

Date of Hearing: September 12, 2025

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

SB 851 (Cervantes) – As Amended September 9, 2025

SENATE VOTE: [not relevant]

SUBJECT: Elections.

SUMMARY: Requires a state or local agency or political subdivision to provide written notice to the Secretary of State (SOS) and the Attorney General (AG) after it files or is served a court action relating to elections which contains a claim arising under federal law. Expands existing law that makes it a crime for a person who hires or arranges any person with a firearm or uniformed officer, as defined, to be stationed in the immediate vicinity of a polling location such that it applies to such a person or officer outside a county elections office without authorization of the appropriate elections official. Repeals requirements that standards for testing of voting equipment in the state must meet or exceed standards set by the federal Election Assistance Commission (EAC). Makes it a crime to use misleading unofficial ballot return envelopes. Clarifies that the duty to certify election results is a ministerial duty of the elections official. Specifically, **this bill:**

- 1) Requires a state or local agency or political subdivision, within three court days after a state or local agency or political subdivision files or is served with a court action relating to elections that contains a claim arising under federal law, to provide a written notice to the SOS and the AG. Requires the notice to include the case number, case name, and venue.
- 2) Requires a state or local agency or political subdivision, at least 14 court days before entering into a settlement, consent decree, or other court-approved agreement in a court action relating to elections that contains a claim arising under federal law, to provide a draft copy of the settlement, consent decree, or agreement to the SOS and the AG in order to provide them an opportunity to deliver guidance to the state or local agency or political subdivision to ensure that the settlement, consent decree, or agreement is consistent with state law, including regulations. Provides that any such information exchanged is exempt from disclosure under the California Public Records Act. Provides, for purposes of this section, that a claim arising under federal law includes, but is not limited to, a claim brought under the federal Voting Rights Act of 1965 (VRA), the National Voter Registration Act of 1993 (NVRA), the Help America Vote Act of 2002 (HAVA), the Civil Rights Act of 1960, and the Fourteenth and Fifteenth Amendments to the United States (US) Constitution. Provides that this bill shall not be construed to require the SOS or the AG to become a party to any action of which they receive written notice.
- 3) Finds and declares that the provisions above address a matter of statewide concern, and therefore apply to all cities and counties, including charter cities, charter counties, and charter cities and counties.
- 4) Expands an existing law that makes it a crime for a person to hire or arrange for any person in possession of a firearm or any uniformed officer to be stationed in the immediate vicinity of, or posted at a polling place without authorization of the appropriate elections official, so that it includes an officer or agent of a federal law enforcement agency or any person acting

on behalf of a federal law enforcement agency. Expands this crime to include a person who hires or arranges for any of the listed persons to be stationed in the immediate vicinity of or at a county elections office. Provides that this restriction does not apply when the person is being stationed at a polling place or county elections official's office pursuant to a federal court order.

- 5) Repeals requirements that standards adopted by the SOS for testing of voting equipment to be used in the state must meet or exceed voluntary federal standards set by the EAC, and instead requires the state standards to meet the minimum requirements of HAVA and to incorporate best practices in election technology.
- 6) Repeals provisions of law that require the SOS, after receiving written notification from a vendor, jurisdiction, or applicant, of a defect, fault, or failure of a voting system, part of a voting system, or a remote accessible vote by mail (VBM) system, to notify the EAC or its successor agency of the problem.
- 7) Clarifies that existing provisions of law that require an elections official to prepare a certified statement of the results of the election and submit it to the governing body within 30 days of the election, post the certified statement of results of the election on its internet website, and send to the SOS within 31 days of the election in an electronic format a complete copy of specified election results, are ministerial and nondiscretionary duties.
- 8) Requires the SOS, if an elections official fails to prepare a certified statement of the results of the election, to call the violation to the attention of the district attorney of the county or to the AG, and permits the SOS to assist the county elections official in discharging the officer's duties.
- 9) 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 who provides, directs, or solicits a voter to place or return a ballot in an envelope with the intent or in a way to deceive a voter into returning a ballot in an unofficial return envelope and believing that the envelope is an official ballot return envelope.
- 10) Makes other technical and conforming changes.
- 11) Contains a severability clause and contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Provides, in general, minimum standards and requirements for voting equipment used in federal elections, including, but not limited to, accessibility, voter verification, paper records, error rate, and audit capacity. (52 U.S.C. §§21081 et seq.)
- 2) Defines a voting system to mean a mechanical, electromechanical, or electronic system and its software, or any combination of these used for casting a ballot, tabulating votes, or both. Provides that a voting system does not include a remote accessible VBM system. (Elections Code §362)

- 3) Requires the SOS to adopt and publish voting system standards and regulations governing the use of voting systems. Requires the SOS to adopt standards that meet or exceed federal voluntary voting system guidelines set forth by the EAC or its successor agency. Provides that until state standards are adopted, the voluntary voting system guidelines (VVSG) Draft Version 1.1, as submitted to the EAC on August 31, 2012, shall be used as state standards to the extent that they do not conflict with the Elections Code. Authorizes the SOS to require additional testing to ensure that voting systems meet the requirements in law. (Elections Code §19101) Requires the SOS, in deciding whether to certify, decertify, or withhold certification of a voting system, voting system procedures, or part of a voting system, to apply the standards entitled California Voting System Standards (CVSS). (Cal. Code Regs. Tit. 2, § 20700)
- 4) Prohibits a voting system, in whole or in part, from being used unless it has been certified or conditionally approved by the SOS prior to any election at which it is to be used. (Elections Code §19202(a)) Prohibits a jurisdiction from purchasing or contracting for a voting system unless it has been certified or conditionally approved by the SOS. (Elections Code §19202(d))
- 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. Defines “immediate vicinity” to mean the area within 100 feet of the room or rooms in which the voters are signing the roster and casting ballots. (Elections Code §§18544, 18545, 18546(b))
- 6) Provides it is the intent of the Legislature that:
 - a) All voting systems be certified or conditionally approved by the SOS, independent of voluntary federal qualification or certification, before they are used in future elections to ensure that the voting systems have the ability to meet accuracy, accessibility, and security standards. (Elections Code §19006(a))
 - b) The SOS adopt and publish testing standards that meet or exceed federal voluntary standards set by the EAC or its successor agency. (Elections Code §19006(b))
- 7) Requires a vendor, jurisdiction, or applicant, if a voting system or a part of a voting system has been certified or conditionally approved by the SOS, to notify the SOS and all local elections officials who use the system in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system of the defect, fault, or failure. Requires the SOS, after receiving written notification of a defect, fault, or failure, to notify the EAC or its successor agency, as specified. (Elections Code §§19215, 19290, 19284)
- 8) Requires an elections official, upon completion of the count, to add to the results as so determined, the results of the write-in votes and any paper ballots used as certified by the precinct board, and thereupon to declare the vote, and forthwith post one copy at the counting place for public inspection. (Elections Code §15371)

- 9) Requires an elections official to prepare a certified statement of the results of the election and submit it to the governing body within 30 days of the election, as specified. Requires an elections official to post the certified statement of the results of the election on their website in a downloadable spreadsheet format, as specified. (Elections Code §15372)
- 10) Requires an elections official to send one complete copy of all results to the SOS in an electronic format within 31 days of the election as to all of the following:
 - a) All candidates voted for statewide office.
 - b) All candidates voted for the following offices:
 - i) Member of the Assembly.
 - ii) Member of the Senate.
 - iii) Member of the United States House of Representatives.
 - iv) Member of the State Board of Equalization.
 - v) Justice of the Court of Appeal.
 - vi) Judge of the superior court.
 - c) All statewide measures.
 - d) The total number of ballots cast. (Elections Code §15375)
- 11) Requires a governing body to declare elected or nominated to each office voted on at each election under its jurisdiction the person having the highest number of votes for that office, and to declare the results of each election under its jurisdiction as to each measure voted on at the election. (Elections Code §15400)
- 12) Provides that every person is punishable by a fine not exceeding \$1,000, or by imprisonment for 16 months or two or three years, or by both that fine and imprisonment, as specified, who does either of the following:
 - a) Displays a container for the purpose of collecting ballots, with the intent to deceive a voter into casting a ballot in an unofficial ballot box. Evidence of 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.
 - b) Directs or solicits a voter to place a ballot in an unofficial ballot box prohibited as described above. (Elections Code §18586)

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

COMMENTS:

- 1) **Prior Assembly Consideration of This Bill:** As previously approved by policy and fiscal committees in this house, this bill would have made various minor changes to the Elections Code. Subsequently, this bill was amended on the Assembly Floor to delete the contents of the bill, and to add the current provisions. As a result, prior votes and analyses are not relevant to the current version of this bill. The current version of this bill includes some of the provisions from AB 331 (Pellerin) of the current legislative session, which was approved by the Assembly. Additionally, 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) **Purpose of the Bill:** According to the author:

Make no mistake: California's elections systems are under attack from President Trump...Senate Bill 851 is the first step we must take to protect the integrity of our elections systems in time for the November 4 statewide special election.

SB 851 will ensure that the Secretary of State and Attorney General are notified when a state agency or local government are served with a suit or are entering into a settlement involving elections arising under federal law. This will allow both the SOS and AG to assist in defending against attacks by the federal government. This bill will also ensure that federal agents are treated the same way as state and local law enforcement so that it is a crime to hire or arrange for law enforcement to be posted at or near a voting location or county registrar's office without authorization. This will protect the sanctity of the places where Californians vote in person, and where their votes are counted. In addition, SB 851 will protect our voting system standards from attacks by the federal government by requiring voting machines in California continue to meet the highest industry standards, not the warped demands of President Trump. Finally, SB 851 makes county registrars' roles in certifying election results ministerial and non-discretionary, which will protect registrars from being pressured by President Trump to refuse to certify an election because he does not like the results.

- 3) **Help America Vote Act:** In 2002, President Bush signed HAVA into law to address irregularities in voting systems that came to light in 2000. Among other provisions, HAVA mandated the replacement of all punch card and lever voting machines in the country, required every polling place to deploy at least one accessible voting machine to allow voters with disabilities to mark, cast, and verify their ballots privately and independently, and required all voting systems to meet a set of minimum standards to be used in federal elections.

HAVA also established the EAC to serve as an independent, bipartisan commission responsible for developing guidance to meet HAVA requirements, adopting VVSG, and serving as a national clearinghouse of information on election administration. The EAC also accredits testing laboratories and certifies voting systems, as well as audits the use of HAVA funds. Using the VVSG and the EAC's testing and certification program are not mandatory, but many states require their use through statute or rule. Since states have different requirements for what they need a voting system to do, the EAC's programs are also not

necessarily a substitute for state-based requirements and testing. Many states use the VVSG or the EAC's testing and certification program as a baseline while also adding their own requirements and testing protocols.

- 4) **Voting Technology:** The Legislature has approved various bills to ensure California has rigorous and stringent voting system and voting equipment standards and approval procedures. Accordingly, voting technology, including, but not limited to voting systems, electronic pollbooks, and remote accessible VBM systems, are required to be certified for use prior to being sold or used in any California elections. Previous legislation authorizing the use of new voting technology has included provisions requiring the SOS to develop standards and regulations governing their use. Notably, SB 360 (Padilla), Chapter 602, Statutes of 2013, required the SOS to adopt and publish voting system standards and regulations governing the use of voting systems, and required those standards to meet or exceed federal voluntary voting system guidelines set forth by the EAC or its successor agency, as specified. SB 360 was enacted, in part, in response to the fact that federal voting system standards had not been updated because the EAC had lacked a quorum of commissioners for an extended time.

Accordingly, in 2014, California established its own standards – CVSS – for electronic components of voting systems which were derived from the EAC's VVSG versions 1.1 and 2.0. The CVSS provide a set of specifications and requirements to which voting systems are required to be tested to determine if they provide all the basic functionality, accessibility, and security capabilities required of voting systems. For instance, every system must go through functional testing, source code review, accessibility and volume testing, and red team security testing that involves experts trying to break into the voting system. The CVSS standards exceed the federal VVSG guidelines and are considered the most rigorous in the country and have been used in the evaluation and testing of all voting technology certified for use in California. According to the SOS, because voting technology has evolved, it is the time to update the standards to match new and emerging voting technology. Thus the SOS has contracted to begin the process of updating the CVSS.

While HAVA mandates the EAC to develop and maintain VVSG standards, adhering to the VVSG is voluntary except in select states where it is required by their own state law. As mentioned above, California has established its own voting system standards that exceed the federal standards. Accordingly, this bill updates the Elections Code and repeals obsolete provisions of law that require the SOS to adopt voting system standards that meet or exceed federal voluntary voting guidelines, and instead require the state standards to meet the minimum requirements of HAVA and to incorporate best practices in election technology.

- 5) **Other States and Voting System Testing:** According to the National Conference of State Legislatures, 38 states (Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming) and the District of Columbia have statutes or rules requiring some aspect of the federal testing and certification program. Some of these require full EAC certification, while others require testing to federal standards or testing by a federally accredited laboratory.

Some states (including California), however, do not use the federal program but have robust state-based standards, testing and certification programs. For instance, in Florida, the Bureau of Voting Systems Certification within the Department of State is responsible for voting system standards and certification.

- 6) **Executive Order:** Article I, Section 4, Clause 1, of the US Constitution, also referred to as the Elections Clause, gives states the primary authority over elections, granting them the power to determine the “times, places and manner” of elections. It is not unprecedented, however, for presidents to issue executive orders (EO) on the administration of federal elections, which are primarily focused on improving the voting experience. Similarly, Congress has used its constitutional power to enact several major pieces of election legislation, such as the VRA, NVRA, HAVA, and the Uniform and Overseas Citizens Absentee Voting Act.

On March 25th, the Trump Administration issued an EO titled “Preserving and Protecting the Integrity of American Elections,” containing a number of directives on policies that have traditionally been the purview of states and directing federal agencies to conduct specific activities related to election integrity. The EO directs the EAC to: (1) update the federal voter registration form to include a requirement for “documentary proof of United States citizenship;” (2) withhold funding from states that do not comply with federal law, including the EO’s documentary proof of US citizenship requirements, and (3) amend the VVSG, including to prohibit the use of certain voting systems, and rescind all previous certifications of certain systems. Other major directives contained in the EO include requiring the Department of Homeland Security to review each state’s publicly available voter lists and available records, and requiring all ballots to be received on Election Day and all electors selected on Election Day.

Several lawsuits have been filed challenging aspects of the EO, and asking courts to block many of its provisions, arguing that they unconstitutionally preempt state authority and amount to executive overreach. In at least two such cases, including one case brought by the State of California and 18 other states, courts issued preliminary injunctions that blocked implementation of key provisions of the EO.

This bill requires a state or local agency to notify the SOS and AG before entering into any court-approved agreement relating to elections that contains a claim arising under federal law. According to the author, this bill ensures the SOS and the AG will have the opportunity to aid in defending against attacks by the federal government.

- 7) **Current Protections in California:** Due to escalating hostility and acrimonious discourse surrounding elections over the years, the Legislature has taken steps to ensure there are laws in place to protect election workers and voters. For example, SB 35 (Umberg), Chapter 318, Statutes of 2021, expanded laws that prohibit electioneering and political activities near voting sites, and prohibits activities related to deceptive unofficial ballot collection containers.

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 485 (Becker), Chapter 611, Statutes of 2023, expanded 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, and clarified the law to ensure the applicability of the term “officers holding an election or conducting a canvass” includes elections officials and their permanent staff, temporary workers and volunteers.

Additionally, AB 2642 (Berman), Chapter 533, Statutes of 2024, prohibits a person from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce, any other person for engaging in specified election-related activities, and authorizes an aggrieved person, an officer holding an election or conducting a canvass, or the AG to file a civil action to enforce those prohibitions. Additionally, AB 2642 created a presumption that a person who openly carries a firearm or imitation firearm while interacting with or observing specified election-related activities, is presumed to have engaged in prohibited intimidation, as specified.

According to the author, this bill will additionally protect voters and elections officials by expanding an existing crime and making it illegal to hire or arrange for an officer or agent of a federal law enforcement agency or any person acting on behalf of a federal law enforcement agency officer to be stationed in the immediate vicinity of, or posted at a polling place without authorization of the appropriate elections official. Additionally, this bill expands this crime to include a person who hires or arranges specified persons, including a federal law enforcement officer or agent, to be stationed in the immediate vicinity of or at a county elections office.

- 8) **Election Certification Processes and Guardrails:** Certification, the statutory process by which officials sign off on the completion of election results, has historically been an uncontroversial postelection formality across the country. State law has long established that officials have a mandatory, nondiscretionary duty to certify elections. Despite this, since the 2020 election, more than 30 local officials nationwide have refused or threatened to refuse to certify election results (committee staff is unaware of any local elections officials in California who have refused or threatened to refuse to certify election results during that time). Their efforts did not succeed because state courts and state officials intervened to protect the certification process. State officials have several legal tools available to respond to and protect against future election certification issues.

The Citizens for Responsibility and Ethics in Washington published a report, “Election Certification Under Threat: A legal roadmap to protect the 2024 election including from 35 officials who have refused to certify results” that outlines legal remedies available to state and federal authorities to protect certification at the county level. For example, the report recommends state election boards, secretaries of state, attorneys general and local prosecutors should explicitly advise county officials of their non-discretionary certification duties and the penalties for non-compliance before any election. This bill codifies this legal protection and clarifies that the duty to certify election results is a ministerial and nondiscretionary duty of the elections official. Additionally, this bill requires the SOS, if an elections official fails to timely certify and report the election results in accordance with the law, to call the violation to the attention of the district attorney of the county or to the AG.

- 9) **Unofficial Vote by Mail Ballot Return Envelopes and Previous Legislation:** During the November 2020 statewide general election, 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. Subsequently, SB 35 (Umberg), Chapter 318, Statutes of 2021, was enacted to prohibit 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. SB 35 established 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.

The state Department of Justice received a report of a potentially misleading ballot return envelope being delivered to a voter during the November 2024 general election. In order to protect voters and deter this type of conduct from occurring, this bill expands current prohibitions on the use of unauthorized and non-official VBM drop boxes to include the use of unauthorized and non-official VBM ballot return envelopes.

- 10) **Arguments in Support:** In support, the League of Women Voters of California, writes:

California's election laws are grounded in the principle that federal authorities should not interfere in state and local elections unless there is a clear violation of voting rights. Unfortunately, recent events have demonstrated that this norm cannot be taken for granted. Efforts to undermine the certification of the 2020 presidential election, false attacks on the legitimacy of vote-by-mail and voting machines, and the deployment of federal agents in ways that intimidate voters and public officials highlight the urgent need for stronger state-level protections. At least one California county is already facing federal litigation for refusing to accede to these pressures. SB 851 responds directly to these challenges by reinforcing the independence and security of California's election processes.

- 11) **Related Legislation:** AB 331 (Pellerin) clarifies that the duty to certify election results is a ministerial duty of the elections official, and makes it a crime to use misleading unofficial ballot return envelopes, among other provisions. AB 331 passed out of this committee on 7-0 vote and passed the Assembly Floor on a 71-1 vote, but subsequently was held on suspense in the Senate Appropriations Committee. This bill includes some of the provisions of AB 331.

REGISTERED SUPPORT / OPPOSITION:

Support

Courage California
Felony Murder Elimination Project
League of Women Voters of California

Opposition

None on file.

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