
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 29 (Umberg) - Elections: vote by mail ballots

Version: January 15, 2021

Urgency: Yes

Hearing Date: January 21, 2021

Policy Vote: E. & C.A. 4 - 1

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: SB 29 would require county elections officials to (1) mail a vote by mail (VBM) ballot to every registered voter, and (2) use a VBM ballot tracking system established by the Secretary of State (SOS) for elections conducted and proclaimed prior to January 1, 2022.

Fiscal Impact:

- The fiscal impact of this bill would be driven by several factors, including (1) the number of elections conducted and proclaimed in 2021, and (2) the number of voters eligible to participate in these elections that are not presently permanent VBM voters (see Staff Comments).
- SOS indicates that its implementation of the bill would not result in new state costs. The SOS ballot tracking system has already been deployed and is maintained using federal funds.
- By requiring counties to mail a ballot to every registered voter and to use a ballot tracking system, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. Mailing costs for two elections currently scheduled in 2021 will total about \$300,000 (General Fund, see Staff Comments).

Background: In 2001, AB 1520 (Shelley) was enacted, which among other provisions, authorized any voter to become a permanent VBM voter. Consequently, the State's voters have increasingly used VBM ballots to vote in recent elections. Since 2012, VBM ballots have constituted the majority of ballots cast in all statewide elections; as of March 2020, about 70 percent of all California voters are now permanent VBM voters.

In three counties (Alpine, Plumas, and Sierra), 100 percent of their precincts are small enough that current law deems them to be all-mail ballot precincts. Fifteen counties conduct elections pursuant to the California Voter's Choice Act (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) wherein every registered voter receives a ballot in the mail, whether or not they requested to be permanent VBM voters.

Following the State's primary election in March, 2020, SOS established a working group (comprised of staff from SOS, the Legislature, the Governor's Office, local elections officials, and representatives from numerous good government and voting rights organizations) to discuss the future conduct of elections due to the challenges posed by the worsening COVID-19 pandemic. Among the issues discussed were concerns that the COVID-19 pandemic would (1) make voters less willing to vote in person, (2) reduce the number of people willing to serve as poll workers, (3) reduce the number of locations willing to serve as in-person voting locations, and (4) require the use of different types of locations for in-person voting given the potential need to be able to accommodate physical distancing during in-person voting. A number of the recommendations from the working group provided the foundation for legislation pertaining to the November 3, 2020 statewide general election.

One such bill, AB 860 (Berman), required county elections officials to mail a ballot to every active registered voter for the November general election. Additionally, AB 860 (1) required county elections officials to permit any voter to cast a ballot using a certified remote accessible VBM system, (2) required county elections officials to use either SOS's ballot tracking system or a system that meets or exceeds its the level of service, (3) extended the deadline by which VBM ballots must be received from three days after Election Day to 17 days after Election Day, and (4) authorized counties to begin processing VBM ballots on the 29th day before the election. The changes established by AB 860 were only applicable for the November statewide general election.

In February 2020, SOS launched a "Where's My Ballot?" tool that allowed voters to receive notifications about their VBM ballots. Voters who signed up received automated notifications by voice call, email, or text when the county elections office mailed the voter's ballot, when the county received the voter's ballot, when the county counted the ballot, and when there were any issues with the voter's ballot. As noted above, pursuant to AB 860 counties were required to use this ballot tracking system developed by SOS, or another system that meets or exceeds it. As a result, "Where's My Ballot?" was available in every county for the November statewide general election. According to a press release from the SOS on overall turnout for the November 2020 statewide general election, over 5 million voters signed up to receive these notifications.

The National Conference of State Legislatures indicates that five states currently conduct all elections entirely by mail, and at least 21 other states permit certain smaller elections, such as school board contests, to be conducted by mail. Other states took actions to mitigate the effects of the COVID-19 pandemic on the conduct of elections, including (1) delaying the dates of primary and local elections, (2) conducting elections by mail, (3) expanding the criteria under which voters may request a VBM ballot, and (4) expanding early voting opportunities.

Proposed Law: This bill would, among other things, do the following:

- Require county elections officials to mail a ballot to every registered voter for an election proclaimed or conducted prior to January 1, 2022, as specified.
- Require county elections officials to use the VBM ballot tracking system established by SOS for an election proclaimed or conducted prior to January 1,

2022, unless the county makes available to voters a different VBM ballot tracking system that meets or exceeds the level of service provided by the SOS system.

Related Legislation:

- AB 37 (Berman) would require county elections officials to (1) mail a VBM ballot to every active registered voter, and (2) use a ballot tracking system for all future elections, as specified. This bill is pending in the Assembly Committee on Elections.
- AB 860 (Berman, Chapter 4, Statutes of 2020), among other provisions, required county elections officials to mail a ballot to every registered voter and required county elections officials to use the VBM ballot tracking system developed by SOS for the November 3, 2020 statewide general election.

Staff Comments: The cumulative result of current law (permanent VBM voters and Voter's Choice Act counties) is that more than 87 percent of California's registered voters received a VBM ballot for the 2020 November General Election.

As indicated previously, this bill would not result in new direct costs to the State. However, the bill would result in (1) mailing costs to affected counties, and (2) potential additional costs to those counties with respect to using the SOS "Where's my Ballot?" tool.

Scheduled elections in 2021 that would drive this bill's fiscal impact currently include one for Senate District 30 (in Los Angeles County), and one for Assembly District 79 (in San Diego County). Currently, counties are reimbursed for the costs associated with mailing ballots to permanent VBM voters only. Thus, for the California Voter's Choice Act counties, including Los Angeles County, costs associated with ballots mailed to voters who are not permanent VBM voters are not reimbursed. SOS estimates these costs for the Senate District 30 election to be about \$197,000. San Diego County is not a Voter's Choice Act county; costs for this election are estimated to be \$103,000. Potential local costs associated with "Where's my Ballot?" are still being determined. These aggregate local costs could be determined by the Commission on State Mandates to be state-reimbursable, and would be paid from the General Fund.

To the extent that presidential and gubernatorial appointments to vacant positions lead, in turn, to additional special elections, costs resulting from this bill could be higher. Likewise, if an already scheduled election leads, in turn, to a subsequent election (for instance, if an Assembly Member won the election in Senate District 30), costs resulting from this bill would be higher. Finally, based on information provided by SOS, a statewide election in 2021 would result in potentially reimbursable local costs of about \$7.6 million.

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