

Date of Hearing: May 10, 2023

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 292 (Pellerin) – As Amended April 12, 2023

Policy Committee: Elections

Vote: 6 - 1

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill modifies the nonpartisan ballot provided to a No Party Preference (NPP) voter to enable the voter to write in the name of a candidate for President of the United States.

Specifically, this bill:

- 1) Requires a nonpartisan ballot provided to a NPP voter to include a space for the voter to write in the name of a candidate in a presidential primary election nominated by a party that authorizes NPP voters to vote in the primary election. The voter must complete, sign, and return a separate identifying document with the ballot indicating the political party of the candidate written in by the voter.
- 2) Modifies to be more user-friendly the application mailed to a NPP voter prior to each partisan primary election that allows the voter to request a vote by mail (VBM) ballot of a party that authorizes NPP voters to vote in the primary election.
- 3) Authorizes a voter to request by text message a crossover VBM ballot from the appropriate elections official, if the county has established a system for such requests.

FISCAL EFFECT:

- 1) By requiring a county elections official to modify NPP ballots and applications for crossover ballots, this bill may create a state-mandated local program. If the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service for which the state must reimburse local costs, the county could claim reimbursement from the state (General Fund). Individual counties estimate per-election costs averaging around the mid-tens of thousands of dollars to process more complex NPP ballots and crossover ballot applications.
- 2) One-time costs of approximately \$100,000 to the Secretary of State (SOS) to test and modify the VoteCal statewide voter database to accommodate this bill's changes to elections management.

COMMENTS:

- 1) **Purpose.** According to the author:

Voters who are registered to vote as [NPP] often do not realize that they cannot vote in a presidential primary without requesting a partisan ballot from a political party which allows crossover voting. Despite current requirements for notices to be sent to NPP voters prior to a Presidential Primary election, many voters fail to request a party ballot. With the statewide expansion of vote-by-mail, more voters are waiting until Election Day to open, vote, and return the ballot mailed to them. This means that many NPP voters will not realize that their ballot does not have the option to vote in a Presidential Primary until Election Day. Our bill would ensure that NPP voters who wish to crossover vote are not prevented from doing so by the lack of the appropriate ballot.

- 2) **Support and Opposition.** This bill is supported by voting rights groups and supported, if amended, by the California Association of Clerks and Elections Officials (CACEO). CACEO supports the goal of streamlining the presidential primary election for NPP voters, but notes processing votes for presidential write in candidates, as proposed by this bill, “requires county elections officials to review each ballot individually and manually enter the write-in votes into the tally system. This would add cost, time, and risk to the processing of these non-partisan ballots.” CACEO proposes this bill be amended to specify the NPP ballot include the names of presidential candidates from all parties open to such voters.

This bill is opposed by Election Integrity Project California (EIPC), which argues “NPP voters already receive multiple mailings and notifications from their county elections office in advance of the [VBM] ballot mailing, giving them ample opportunity to request the legal ballot of their choice – at substantial cost to the taxpayers.” EIPC also cautions this bill does not specify a clear procedure for the separation of the NPP ballot and accompanying identifying information, potentially breaching the voter’s right to a secret ballot.

- 3) **NPP Voters.** As of February 10, 2023, 22.5% of California voters are registered as NPP. California has a “modified” closed primary system for presidential primaries, permitting an NPP voter to participate in a party’s primary election via a “crossover” ballot if party rules authorize and notice is given to the SOS. In California’s 2020 presidential primary election, the American Independent Party, Democratic Party, and Libertarian Party allowed crossover ballots. Despite outreach efforts by state and local elections officials, anecdotal evidence reveals NPP voters continue to experience confusion about the need to obtain a crossover ballot. This bill makes it easier for an NPP voter to apply for a crossover ballot and provides a mechanism for an NPP voter to cast a vote in the presidential primary without requesting a crossover ballot in advance.
- 4) **Logistical Questions.** As noted in the Assembly Elections Committee’s analysis of this bill, it is unclear whether a political party will recognize as valid the NPP votes cast in the manner authorized by this bill. It is also unclear what happens if an NPP voter does not include the required extra document with identifying information when mailing back their ballot – will the vote still be counted and will the voter have any recourse to fix this mistake?