

SENATE THIRD READING
SB 35 (Umberg and McGuire)
As Amended August 26, 2021
Majority vote

SUMMARY

Expands prohibited electioneering and political activities near voting sites, and prohibits activities related to deceptive unofficial ballot collection containers. Requires the Secretary of State (SOS) to promulgate regulations specifying the manner in which to give required notice to the public on the prohibited activity. Extends an existing deadline for a candidate for Governor to submit tax returns to the SOS in order to have the candidate's name printed on the direct primary election, and makes changes to the process for submitting those documents, as specified.

Major Provisions

- 1) Modifies the distance from which electioneering and other specified political activities near a polling location are prohibited from the 100-foot radius of protected voting space from the room or rooms in which voters are signing the roster and casting ballots to instead the 100 feet from the entrance to a building that contains a polling place and an outdoor voting area where a voter may cast their ballot or drop off a ballot, as specified.
- 2) Prohibits obstructing access to, loitering near, or disseminating visible or audible electioneering information at a vote by mail (VBM) ballot drop box.
- 3) Prohibits obstructing ingress, egress, or parking with the intent of dissuading another person from voting within 100 feet of a voting site.
- 4) Prohibits engaging in specified political activities and electioneering in the immediate vicinity of a voter in line to cast or drop off a ballot, as specified.
- 5) Prohibits displaying a ballot collection container with the intent to deceive a voter into casting a ballot in an unofficial ballot box and directing or soliciting a voter to cast a ballot into an unofficial ballot collection container. Establishes that evidence of an intent to deceive may include using the word "official" on the container, or otherwise fashioning the container in a way that is likely to deceive a voter into believing that the container is an official collection box that has been approved by an elections official.
- 6) Requires notices regarding the prohibitions on electioneering and the prohibitions on activity related to corruption of the voting process be provided to the public and requires the SOS to promulgate regulations specifying the manner in which these notices are provided.
- 7) Extends an existing deadline for a candidate for Governor to submit tax returns to the SOS to have the candidate's name printed on the direct primary ballot, from 98 days before the direct primary election to 88 days before the direct primary election.
- 8) Deletes provisions of law that require the SOS to prepare a new version of the tax return if the SOS determines a candidate redacted information other than that permitted under existing law, and instead requires the SOS to notify a candidate for Governor of any deficiencies, as specified, and requires the candidate to submit corrected hard copies of the tax return no later than 5 p.m. on the 78th day before the direct primary election. Provides that the candidate

shall not be qualified to appear on the direct primary ballot if the corrected copies are not timely submitted.

COMMENTS

During the November 2020 election, several instances occurred in which electioneering or political activities happened near voting sites, and in some cases blocked access by voters to voting sites. For instance, in the city of Temecula, electioneering activity at the Ronald Reagan Sports Park by a crowd of then-President Trump supporters was reported to the police because the crowd was blocking access to a vote center inside the park. In another example in Nevada City, residents reported to *The Washington Post* they did not feel comfortable and could not access one of the most popular ballot boxes in the county during a political rally at the drop box site.

In addition, there were instances of unauthorized and non-official VBM drop boxes. According to an October 11, 2020 advisory from the SOS to county elections officials, the SOS's office received several complaints regarding the use of unauthorized and non-official VBM drop boxes being used or proposed to be used at local political party offices, candidate headquarters, and churches throughout the state. According to the memo, examples that were provided to the SOS's office included boxes or containers labeled simply as "ballot drop boxes" or designated misleadingly as "official ballot drop boxes." The memo stated that, "[state] law does not authorize the use of unauthorized, non-official vote-by-mail ballot drop boxes. County elections officials alone have the authority to designate the location, hours of operation, and number of drop boxes in the county, and have the responsibility for ensuring compliance with all applicable [statutes] and regulations that guarantees the security and chain of custody of vote-by-mail ballots deposited. Moreover, the use of unauthorized, non-official vote-by-mail ballot drop boxes does not comply with state law governing ballot collection activities."

Please see the policy committee analyses for further discussion of this bill.

According to the Author

"Californians have embraced an expanding array of options for casting their ballots. But state law intended to protect voters from intimidation and partisan harassment has not kept pace. Buffer zones that may have provided adequate protection to voters in the past are becoming less effective forms of protection for voters who may now wait in lines that stretch far outside of early and day-of polling places due to social distancing restrictions, increasing voter engagement, and work and family obligations that limit the times of day that many Californians are available to vote. Further, the law does not clearly provide enough protections to a growing number of early voters who cast their ballots in official vote-by-mail ballot drop boxes."

Arguments in Support

In support, the California Teachers Association writes: "SB 35 expands prohibited activities including obstructing ingress, egress, and parking within 100 feet for which it is a crime to conduct electioneering at a polling place, an election official's office, or a satellite voting location; requires notice regarding prohibitions on electioneering; requires regulations promulgated by the Secretary of State regarding the notice; and makes it a felony offense to display a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box."

"During the 2020 election cycle, there were reports of attempts to demonstrate for specific candidates within close proximity of polling places as well as attempts to create unofficial ballot boxes. This proposal addresses attempts to 'corrupt' the voting process by ensuring voters are not subjected to false electioneering while at a designated polling place and guarantees their ballots are counted."

Arguments in Opposition

In opposition to a prior version of this bill, the Election Integrity Project California, Inc. (EIPCa), wrote: "SB 35 assumes that certain types of third-party ballot collection are legitimate and that others are not. EIPCa reiterates that no form of unrestricted ballot collecting is legitimate or conducive to a healthy democratic process. If the legislature is sincere in its desire to encourage every eligible Californian to register and vote, then it needs to provide them with a system that is secure and trustworthy, one that engenders trust and confidence that all votes will be legitimate and that their vote will be equal to all other votes and receive due and legal process."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) SOS costs to develop regulations for the notice to the public on prohibited activities are absorbable.
- 2) Insignificant costs to the Department of Justice to the extent the new crimes added by this bill result in increased prosecutions brought by the department.
- 3) Minor non-reimbursable costs to local governments for enforcement and prosecution, which will likely be offset to some extent by fine revenues. Violations of the "100-foot" law are misdemeanors.

VOTES

SENATE FLOOR: 29-2-9

YES: Allen, Archuleta, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Jones, Wilk

ABS, ABST OR NV: Bates, Borgeas, Caballero, Dahle, Grove, Limón, Melendez, Nielsen, Stern

ASM ELECTIONS: 6-1-0

YES: Berman, Bennett, Low, Mayes, Mullin, Blanca Rubio

NO: Mathis

ASM PUBLIC SAFETY: 8-0-0

YES: Jones-Sawyer, Lackey, Bauer-Kahan, Lee, Quirk, Santiago, Seyarto, Wicks

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Voepel, Fong, Mullin, Eduardo Garcia, Luz Rivas, Quirk, Kalra, Stone, McCarty

ASSEMBLY FLOOR: 59-15-5

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mathis, Mayes, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Lackey, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

ABS, ABST OR NV: Bennett, Chen, Kiley, McCarty, Nguyen

ASM ELECTIONS: 6-0-1

YES: Berman, Bennett, Low, Mayes, Mullin, Blanca Rubio

ABS, ABST OR NV: Seyarto

UPDATED

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