Office of Senate Floor Analyses
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UNFINISHED BUSINESS

Bill No: SB 851
Author: Cervantes (D) and Pellerin (D)
Amended: 9/9/25
Vote: 27- Urgency

SENATE ELECTIONS & C.A. COMMITTEE: 5-0, 4/29/25
AYES: Cervantes, Choi, Allen, Limón, Umberg

SENATE FLOOR: 38-0, 5/5/25 (Consent)
AYES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Pérez, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener
NO VOTE RECORDED: Padilla, Reyes

ASSEMBLY FLOOR: 60-19, 9/13/25 – See last page for Roll Call.

SUBJECT: Elections

SOURCE: Author

DIGEST: This bill makes changes to state law to protect California's elections from interference.

Assembly Amendments of 9/9/25 replace the contents of this bill with the current language.

ANALYSIS:

Existing federal law:

1) States, pursuant to the Article I, Section 4 of the U.S. Constitution, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at

any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

2) Provides the Voting Rights Act of 1965, the National Voter Registration Act of 1993, the Help America Vote Act of 2002 (HAVA), and the Civil Rights Act of 1960.

3) Establishes, in general and pursuant to the HAVA, 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.

Existing state law:

1) 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. A voting system does not include a remote accessible vote by mail system.

2) Requires the Secretary of State (SOS) to adopt and publish voting system standards and regulations governing the use of voting systems. The SOS must adopt standards that meet or exceed federal voluntary voting system guidelines set forth by the EAC or a successor agency. Until state standards are adopted, the draft federal guidelines from August 31, 2012, must be used as state standards to the extent that they do not conflict with the California Elections Code.

3) Authorizes the SOS to require additional testing to ensure that voting systems meet the requirements in law. A voting system, in whole or in part, cannot be bought or used unless it has been certified or conditionally approved by the SOS prior to any election at which it is to be used.

4) 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 election 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. The SOS must notify the EAC or its successor agency after receiving written notification of a defect, fault, or failure.

5) Makes it a crime punishable as a felony 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. It is also a crime to hire or arrange for another such person to do so, without written authorization of the appropriate city or county elections official.

6) Requires an elections official, upon completion of the vote 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.

7) Requires a governing body to declare the person elected or nominated to each office voted on at each election under its jurisdiction, and to declare the results of each election under its jurisdiction as to each measure voted on at the election.

8) Makes the following punishable as a felony:

   a) Displaying 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) Directing or soliciting a voter to place a ballot in an unofficial ballot box, as described above.

This bill:

1) Requires state agencies and local governments to provide written notice to the SOS and the AG within three court days after the agency or jurisdiction files or is served with a court action that contains a claim relating to elections arising under federal law.

2) Requires state agencies and local governments to provide a draft copy of a settlement, consent decree, or other court-approved agreement relating to elections that contains a claim arising under federal law to the SOS and the AG in order to provide them an opportunity to deliver guidance to ensure that the settlement, consent decree, or other court-approved agreement is consistent with California law. This must occur at least 14 court days before a state agency or local government enters into a settlement, consent decree, or other court-approved agreement in a court action.

3) Expands the prohibition described in 5) of existing law to a uniformed law enforcement officer, including an officer or agent of a federal law enforcement agency, unless certain conditions are met.

4) Clarifies, ministerial and nondiscretionary duties of election officials, requirements to tally votes, prepare a certified statement of the results of the election, submit it to the governing body within 30 days of the election, post it on its website, and send to the SOS within 31 days of the election in an electronic format a complete copy of specified election results. The governing body would also have a ministerial and nondiscretionary duty to declare the winners elected or nominated to each office or ballot measure voted on at each election under its jurisdiction.

5) Requires the SOS, if an elections official fails to prepare a certified statement of the results of an 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.

6) Makes it a crime punishable as a felony 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.

7) Repeals provisions requiring the SOS to adopt and publish voting system standards that meet or exceed federal voluntary voting system guidelines prescribed by the EAC, and instead requires the SOS to adopt and publish voting standards that meet the minimum requirements of HAVA and incorporate best practices in election technology.

8) Repeals requirements for the SOS notify and submit a report to the EAC after learning about a defect, fault, or failure in a voting system, part of a voting system, a remote accessible vote by mail system, or part of a remote accessible vote by mail system.

9) Contains an urgency clause and a severability clause.

Background

Help America Vote Act. In 2002, Congress passed and President Bush signed HAVA into law to address, among other provisions, issues with voting systems arising from the presidential election in 2000. 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 and bipartisan commission responsible for developing guidance to meet HAVA requirements, adopting guidelines, and serving as a national clearinghouse of information on election administration. The EAC also accredits testing laboratories, certifies voting systems, and audits the use of HAVA funds. Using the EAC's testing and certification program are not mandatory, but many states require their use through statute or rule. Because 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.

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, do not use the federal program but have robust state-based standards, testing, and certification programs. For example, in Florida, the Bureau of Voting Systems Certification within the Department of State is responsible for voting system standards and certification.

Voting Technology in California. The Legislature has approved various bills to ensure California has rigorous and stringent voting systems, voting equipment standards, and approval procedures. In 2014, California established its own standards for electronic components of voting systems which were derived from the EAC's guidelines. California's standards 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. These standards exceed the federal guidelines and are considered the most rigorous in the country.

Executive Order. On March 25, 2025, President Trump issued an Executive Order (EO), "Preserving and Protecting the Integrity of American Elections," containing

a number of directives on policies that the U.S. Constitution assigns to states. This EO directs federal agencies to conduct specific activities related to election integrity, including: (1) updating the federal voter registration form to include a requirement for "documentary proof of U.S. citizenship;" (2) withholding funding from states that do not comply with federal law, including the EO's documentary proof of U.S. citizenship requirements, and (3) prohibiting the use of certain voting systems and rescinding 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, require all ballots to be received on Election Day, and that all electors be selected on Election Day. Several lawsuits have been filed challenging aspects of the EO. These lawsuits ask courts to block many of its provisions, arguing that they unconstitutionally preempt state authority and amount to executive overreach. In at least two cases, including one case brought by the State of California with 18 other states, courts issued preliminary injunctions blocking implementation of key provisions of the EO.

Unofficial Vote by Mail Ballot Return Envelopes. During the November 2020 statewide general election, there were instances of unauthorized and unofficial vote by mail drop boxes. According to an October 11, 2020, advisory from the SOS to county election officials, the SOS received several complaints regarding unauthorized and unofficial vote by mail drop boxes being used or proposed to be used at local political party offices, candidate headquarters, and churches throughout the state. Examples provided to the SOS included boxes or containers labeled as "ballot drop boxes" or "official ballot drop boxes."

Following the election, SB 35 (Umberg, Chapter 318, Statutes of 2021) prohibited displaying a ballot collection container with the intent to deceive a voter into casting a ballot and directing or soliciting a voter into casting a ballot in 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.

Certification Process. Since the 2020 election, more than 30 county officials nationwide voted to deny or delay certifying election results citing voter fraud or irregularities in the election. These efforts were unsuccessful 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. Among the recommendations, the report noted 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.

Comments

Author's Statement. This bill will ensure the SOS and AG are notified when a state agency or local government is 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, this bill 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, this bill 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.

Related/Prior Legislation

AB 331 (Pellerin) of 2025, among other provisions relating to the preparation of voter information guides in jail facilities, 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. The bill was held under submission in the Senate Committee on Appropriations.

SB 35 (Umberg, Chapter 318, Statutes of 2021) prohibited displaying a ballot collection container with the intent to deceive a voter into casting a ballot and directing or soliciting a voter into casting a ballot in an unofficial ballot collection container.

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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 9/12/25)

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

OPPOSITION: (Verified 9/12/25)

None received

ASSEMBLY FLOOR: 9/13/25 60-19
AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Ward, Wicks, Wilson, Zbur, Rivas
NOES: Alanis, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Johnson, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis
NO VOTE RECORDED: Flora

Prepared by: Scott Matsumoto / E. & C.A. / (916) 651-4106
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****** END ******