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AB-860 Elections: vote by mail ballots. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

ASSEMBLY BILL

NO. 860

Introduced by Assembly Member Berman and Senator Umberg, and Assembly Members Cervantes, and Gonzalez

(Principal coauthor: Senator Hertzberg)

(Coauthors: Assembly Members Bauer-Kahan, Boerner Horvath, Bonta, Carrillo, Chiu, Friedman, Cristina Garcia, Levine, *Muratsuchi*, Reyes, Robert Rivas, *Santiago*, Smith, and Wicks)

~~(Coauthor: Senator Wiener)~~ *Coauthors: Senators Stern and Wiener*

February 20, 2019

An act to amend Sections 3019.7, 3020, and 15101 of, and to add Sections 3000.5 and 3016.7 to, the Elections Code, relating to elections, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 860, as amended, Berman. Elections: vote by mail ballots.

Under existing law, a registered voter may vote by mail by requesting a vote by mail ballot for a specific election or by becoming a permanent vote by mail voter. County elections officials must begin mailing ballots and other required materials to these voters no later than 29 days before the day of the election. Existing law, the California Voter's Choice Act, authorizes any county to conduct any election occurring on or after January 1, 2020, as an all-mailed ballot election if specified conditions are met. In an all-mailed ballot election held under the act, the county elections official must mail a ballot to every registered voter, regardless of whether the voter requested a vote by mail ballot or is a permanent vote by mail voter.

This bill would require county elections officials to mail a ballot to every registered voter for the November 3, 2020, statewide general election.

Existing law requires county elections officials to permit voters with a disability, and military or overseas voters, to cast a ballot using a certified remote accessible vote by mail system.

This bill would require county elections officials to permit any voter to cast a ballot using a certified remote accessible vote by mail system for the November 3, 2020, statewide general election.

Existing law requires the Secretary of State to establish, by January 1, 2020, a system that a county elections official may use to allow a voter to track the voter's vote by mail ballot through the mail system and processing by the county elections official. County elections officials are not required to use the system, however.

This bill would require county elections officials to use the Secretary of State's system, or a system that meets the same specifications, for the November 3, 2020, statewide general election.

Under existing law, a vote by mail ballot is timely cast if it is voted on or before election day and, if returned by mail, received by the voter's elections official via the United States Postal Service, or a bona fide private mail delivery company, no later than 3 days after election day.

This bill would, for the November 3, 2020, statewide general election, extend the deadline by which vote by mail ballots must be received by the county elections official to the ~~20th~~ 17th day after election day, ~~or 2 days before the elections official sends the Secretary of State the final results for presidential electors, whichever is later.~~ day.

Under existing law, any jurisdiction having the necessary computer capability may start to process vote by mail ballots on the 10th business day before the election. This processing includes opening vote by mail ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, including processing write-in votes so that they can be tallied by the machine, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election.

This bill would authorize these jurisdictions, for the November 3, 2020, statewide general election, to begin processing vote by mail ballots on the 29th day before the election.

By requiring county elections officials to mail a ballot to every registered voter, and to take other actions expanding vote by mail voting, including making remote accessible voting available to all voters, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) To maintain a healthy democracy in California, it is important to encourage eligible voters to vote and to ensure that residents of the state have the tools needed to participate in every election.

(b) Vote by mail voting has become the means by which most Californians exercise their right to vote. In the most recent statewide general election, held in November 2018, 65.31 percent of voters used a vote by mail ballot. Just 10 years ago, in the November 2010 statewide general election, only 48.44 percent of voters used a vote by mail ballot.

(c) Preliminary data indicates that for the March 2020 statewide primary election, approximately 78 percent of registered voters received a ballot in the mail.

(d) Shortly after the March 2020 statewide primary election, the Governor and local governments declared states of emergency and took steps to reduce the spread of COVID-19. One of the early steps taken by the Governor was to order that three pending special elections be conducted as all-mailed ballot elections. This order was issued based on concerns that widespread in-person voting would conflict with public health officials' guidance on COVID-19.

(e) Since California held its statewide primary election in March 2020, at least 16 states have either postponed their scheduled primary elections, or switched them to vote by mail elections, due to concerns that conducting in-person voting during the spread of COVID-19 would threaten the health and safety of voters, election workers, and the general public.

(f) In Wisconsin's statewide primary election conducted on April 7, 2020, during which millions of voters had no choice but to vote in person, elections officials were forced to significantly reduce the number of polling locations because of COVID-19. In Milwaukee, the number of polling locations open on election day was reduced by more than 97 percent.

(g) A statewide general election will be held in California on November 3, 2020, and it is uncertain whether by that date the COVID-19 pandemic will have subsided and what social distancing guidelines will remain in place. Even if the pandemic has subsided by the time of the election, many voters may nonetheless be uncomfortable with in-person voting because of health concerns.

(h) Broadening the ability of California residents to engage in the democratic process will yield more representative election results and will ensure that the voices of more California residents are heard.

(i) Mailing every voter a ballot for the November 2020 statewide general election is an important step in promoting resilience in the state's elections and ensuring that every California voter will have the opportunity to fill out their ballot in a safe manner.

(j) Consistent with paragraph (2) of subdivision (a) of Section 2226 of the Elections Code, and with the longstanding interpretation by state and local elections officials of Sections 4000 to 4108, inclusive, of the Elections Code governing the conduct of all-mailed ballot elections and of Section 3005 of the Elections Code governing mailed ballot precincts, nothing in this act is intended, and shall not be construed, to mean that a voter with an inactive voter registration status shall receive a vote by mail ballot for the November 3, 2020, statewide general election.

SEC. 2. Section 3000.5 is added to the Elections Code, to read:

3000.5. (a) Notwithstanding any other law, for the statewide general election to be held on November 3, 2020, the county elections official shall, no later than 29 days before the day of the election, begin mailing the materials specified in Section 3010 to every registered voter in the county. The county elections official shall have five days to mail a ballot to each person who is registered to vote on the 29th day before the day of the election and five days to mail a ballot to each person who is subsequently registered to vote. The county elections official shall not discriminate against any region or precinct in the county in choosing which ballots to mail first within the prescribed five-day mailing period.

(b) The distribution of vote by mail ballots to all registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.

SEC. 3. Section 3016.7 is added to the Elections Code, to read:

3016.7. For the statewide general election to be held on November 3, 2020, the county elections official shall permit any voter to cast a ballot using a certified remote accessible vote by mail system, regardless of whether the voter is a voter with disabilities or a military or overseas voter.

SEC. 4. Section 3019.7 of the Elections Code is amended to read:

3019.7. (a) Not later than January 1, 2020, the Secretary of State shall establish a system that a county elections official may use to allow a vote by mail voter to track the voter's vote by mail ballot through the mail system and as the vote by mail ballot is processed by the county elections official. The system established pursuant to this section shall, at a minimum, allow a voter to register to receive information via email or text message from the county elections official about the status of the voter's vote by mail ballot, including all of the following information:

(1) A notification when the ballot has been delivered by the county elections official to the United States Postal Service.

(2) A notification of the date, based on information from the United States Postal Service, that the voter's ballot is expected to be delivered to the voter.

(3) A notification if the voter's ballot is returned as undeliverable to the county elections official by the United States Postal Service.

(4) A notification when the voter's completed ballot has been received by the county elections official.

(5) A notification that the voter's completed ballot has been counted, or, if the ballot cannot be counted, a notification of the reason why the ballot could not be counted and instructions of any steps that the voter can take in order to have the ballot counted.

(6) A reminder of the deadline for the voter to return the voter's ballot if the county elections official has not received a voter's completed ballot by specified dates as determined by the county elections official.

(b) The Secretary of State shall make the system established pursuant to subdivision (a) available for use by each county. A county elections official may use the system for the purpose of complying with Section 3019.5.

(c) The Secretary of State shall use funds provided to the state pursuant to the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.) to develop the system described in this section. The Secretary of State shall implement this section only to the extent that these funds are available.

(d) For the statewide general election to be held on November 3, 2020, the county elections official shall use the system established by the Secretary of State pursuant to subdivision (a), unless the county makes available to voters a different vote by mail ballot tracking system that meets or exceeds the level of service provided by the Secretary of State's system.

SEC. 5. Section 3020 of the Elections Code is amended to read:

3020. (a) All vote by mail ballots cast under this division shall be received by the elections official from whom they were obtained or by the precinct board no later than the close of the polls on election day.

(b) Notwithstanding subdivision (a), any vote by mail ballot cast under this division shall be timely cast if it is received by the voter's elections official via the United States Postal Service or a bona fide private mail delivery company no later than three days after election day and either of the following is satisfied:

(1) The ballot is postmarked on or before election day or is time stamped or date stamped by a bona fide private mail delivery company on or before election day.

(2) If the ballot has no postmark, a postmark with no date, or an illegible postmark, the vote by mail ballot identification envelope is date stamped by the elections official upon receipt of the vote by mail ballot from the United States Postal Service or a bona fide private mail delivery company, and is signed and dated pursuant to Section 3011 on or before election day.

(c) For purposes of this section, "bona fide private mail delivery company" means a courier service that is in the regular business of accepting a mail item, package, or parcel for the purpose of delivery to a person or entity whose address is specified on the item.

(d) Notwithstanding subdivisions (a) and (b), for the statewide general election to be held on November 3, 2020, any vote by mail ballot cast under this division shall be timely cast if it is received by the voter's elections official via the United States Postal Service or a bona fide private mail delivery company by the ~~20th~~ 17th day after election day, ~~or by two days before the elections official sends the Secretary of State the final results for presidential electors pursuant to subdivision (d) of Section 15375 of the Elections Code, whichever is later,~~ day and either of the following is satisfied:

(1) The ballot is postmarked on or before election day, is time stamped or date stamped by a bona fide private mail delivery company on or before election day, or it is otherwise indicated by the United States Postal Service or a bona fide private mail delivery company that the ballot was mailed on or before election day.

(2) If the ballot has no postmark, a postmark with no date, or an illegible postmark, and no other information is available from the United States Postal Service or the bona fide private mail delivery company to indicate the date on which the ballot was mailed, the vote by mail ballot identification envelope is date stamped by the elections official upon receipt of the vote by mail ballot from the United States Postal Service or a bona fide private mail delivery company, and is signed and dated pursuant to Section 3011 on or before election day.

SEC. 6. Section 15101 of the Elections Code is amended to read:

15101. (a) Any jurisdiction in which vote by mail ballots are cast may begin to process vote by mail ballot return envelopes beginning 29 days before the election. Processing vote by mail ballot return envelopes may include verifying the voter's signature on the vote by mail ballot return envelope pursuant to Section 3019 and updating voter history records.

(b) (1) Any jurisdiction having the necessary computer capability may start to process vote by mail ballots on the 10th business day before the election. Processing vote by mail ballots includes opening vote by mail ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, including processing write-in votes so that they can be tallied by the machine, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election. All other jurisdictions shall start to process vote by mail ballots at 5 p.m. on the day before the election.

(2) For the statewide general election to be held on November 3, 2020, any jurisdiction having the necessary computer capability may start to process vote by mail ballots on the 29th day before the election. Processing vote by mail ballots includes opening vote by mail ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, including processing write-in votes so that they can be tallied by the machine, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election. All other jurisdictions shall start to process vote by mail ballots at 5 p.m. on the day before the election.

(c) Results of any vote by mail ballot tabulation or count shall not be released before the close of the polls on the day of the election.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that county elections officials have sufficient time to prepare and mail a ballot to every registered voter in advance of the November 3, 2020, statewide general election, it is necessary for this act to take effect immediately.