
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 1480 (Glazer) - Remote accessible vote by mail systems

Version: April 6, 2022

Urgency: No

Hearing Date: May 9, 2022

Policy Vote: E. & C.A. 4 - 1

Mandate: Yes

Consultant: Robert Ingenito

Bill Summary: SB 1480 would (1) permit the Secretary of State (SOS) to certify a remote accessible vote by mail (RAVBM) system that allows a voter with a qualifying disability to return a ballot by electronic means, as specified, (2) require county election officials to permit a voter with a qualifying disability to use a certified RAVBM system upon certification of system by the SOS, as specified, and (3) permit a voter with a qualifying disability to return a copy of a complete RAVBM ballot by facsimile transmission (fax) if a certified RAVBM system allowing a ballot to be returned electronically is not available for use in the voter's county.

Fiscal Impact:

- SOS indicates that it would incur first-year costs of \$342,000, and \$332,000 annually thereafter, to implement the provisions of the bill (General Fund).
- By making the specified changes with respect to the duties of local elections officials, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude of those costs is unknown.

Background: In 2021, the Election Assistance Commission (EAC) released a comprehensive national report about disability and voting accessibility in the 2020 election. The report found that voting difficulties among people with disabilities declined from 2012 to 2020. Nevertheless, about one in nine voters with disabilities encountered difficulties while voting in 2020, double the rate of people without disabilities. When voting by mail, 5 percent of voters with disabilities had difficulties using a mail ballot, twice the number compared to voters without disabilities). A companion report from Rutgers University concluded that if people with disabilities voted at the same rate as people without disabilities who have the same demographic characteristics, there would be approximately 1.75 million additional voters.

Under current law, a military or overseas voter living outside of the territorial limits of the United States or the District of Columbia, or is called for military service within the United States on or after the final date to apply for a vote-by-mail (VBM) ballot, is permitted to return their ballot by fax. When voting abroad, the Federal Voting Assistance Program (FVAP) provides assistance for service members, their families, and overseas citizens in voting in elections. As part of the program, the Department of

Defense Fax Service is available for those voters who cannot send their election materials directly to their election officials.

A RAVBM system allows voters to mark their selections using their own compatible technology to vote independently and privately in their own home. To use a RAVBM system, a voter must download the application, mark their selections, print their selections, sign the envelope (using the envelope provided with the ballot or the voter's own envelope), and return the printed and signed selections either by mail or by dropping it off at a voting location. Under current law, these selections cannot be returned electronically.

Existing law requires a RAVBM system to be certified or conditionally approved by SOS prior to the election at which it is to be first used. SOS indicates that the certification process takes place in four phases: application phase, pre-testing application phase, testing phase, and the report issuance and post-test activities phase.

On March 7, 2021, President Biden issued Executive Order (EO) 14019, which focused on access to voting and, among other voting access issues, acknowledged that “people with disabilities continue to face barriers to voting and are denied legally required accommodations in exercising their fundamental rights and the ability to vote privately and independently.” As a result, the EO required the National Institute of Standards and Technology (NIST), in consultation with the Department of Justice, the EAC, and other agencies, as appropriate, to analyze barriers to private and independent voting for people with disabilities. This included access to voter registration, voting technology, voting by mail, polling location, and poll worker training.

NIST subsequently published a report in March of 2022 with recommendations for addressing barriers to private and independent voting for people with disabilities. The report identified the following five systemic barriers to privately and independently voting that voters with disabilities face throughout the voting process: (1) inconsistent implementation of laws, regulations, and guidelines addressing accessibility for voters, (2) gaps in accessible communication and information, (3) inaccessibility of paper, especially for voters with print disabilities, (4) limitations of current voting technology in prioritizing accessibility, and (5) situational challenges that create extra obstacles throughout the voting process.

Additionally, the report also discussed barriers to VBM voting, and makes a distinction that RAVBM and electronic ballot returns are different because RAVBM requires a paper ballot to be returned. That said, some voters with disabilities encounter barriers with reading, marking, verifying, and returning a paper ballot when voting by mail. Another barrier, especially for voters with print disabilities is that accessible options for electronic blank ballot delivery, marking, verification, signing, and return are limited for voters with disabilities. The research also suggests that voters with disabilities are more likely to have their ballots rejected.

Proposed Law: This bill, among other things, would do the following:

- Permit SOS to do any of the following: (1) certify a RAVBM system that allows a voter with a qualifying disability to return a ballot by electronic means and in a private and independent manner, or (2) develop procedures for a voter with a

qualifying disability to submit a signature electronically, including procedures to correct or submit an absent signature, for signature comparison, as specified.

- Require, upon certification of a RAVBM system that allows a voter with a qualifying disability to return a ballot by electronic means and in a private and independent manner, the county elections official to permit a voter with a qualifying disability, as defined, to use a certified RAVBM system that enables the voter to return a ballot by electronic means and in a private and independent manner. Provide that if a RAVBM system is not available for use in the voter's county, the voter may return a copy of a complete RAVBM ballot by fax, as specified.

Related Legislation:

- AB 37 (Berman, Chapter 312, Statutes of 2021) among other provisions, permitted any voter to cast a ballot using a certified RAVBM system.
- SB 503 (Becker, Chapter 319, Statutes of 2021) provided additional parameters for elections officials when comparing a voter's signature on a VBM ballot envelope and procedures for missing signatures on a VBM ballot envelope, as specified.
- AB 3075 (Berman, Chapter 241, Statutes of 2018) created the Office of Elections Cybersecurity and required the office to, among other duties, coordinate with federal, state, and local agencies the sharing of information on threats to election cybersecurity, risk assessment, and threat mitigation in a timely manner and in a manner that protects sensitive information.
- AB 2252 (Ting, Chapter 75, Statutes of 2016), among other provisions, established the framework whereby a voter with disabilities would be able to electronically receive and mark his or her VBM ballot using a RAVBM system, as specified.
- AB 683 (Low, Chapter 334, Statutes of 2015) among other provisions, required the SOS to establish a VAAC and required the SOS to consult with, and consider the VAAC's recommendations related to improving the accessibility of elections for voters with disabilities.

Staff Comments: SOS indicates that it would require two positions to administer the provisions of the bill. The first would be an information technology specialist in its Office of Voting Systems Technology Assessment (OVSTA) to oversee RAVBM testing and the certification process. SOS notes that voting systems in all 58 counties would need to add new RAVBM voting modules to use the technology authorized in the bill. In addition, because technology constantly evolves, SOS anticipates a subsequent ongoing need for testing and certification of RAVBM voting modules when counties and voting systems vendors seek to update those systems to incorporate new and better technologies.

Second, OVSTA would need an additional information technology specialist for ongoing monitoring of RAVBM systems for each of the 58 counties. SOS indicates that this need reflects three factors: (1) RAVBM technologies will be increasingly implemented for

expanded use, (2) the number of special elections will continue to increase, and (3) voters will seek greater clarification about the accuracy of voting system.

Finally, SOS cites the need for, minimally, \$25,000 per year in software and hardware resources to track usage of county RAVBM systems. This amount could increase once SOS specifically engages potential vendors regarding its needs.

-- END --