order to determine whether a provisional ballot can be counted, the cost of, and amount of time spent, processing a provisional ballot are higher than for VBM and regular polling place ballots.

Traditionally, VBM voters who are unable to surrender their VBM ballots have been required to vote provisional ballots at the polling place to protect against double voting. Unless a voter surrenders the VBM ballot that was mailed to the voter, election workers at a polling place historically had no way of knowing whether that voter had already returned the VBM ballot. As counties begin using new methods (e.g., electronic poll books) to allow election

workers at polling places and vote centers to communicate with the elections official's office in real time, however, elections officials can protect against double voting without the use of provisional ballots. This bill allows elections officials to issue a regular (i.e., non-provisional) ballot to a VBM voter who is unable to surrender his or her VBM ballot if the official has a mechanism to determine that the voter has not already returned the VBM ballot, and to prevent that VBM ballot from being counted if it subsequently is returned to the elections official.

Because counties conducting elections pursuant to the CVCA generally are required to mail a VBM ballot to every registered voter, creating a mechanism for elections officials to issue non-provisional ballots to voters who are unable to surrender their VBM ballots should significantly reduce the number of provisional ballots that those counties must process. In fact, given the prevalence of VBM voting in California, this bill has the potential to significantly reduce the number of provisional ballots that counties must process even in counties that are not conducting elections pursuant to the CVCA.

- 6) **Arguments in Support:** In support of this bill, the California Association of Clerks and Election Officials writes:

Current law indicates that a voter who is unable to surrender their vote by mail ballot at the polling place must vote a provisional ballot. This results in a large number of provisional ballots that must be researched during the canvass period to determine if the voter had already returned their ballot. SB 286 will offer the option for counties to allow these voters to vote non-provisional ballots at the polls if the precinct officers are able to determine a ballot has not already been returned.

By allowing counties to provide this service will reduce the number of provisional ballots being issued and reviewed, which will allow counties to re-allocate their resources to other canvass activities.

- 7) **Related Legislation:** Recent amendments to this bill caused it to come into conflict with four other pending bills.

AB 837 (Low), which is pending in the Senate Appropriations Committee, makes significant changes to partisan primary election processes and procedures to improve the voting process for voters that decline to disclose a political party preference. AB 837 and this bill both amend a section of law dealing with supplies that are required to be provided for polling places.

AB 918 (Bonta), which is pending in the Senate Elections and Constitutional Amendments Committee, significantly expands the availability and accessibility of facsimile ballots in languages other than English in situations where such facsimile ballots are required to be made available pursuant to existing law. AB 918 and this bill both amend a section of law dealing with information that is required to be posted at polling places.

AB 939 (Low), which is pending in the Senate Elections and Constitutional Amendments Committee, requires the copies of the roster of registered voters for a precinct that are posted at the polling place to be listed by street address in numerical order. AB 939 and this bill

both amend a section of law dealing with the posting of rosters of registered voters at polling places.

AB 1403 (Oberholte), which is pending in the Senate Elections and Constitutional Amendments Committee, allows a military or overseas voter who is required to move under official active duty military orders after the voter registration deadline to apply in person to his or her elections official for permission to register, as specified, among other provisions. AB 1403 and this bill both amend a section of law dealing with voter registration for overseas and military voters.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association of Clerks and Election Officials
California Common Cause (prior version)
California Labor Federation (prior version)
Secretary of State Alex Padilla (prior version)

Opposition

None on file.

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