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Elections

Chapter 280: Streamlined Vote by Mail Procedures for Today's Majority Voting Method

Anthony Serrao

Code Sections Affected

Elections Code §§ 3019.5, 13305 (new).
SB 589 (Hill); 2013 STAT. Ch. 280.

I. INTRODUCTION

In the 2012 general election, fifty-one percent of ballots cast in California were vote by mail (VBM) ballots—representing a majority of votes for the first time in state history.¹ These figures represent an ever-increasing voting trend in California as growing numbers of voters choose to cast their votes through the mail.² However, voters who submit their ballots via mail cannot ascertain if their votes counted or not.³ Indeed, elections officials rejected nearly 60,000 VBM ballots in the 2012 election, which represented roughly one percent of the total ballots cast.⁴ Recognizing the growing trend in absentee voting, Senator Jerry Hill introduced Chapter 280 to allow VBM voters “to take corrective action to ensure that their ballots will count in future elections.”⁵

II. LEGAL BACKGROUND

This Part tracks the historical expansion of VBM voting to its present state.⁶ Section A addresses prior legislation that expanded the availability of permanent VBM voting to all voters.⁷ Section B discusses the subsequent increase in permanent VBM voting.⁸

1. CALIFORNIA SECRETARY OF STATE, VOTE BY MAIL SURVEY 2003–2012 (2012).

2. *See id.* (detailing the number of VBM ballots issued in recent years).

3. SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 589, at 3 (Apr. 2, 2013).

4. *Id.*

5. 2013 *Legislation*, SENATOR JERRY HILL (Aug. 29, 2013, 10:55 PM), <http://sd13.senate.ca.gov/2013-legislation> (on file with the *McGeorge Law Review*).

6. *Infra* Part II.

7. *Infra* Part II.A.

8. *Infra* Part II.B.

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A. Chapter 922

In 2001, the addition of Chapter 922 to the California Elections Code allowed any eligible voter to become a permanent VBM voter.⁹ The law eliminated the restrictions on voting by mail that allowed only those with specific physical impairments to be eligible for the permanent list.¹⁰ Persons who request to become permanent VBM voters remain on the list indefinitely, unless they fail to vote in four consecutive statewide elections.¹¹

B. The State of VBM Voting—An Upward Trend

Despite the expansion of vote by mail, county elections officials still send sample ballots¹² to all voters as required by the law.¹³ Therefore, voters who receive their official ballots in the mail before the election also receive a duplicate sample ballot, which is nearly identical to the official one.¹⁴

Since the relaxation of VBM requirements and restrictions in 2001, the use of permanent VBM voting expanded exponentially,¹⁵ albeit with some drawbacks concerning the acceptance of ballots.¹⁶ In the 2000 general election, permanent VBM ballots accounted for roughly one percent of the total votes cast.¹⁷ By the 2004 general election, that share increased dramatically to over sixteen percent of the total votes cast.¹⁸ Today, nearly eight million Californians are permanent VBM voters,¹⁹ representing over forty percent of total votes cast in the state during the 2012 general election.²⁰

9. 2001 Cal. Stat. Ch. 922.

10. *Id.*; see also CAL. ELEC. CODE § 3201 (allowing any voter to become a permanent VBM voter).

11. ELEC. § 3206 (West Supp. 2013).

12. See CAL. ELEC. CODE 13300(a) (stating that sample ballots are unofficial ballots sent out “at least 29 days before the partisan primary” to pre-inform voters); *id.* § 13300(b) (requiring sample ballots to be “identical to the official ballot, except as provided by law).

13. *Id.* § 13300; *id.* § 13303(a).

14. See *id.* § 13300(b) (requiring sample ballots to be identical to official ballots).

15. See CALIFORNIA SECRETARY OF STATE, PERMANENT VOTE BY MAIL SURVEY (2012) (noting an increase in the total percentage of permanent VBM voters, from 1.79% in 2000 to 43.35% in 2012).

16. See *infra* Part IV.A (describing the most common reasons for a VBM ballot rejection, and how the free access systems might serve as a remedy).

17. CALIFORNIA SECRETARY OF STATE, PERMANENT VOTE BY MAIL SURVEY (2012).

18. *Id.*

19. *Id.*

20. *Id.*

III. CHAPTER 280

This Part addresses the changes in law brought about by Chapter 280.²¹ Section A details the requirement of disclosing whether a VBM ballot was accepted or rejected.²² Part B discusses new exemptions for permanent VBM voters concerning sample ballot mailings.²³

A. *Increasing Transparency of Vote-By-Mail Ballots*

Chapter 280 amends the Elections Code by requiring county elections officials to create “free access system[s]”²⁴ that inform VBM voters whether their ballots counted or not.²⁵ Chapter 280 also requires elections officials to disclose the reason for a ballot rejection.²⁶ Chapter 280 mandates that this information remain available to voters for thirty days following the official canvass.²⁷

B. *Eliminating Superfluous Mailing of Sample Ballots*

With the passage of Chapter 280, county elections officials may in certain instances decline to mail a sample ballot.²⁸ Specifically, an official may decline to mail a sample ballot to a permanent VBM voter,²⁹ “a voter in a mail ballot election,”³⁰ or a voter in precincts that use only VBM due to a low concentration of registered voters.³¹ An official must also send a voter information guide that includes all election information that would normally accompany sample ballots in order to decrease the amount of mailings.³² In promulgating these regulations, Chapter 280 allows county elections officials to print one fewer sample ballot per voter affected, amending prior requirements.³³

21. *Infra* Part III.

22. *Infra* Part III.A.

23. *Infra* Part III.B.

24. See SENATE FLOOR, COMMITTEE ANALYSIS OF SB 589, at 2 (Apr. 17, 2013) (noting that potential free access systems, which allow voters to determine whether or not their ballots counted, should be available without charge through a county’s elections division website or toll-free telephone numbers).

25. ELEC. § 3019.5(a) (enacted by Chapter 280).

26. *Id.* (enacted by Chapter 280).

27. *Id.* (enacted by Chapter 280); see also ELEC. § 335.5 (defining official canvass as “the public process of processing and tallying all ballots received in an election, including, but not limited to, provisional and vote by mail ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by mail and provisional voters, and performance of the manual tally of 1 percent of all precincts”).

28. See *id.* § 13305(a) (enacted by Chapter 280).

29. *Id.* § 13305(a)(1)(A) (enacted by Chapter 280).

30. *Id.* § 13305(a)(1)(B) (enacted by Chapter 280).

31. *Id.* § 13305(a)(1)(C) (enacted by Chapter 280).

32. *Id.* § 13305(a)(2) (enacted by Chapter 280).

33. *Id.* § 13305(b) (enacted by Chapter 280); see also *id.* § 13303(a) (ensuring compliance with the

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IV. ANALYSIS

This Part explores the impact of Chapter 280 on existing law.³⁴ Section A describes the free access systems, and how their creation brings VBM voting in line with existing law surrounding other methods of voting.³⁵ Section B discusses the relaxed printing requirements of sample ballots.³⁶ Section C addresses the potential savings that might be realized through these relaxed printing requirements.³⁷

A. *Expanding Transparency of VBM Ballot Acceptance*

The creation of free access systems gives VBM voters the chance to confirm the acceptance or rejection of their ballots, thereby allowing voters to remedy errors in their ballots to prevent future rejections.³⁸ The most common reasons for VBM ballot rejection are non-matching signatures or ballots that arrive late.³⁹ Specifically, many voters incorrectly believe that a VBM ballot need only be postmarked by election day.⁴⁰ This misconstrues the actual rule, which requires a ballot to be *received* at the polling station by election day.⁴¹ By requiring the free access systems to notify voters of the specific reason for a ballot rejection, Chapter 280 educates voters on how to properly submit their VBM ballot, preventing similar mistakes in future elections.⁴²

The creation of free access systems by Chapter 280 also extends the same rights to VBM voters as those who cast a provisional ballot.⁴³ Existing law already mandates that free access systems allow provisional voters the ability to find out if their ballots counted and the reasons for a ballot's rejection if it did not.⁴⁴ Chapter 280 therefore aligns the laws of VBM voting with other methods of

requirement by mandating that officials prepare ballots for at least the number of voters as there are in a precinct).

34. *Infra* Part IV.

35. *Infra* Part IV.A.

36. *Infra* Part IV.B.

37. *Infra* Part IV.C.

38. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 589, at 4 (June 11, 2013).

39. SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 589, at 2–3 (Apr. 2, 2013).

40. *Id.*

41. *Id.*

42. *See id.* at 3 (noting that the free access systems allow voters to remedy defects in their ballots for future elections).

43. *See* CAL. ELEC. CODE § 14310(c)(B)(d) (West 2013) (establishing a right to cast a provisional ballot, which is used in the event that a voters registration cannot be ascertained on Election Day); *id.* § 14310(c)(B)(d) (West 2013) (requiring the Secretary of State to set up free access systems that notify provisional voters whether their ballot was accepted or rejected).

44. *Id.*

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non-traditional voting, creating a more streamlined regulatory framework for voters.⁴⁵

B. Reducing Duplicative Information: New Printing Requirements

Prior law required county elections officials to send sample ballots to every registered voter, regardless of their manner of voting.⁴⁶ The requirement resulted in the mailing of duplicative information that was unnecessary to VBM voters, who have the opportunity to review their official ballots prior to election day.⁴⁷ Therefore, the exceptions to the mailing of sample ballots contained in Chapter 280 help to prevent the dissemination of duplicative information.⁴⁸

C. Fiscal Impact of Chapter 280

Chapter 280's new printing requirements also allow counties to offset the costs of the free access systems with the savings of decreased sample-ballot mailings.⁴⁹ The reduced mailings addressed by Chapter 280 involve significant amounts of information, including the list of all standing candidates and their personal statements.⁵⁰ The savings associated with reduced printing requirements for these ballots may therefore be significant.⁵¹ The inclusion of the new printing requirements is particularly significant given the history of previous, failed bills concerning potential free access systems for VBM voters.⁵² Indeed, the Governor vetoed numerous prior bills containing the same notification systems as Chapter 280 on account of their fiscal impact.⁵³

45. *Id.*; see also *id.* § 3019.5(a) (enacted by Chapter 280) (requiring the same free access system be created for VBM ballots).

46. See ELEC. § 3010(a) (requiring elections officials to send out an official ballot to all qualified vote by mail registrants).

47. See *id.* § 13300(a) (requiring sample ballots identical to official ballots to be sent out at least twenty-nine days before the election).

48. SENATE FLOOR, COMMITTEE ANALYSIS OF SB 589, at 4 (Apr. 17, 2013).

49. See ELEC. § 3019.5(c) (enacted by Chapter 280); SENATE COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 589, at 1 (Apr. 15, 2013) (noting "potential savings" associated with reduced printing requirements).

50. See generally ELEC. § 13307 (describing the procedure for submitting a candidate's statement and the acceptable format and content of the statements).

51. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 589, at 1 (July 3, 2013).

52. See SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 589, at 4 (Apr. 2, 2013) (describing prior proposed legislation that sought to create free access systems for VBM voters).

53. See ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 589, at 5 (June 11, 2013) (noting the veto of AB 2616, about which Governor Brown remarked, "I cannot support mandating additional costs in this time of fiscal crisis").

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IV. CONCLUSION

Chapter 280 increases transparency of VBM voting.⁵⁴ As the use of VBM voting continues to expand, this transparency aligns the regulations with other methods of voting, like provisional voting.⁵⁵ Additionally, the relaxed printing requirements of sample ballots allow VBM voting to operate more economically.⁵⁶ As the use of absentee-style voting continues to expand, voters and taxpayers alike will benefit from Chapter 280's new regulations.⁵⁷

54. *See* SENATE COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 589, at 2 (Apr. 2, 2013).

55. *See* ELEC. § 14310(c)(B)(d) (West 2013) (requiring county elections officials to set up free access systems that notify provisional voters whether their ballot was accepted or rejected).

56. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 589, at 1 (July 3, 2013) (assessing the fiscal impact of Chapter 280 by noting savings in printing and mailing costs).

57. *See* ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 589, at 5 (June 11, 2013) (describing how voters will be able to prevent future VBM ballot mistakes); ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 589, at 1 (July 3, 2013) (noting the potential savings and only minor costs that may be incurred).