

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Evan Low, Chair

AB 1403 (Oberholte) – As Amended March 29, 2017

**SUBJECT:** Military and overseas voters: return of ballot by email.

**SUMMARY:** Permits a military or overseas voter who is outside the country to return his or her ballot by email.

**EXISTING LAW:**

- 1) Defines a "military or overseas voter" as an elector absent from the county in which he or she is otherwise eligible to vote who is any of the following:
  - a) A member of the active or reserve components of the United States (U.S.) Army, Navy, Air Force, Marine Corps, or Coast Guard; a Merchant Marine; a member of the U.S. Public Health Service Commissioned Corps; a member of the National Oceanic and Atmospheric Administration Commissioned Corps of the U.S.; a member on activated status of the National Guard or state militia;
  - b) A citizen of the U.S. living outside of the territorial limits of the U.S. or the District of Columbia; or,
  - c) A spouse or dependent of a person described above.
- 2) Provides that when a military or overseas voter applies for a VBM ballot, the application shall be deemed to be an affidavit of registration and an application for permanent VBM status.
- 3) Requires each elections official to have a system available which allows a military or overseas voter to electronically request and receive a VBM application, an unvoted ballot, and other information.
- 4) Requires elections officials to request an email address from each military or overseas voter who registers to vote, as specified.
- 5) Requires elections officials to send VBM ballots by means of transmission (mail, facsimile, or electronic transmission) requested by a qualified military or overseas voter.
- 6) Requires the elections official to send a VBM ballot to a military or overseas voter not earlier than 60 days, but not later than 45 days, before the election.
- 7) Allows a military or overseas voter who is temporarily living outside of the U.S. to return his or her ballot by facsimile transmission. Requires a ballot returned by facsimile transmission to be accompanied by an identification envelope and an oath of voter declaration in which the voter acknowledges that the electronic transmission of a completed ballot may compromise the secrecy of the ballot.

- 8) Requires the county elections official to determine the voter's eligibility to vote by comparing the voter's signature from the materials returned by facsimile transmission to the signature on the voter's affidavit of registration.
- 9) Permits a military or overseas voter to use a federal write-in absentee ballot in any election in which he or she is qualified to vote.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:**

- 1) **Purpose of the Bill:** According to the author:

Current law allows Military and Overseas Voters to return their ballots by fax; however it does not allow any other sort of updated technology to be utilized. Fax machines are no [longer] commonplace in today's culture. AB 1403 updates the statute to also allow ballots to be returned by email. This will allow Military and Overseas Voters to be able to more efficiently return their ballots to their County Registrar's Office and will update law to today's standard practice.

- 2) **New Ballot Return Election Policies:** This bill breaks new ground and permits a new method by which a voted ballot may be returned. Specifically, this bill allows a military or overseas voter to return his or her VBM ballot by email. For the ballot to count, the voter must send electronic copies of the voted ballot, a copy of the identification envelope and an oath of voter declaration to the voter's elections official no later than the closing of the polls on election day. Returning a voted ballot by email is not currently allowed under existing law. As mentioned above, military or overseas voters currently are only allowed to return a voted ballot by mail, fax, or in-person return.
- 3) **What is an Internet Voting System?** According to the U.S. Election Assistance Commission's (EAC) September 2011 report entitled, "A Survey on Internet Voting," the term "Internet voting" is used to refer to many different methods, or channels, of voting. What the channels have in common is the use of the communications connectivity and protocols by the Internet. The report classifies Internet voting as a subset of electronic voting. For the purposes of their study, an Internet voting system was defined as any system where the voter's ballot selections are transmitted over the Internet from a location other than a polling place to the entity conducting the election. Consequently, the term "remote electronic voting" is often used as a synonym.

The report states that the remote voting location can be either a controlled or an uncontrolled voting environment. It defines a controlled environment to mean a situation where the voting platform, such as the computer used for voting, was supplied by and under the control of the entity conducting the election. The report describes an uncontrolled environment to mean a situation where the voter supplies the computer used for voting, which may be the voter's personal computer, workplace computer, or any other public computer.

According to the survey, there are two forms in which a voter's ballot selections can be returned – electronic ballot return, where the entire ballot document, including the voter's selections, are transmitted, or vote data return, where only the voter's selections are

transmitted. Furthermore, the survey describes that there are three channels, or methods, for electronic ballot return: a web-based communications application which uploads a digital representation of a voted ballot (e.g., pdf or jpeg) file to a website; a digital facsimile, where a voter's ballot is scanned and transmitted as a graphics file; and, email, where a digital representation (e.g., pdf or jpeg) of a voter's ballot is transmitted via email.

- 4) **Security Concerns:** Many computer scientists and cyber security experts and documented studies and reports, generally conclude that the current architecture of the Internet and the variety of ways in which its security can be compromised, pose a significant threat and risk to Internet voting systems and electronic ballot delivery. Both private and public entities are susceptible to attacks via the Internet. Experts say they can happen by anyone, anywhere in the world who has a computer and an Internet connection. According to various studies and reports, Internet voting systems and electronic ballot transmission can be vulnerable to a variety of different attacks. The most common attacks include, but are not limited to, denial of service, Trojan horse viruses, malware, website spoofing and phishing. Depending on the attack a variety of outcomes can result, all of which could compromise the integrity of the election.

Scientists at the National Institute of Standards and Technology (NIST), the technical advisors to the U.S. EAC, have been conducting research into the use of electronic technologies to support military and overseas voting, including casting a ballot over the Internet. In a 2008 report entitled, "A Threat Analysis on UOCAVA Voting Systems," NIST analyzed the use of several electronic technologies for different aspects of the absentee voting process. Their research concluded that widely-deployed security technologies and procedures could help mitigate risks associated with electronic ballot delivery, however the risks associated with casting ballots over the Internet were more serious and challenging to overcome.

Specifically, the report concluded that the use of email to return ballots presents several significant security challenges. Several different computer systems are involved in sending an email from a voter to an election official. Many of these systems, such as the voters' computers and email servers, are outside the control of election officials. Attacks on these systems could violate the privacy of voters, modify ballots, or disrupt communication with election officials. Because other individuals or organizations operate these systems, there is little election officials can do to prevent attacks on these systems. The security challenges associated with email return of voted ballots are difficult to overcome using technology widely deployed today.

Moreover, in 2011 NIST released a report entitled, "Security Considerations for Remote Electronic UOCAVA Voting," which studied Internet voting in more detail. The report identified and analyzed current and emerging technologies that may mitigate risks to Internet voting, however it also identified several areas that require additional research and technological improvements. Ultimately, the study concluded that Internet voting systems cannot currently be audited with a comparable level of confidence in the audit results as those for polling place systems. The report also concluded that malware on voters' personal computers poses a serious threat that could compromise the secrecy or integrity of voters' ballots. Finally, the report stated that the U.S. currently lacks a public infrastructure for secure electronic voter authentication and recommended that additional research and development is needed to overcome these challenges before secure Internet voting will be

feasible.

This bill does not include specific safeguards or safety measures to protect a voter's private information and voting selections, nor does it include any requirements for encryption or other safeguards to protect against information being intercepted during transmission. In addition to the security issues mentioned, there are other important concerns that are not currently addressed or contemplated in this bill, such as usability, transparency, auditability and verifiability. If it is the will of the committee to approve this bill, it may be appropriate to include more detail to address these important issues.

- 5) **Electronic Transmission of Ballots in Other States:** According to a 2017 report by the National Conference of State Legislatures, the District of Columbia and 21 states (Colorado, Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, Utah, Washington, and West Virginia) permit Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters to return their voted ballots by email or fax. Five of the 21 states, however, only permit a UOCAVA voter to return his or her voted ballot via email or fax under certain circumstances, such as when a more secure method is not available, only in certain emergency situations, if the voter is in an area eligible for imminent danger, serving in a hostile fire area, or must also send a hard copy of the ballot via postal mail. The report also states that 18 states do not allow electronic transmission and voters must return voted ballots via postal mail.

As mentioned above, California permits a military or overseas voter who is outside the country to return a voted ballot via mail or fax.

- 6) **Existing Laws to Facilitate Voting by Overseas and Military Voters:** On October 28, 2009, President Obama signed into law the Military and Overseas Voter Empowerment (MOVE) Act to expand the 1986 UOCAVA, which was established to protect the rights of service members to vote in federal elections regardless of where they are stationed. The MOVE Act builds on UOCAVA to provide greater protections for service members, their families, and other overseas citizens.

The provisions of the MOVE Act have been in effect since the November 2010 election. However, given that California law already included provisions to facilitate voting by military members and other California residents who are outside of the U.S., the SOS's office and local elections officials only had to make minimal adjustments to their practices in order to be in compliance. For example, the MOVE Act requires states to establish procedures to allow overseas voters to request voter registration applications and VBM applications by mail or electronically, and requires at least one means of electronic communication for voters to request, and for all states to send, voter registration applications, VBM applications, and voting information. Current law allows a military or overseas voter to register to vote and apply for VBM ballot by facsimile transmission and allows elections official to send a VBM ballot by mail, facsimile, or electronic transmission. Exceeding the requirement of the MOVE Act, current law allows a military or overseas voter who is temporarily living outside of the US to return his or her ballot by facsimile transmission. The MOVE Act, however, does not require states to accept voted ballots electronically.

In addition, the MOVE Act requires states to transmit a requested absentee ballot to overseas

voters not later than 45 days before an election for federal offices. Again, California law exceeds this requirement by specifically requiring the county elections official to send ballots to overseas voters with a list of all candidates who have qualified for the ballot beginning on the 60<sup>th</sup> day before the election, along with a list of all measures on which the voter is qualified to vote.

- 7) **One Step Further:** In addition to being compliant with all provisions in the MOVE Act, California law also makes other accommodations to facilitate voting by military voters and other California residents who are outside of the U.S. Specifically, current law provides that an application for a VBM ballot by an overseas voter is deemed to be a request for voter registration (if the voter was not already registered to vote) and an application for permanent VBM voter status. In addition, California makes all overseas voters permanent VBM voters, thereby eliminating the need for overseas military voters and other overseas voters to request a VBM ballot for each election.

In 2012 the Legislature passed and the Governor signed AB 1805 (Huffman), Chapter 744, Statutes of 2012, which established new voting procedures for military and overseas voters, as defined, to comply with the UOCAVA and implement the policies of that act and the Uniform Military & Overseas Voter Act adopted by the National Conference of Commissioners on Uniform State Laws. Among other provisions, AB 1805 expands the universe of people who can be considered military or overseas voters; expands the use of the Federal Write-In Absentee Ballot by allowing it to be used by military or overseas voters in non-federal elections; and makes other conforming changes, where appropriate in California, to ensure continuity and uniformity across state lines for military and overseas voters.

AB 1929 (Gorell), Chapter 694, Statutes of 2012, established processes and procedures for the review and approval of ballot marking systems, as defined, for use in California elections. A ballot marking system speeds up the amount of time it takes for military or overseas voter to cast a ballot by allowing a military or overseas voter to electronically obtain a ballot specific to the precinct in which they reside and electronically mark his or her ballot. The information marked on the voter's ballot is formatted onto a document that the voter may print out and mail or fax to their county elections official.

AB 1589 (Frazier) Chapter 649, Statutes of 2013, deleted provisions of law that required a military or overseas voter's electronic mail address to expire no later than December 31 of the year following the calendar year of the application and instead requires an elections official to provide for electronic delivery of a ballot to a military or overseas voter who makes a standing request for all elections conducted in the jurisdiction in which he or she is eligible to vote.

SB 29 (Correa), Chapter 618, Statutes of 2014, allows a VBM ballot to be counted if it is cast by election day and received by the elections official by mail no later than three days after the election, as specified.

AB 477 (Mullin), Chapter 726, Statutes of 2015, allows a voter who failed to sign his or her VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election, as specified, in order to have his or her ballot counted. AB 477 allows an unsigned ballot statement to be returned by mail, have it delivered, or be submitted by facsimile.

AB 2252 (Ting), Chapter 75, Statutes of 2016, allows a military or overseas voter or a voter with disabilities to electronically receive and mark his or her VBM ballot using a remote accessible VBM system. To better reflect current technology, AB 2252 (Ting) deleted the term “ballot marking system” and replaced and updated it with the term “remote accessible VBM system.” AB 2252 (Ting) defined a “remote accessible VBM system” to mean a mechanical, electromechanical, or electronic system and its software that is used for the sole purpose of marking an electronic VBM ballot for a voter with disabilities or a military or overseas voter who shall print the paper cast voter record, as defined, to be submitted to the elections official. Additionally, AB 2252 prohibited a remote accessible VBM system from being connected to a voting system at any time and revised, updated, and established processes and procedures for the review and approval of a remote accessible VBM system, as specified.

- 8) **Previous Legislation:** AB 887 (Ting) of 2015, would have permitted a military or overseas voter to return his or her VBM ballot by email, as specified, and would have allowed a military or overseas voter to cast his or her vote on the Internet, as specified. AB 887 failed passage of this committee on a 3-3 vote.

SB 908 (Runner) of 2011, would have permitted a military or overseas voter to return his or her ballot by email, as specified. SB 908 failed passage in this committee on a 2-2 vote.

- 9) **Double-Referral:** This bill has been double referred to the Assembly Veterans Affairs Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

Citizen's Oversight (unless amended)  
Protect California Ballots (prior version)  
Voting Rights Task Force (prior version)  
Wellstone Democratic Renewal Club (prior version)  
Two Individuals

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