
THIRD READING

Bill No: SB 1480
Author: Glazer (D), et al.
Amended: 4/6/22
Vote: 21

SENATE ELECTIONS & C.A. COMMITTEE: 4-1, 4/27/22
AYES: Glazer, Hertzberg, Leyva, Newman
NOES: Nielsen

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Remote accessible vote by mail systems

SOURCE: Author

DIGEST: This bill permits 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. This bill also requires county election officials to permit a voter with a qualifying disability to use a certified RAVBM system that enables the voter to return a ballot by electronic means upon certification of system by the SOS, as specified. This bill also permits 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, as specified.

ANALYSIS:

Existing law:

- 1) Permits a person who is a United States citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 18 years of age at the time of the next election, to register to vote and to vote.

- 2) Requires county election officials to mail a ballot to every active registered voter for any election, as specified.
- 3) Requires county election officials to permit any voter to cast a ballot using a certified RAVBM system for any election.
- 4) Permits a military or overseas voter who is 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, to return their ballot by fax.
- 5) Requires, pursuant to the California Constitution, that voting is secret.
- 6) Provides procedures to cure a missing or non-comparing signature on VBM ballot envelopes received by an elections official, as specified.
- 7) Requires a RAVBM system, in whole or in part, be certified or conditionally approved by the SOS prior to the election at which it is to be first used. Requires the SOS to not certify or conditionally approve a RAVBM system, or part of a RAVBM system, unless it fulfills the requirements specified in the Elections Code and the regulations of the SOS.
- 8) Requires the SOS to adopt and publish standards and regulations governing the use of RAVBM systems. Requires RAVBM system standards adopted by the SOS to include, but not be limited to, specified requirements.
- 9) Permits a person, corporation, or public agency owning or having an interest in the sale or acquisition of a RAVBM system or a part of a RAVBM system to apply to the SOS for certification or conditional approval that includes testing and examination of the applicant's system and a report on the findings, as specified.
- 10) Prohibits a RAVBM system or part of a RAVBM system from (a) having the capability, including an optional capability, to use a remote server to mark a voter's selections transmitted to the server from the voter's computer via the internet; (b) having the capability, including an optional capability, to store any voter identifiable selections on any remote server; (c) having the capability, including the optional capability, to tabulate votes.
- 11) Requires the SOS to establish a Voting Accessibility Advisory Committee (VAAC), as specified. Requires the SOS to consult with the VAAC and consider the VAAC's recommendations related to improving the accessibility

of elections for voters with disabilities. Permits the SOS to implement the committee's recommendations as the SOS deems appropriate.

- 12) Establishes the Office of Elections Cybersecurity and requires 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.

This bill:

- 1) Permits the SOS to do any of the following:
 - a) 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.
 - b) 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.
- 2) Requires, 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 to use a certified RAVBM system that enables the voter to return a ballot by electronic means and in a private and independent manner. Provides 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.
- 3) Defines "qualifying disability" to mean a disability that prevents a voter from reading, marking, holding, handling, or manipulating a ballot, including blindness, visual impairment, an intellectual or developmental disability, or impairment in dexterity, such that the voter is unable to return a ballot privately and independently.
- 4) Makes corresponding and conforming changes.

Background

Voters with Disabilities. According to information provided on the Americans with Disabilities Act's website, state and local governments are required to ensure that people with disabilities have a full and equal opportunity to vote. This applies

to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.

Ballot Submission by Fax. Pursuant to existing 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 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 voter would need to use the FVAP Transmission Cover Sheet and fax the proper election materials to a specific number. If a voter needs to send election materials via fax to the elections official and *does not* have access to a fax machine, the voter can email the election materials to a specific address (fax@fvap.gov) and FVAP will fax the voter's election materials for the voter. This service is only available for fax transmission.

RAVBM Systems. According to the SOS, a RAVBM system allows voters to mark their selections using their own compatible technology to vote independently and privately in the comfort of 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. It should be noted that, pursuant to existing law, these selections cannot be returned electronically.

Existing law also requires a RAVBM system, in whole or in part, be certified or conditionally approved by the SOS prior to the election at which it is to be first used. According to the SOS's website, 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.

Executive Order and NIST Report. On March 7, 2021, President Biden issued Executive Order (EO) 14019. This EO 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. In March of 2022, NIST published a report in with recommendations for addressing barriers to private and independent voting for people with disabilities. One of the recommendations to help remove the barrier to VBM voting for voters with disabilities is to continue research on accessible methods for verifying, signing, and returning the ballot.

Bipartisan Policy Center Report. In March of 2022, the Bipartisan Policy Center Task Force on Elections (task force) published a report titled, “Balancing Security, Access, and Privacy in Electronic Ballot Return.” The task force included 26 state and local election officials from 18 states who are devoted to making improvements in election in the United States. The report acknowledged that “despite the vulnerabilities, electronic ballot transmission is crucial in ensuring that citizens unable to vote through traditional voting methods (such as mail or in-person voting) can still cast a ballot.”

Security Concerns. In 2020, the NIST, the EAC, the Federal Bureau of Investigation, the Cybersecurity and Infrastructure Security Agency assessed the risks involved for electronic ballot delivery, marking, and return. The report recommended “paper ballot return as electronic ballot return technologies are high-risk even with controls in place.” However, the report also recognized “that some election officials are mandated by state law to employ this high-risk process, its use should be limited to voters who have no other means to return their ballot and have it counted.” Additionally, this report also indicated that the risk is high for an unauthorized individual to participate in a voting via fax, email, and the web.

Comments

According to the author, SB 1480 permits the SOS to certify a RAVBM system that provides an option for some voters with a qualifying disability to electronically return their ballot. While RAVBM has improved voting at home for many voters with disabilities, it is still difficult for some voters with visual and dexterity impairments to vote privately and independently using a RAVBM system. For example, a voter who is blind using a RAVBM system would not have a private and independent voting experience because someone would need to help them with printing the ballot and completing the envelope requirements. Each of these steps presents challenges that force voters with some disabilities to seek third party assistance and hence prevents an individual to cast a private and independent vote. While the voter is able to read and mark the ballot privately and independently, they are unable to verify the printed ballot, put the printed ballot in the envelope and sign the envelope privately and independently. Upon certification of an electronic ballot return option, a county would be required to

permit a voter with a qualifying disability to use that RAVBM system. If a system is not available for use in a voter's county, a voter with a qualifying disability would be able to return a ballot via fax.

Finding a Balance. There are three main factors involved when examining voting systems that support an electronic return for voters with disabilities: access, privacy, and security. First, if a voter is eligible to vote and is unable to vote, it creates an access issue for the voter attempting to participate in the democratic process. Second, if a voter is unable to vote privately and independently, a voter's choices are not secret and likely requires assistance from another person. Third, if a system or an electronic delivery system is not secure, it creates concerns about whether the voter's ballot is tabulated accurately and correctly and damages the confidence that an election is accurate, free, and fair. All three factors have positive and negative attributes and should be weighed appropriately when attempting to find an ideal balance to ensure that a voter can use a secure voting system has an equal and private access to cast a vote.

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

According to the Senate Appropriations Committee:

- SOS indicates that it would incur first-year costs of \$342,000, and \$332,000 annually thereafter, to implement the provisions of this 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.

SUPPORT: (Verified 5/20/22)

Association of Regional Center Agencies
California Council of the Blind
California Environmental Voters
Democracy Live
Disability Rights California
Microsoft
National Association of Social Workers, California Chapter
Resources for Independence Central Valley
Tusk Philanthropies

Four individuals

OPPOSITION: (Verified 5/20/22)

Audit USA

Brennan Center for Justice

California Voter Foundation

Clean Coalition

Cloverdale Indivisible

Coalition for Good Governance

Election Integrity Foundation

Electronic Frontier Foundation

Free Speech for People

Indivisible Alta Pasadena

Indivisible CA-33

Indivisible Marin

Indivisible Media City Burbank

Indivisible Mendocino

Indivisible Resistance San Diego

Indivisible Riverside

Indivisible Ross Valley

Indivisible Sacramento

Indivisible San Jose

Indivisible Sonoma County

Indivisible South Bay LA

Indivisible Stand Strong LA

Indivisible Stanislaus

LA County Voters Action Coalition

Livermore Indivisible

Long Beach Alliance for Clean Energy

Money Out Voters In

National Voting Rights Task Force

PDA-CA, State Pac of Progressive Democrats of America, Oakland Chapter

Progressive Democrats of Santa Monica Mountains

Public Citizen, Inc.

Resistance Indivisible Northridge

Rooted in Resistance

Scrutineers

Secure Elections Network

SoCal 350

Stand Strong LA Indivisible

Validate the Vote USA
Valley Women's Club of San Lorenzo Valley
Verified Voting
Two individuals

ARGUMENTS IN SUPPORT: In a letter supporting SB 1480, Disability Rights California states, in part, the following:

There are security risks with every election system, but we must balance security with accessibility. Many people passionate about election security are focused on security above all other considerations. Admittedly, the negatives of “Internet voting” for all voters due to hacking risks and relying on unproven technology likely still outweigh the positives. But SB 1480 is different in numerous ways that greatly minimize risks and improve accessibility. SB 1480 is a targeted approach using existing technology.

ARGUMENTS IN OPPOSITION: In a coalition letter opposing SB 1480, the 36 signatories states, in part, the following:

[T]he electronic return of voted ballots, either by facsimile or electronic ballot return system, creates profound, dangerous, and currently unsolvable security vulnerabilities, and is unacceptably insecure. There is no technology currently available or expected in the foreseeable future that can adequately secure elections when ballots are faxed/electronically transmitted over the Internet.

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5/21/22 15:52:28

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