
**SENATE COMMITTEE ON
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**
Senator Steven Glazer, Chair
2023 - 2024 Regular

Bill No: AB 398 **Hearing Date:** 6/6/23
Author: Pellerin
Version: 3/16/23
Urgency: No **Fiscal:** Yes
Consultant: Scott Matsumoto

Subject: Voting: replacement ballots

DIGEST

This bill allows an elections official to provide a replacement vote by mail (VBM) ballot to a voter without the need for the voter to provide a specified statement under penalty of perjury.

ANALYSIS

Existing law:

- 1) Requires an elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate. Requires the elections official to begin mailing VBM ballots no later than 29 days before the election, as specified.
- 2) Requires an elections official to provide a second VBM ballot to any voter upon receipt of a statement under penalty of perjury that the voter failed to receive, lost, or destroyed their original ballot.
- 3) Requires an elections official to provide a second VBM ballot to the voter's representative upon receipt of a written request, on a form prescribed by the Secretary of State (SOS), signed by the voter under penalty of perjury, requesting that a ballot be provided to the voter's representative, as specified.
- 4) Requires an elections official to keep a record of each VBM ballot sent to and received from a voter and to verify, prior to counting any duplicate ballot, that the voter has not attempted to vote twice.
- 5) Permits a voter who has declined to disclose a political party preference to request the ballot of a political party that has authorized a voter who has declined to disclose a political party preference to vote in its partisan primary election, as specified. Permits the voter to make that request through various means, including by telephone or by an application over the internet, if available.

This bill:

- 1) Eliminates a requirement that a voter provide a statement under penalty of perjury that the voter failed to receive, lost, or destroyed their original VBM ballot before the elections official provides the voter with a replacement VBM ballot, and instead requires the elections official to provide a replacement ballot to any voter upon request if both of the following requirements are met:
 - a) The voter provides to the elections official personal identifying information that matches the information contained on the voter’s affidavit of registration, including their first and last name, residence address, and date of birth.
 - b) The elections official advises the requester, prior to issuing a replacement ballot, of the following: “Only the registered voter themselves may request a replacement ballot. A request for a replacement ballot that is made by any person other than the registered voter is a criminal offense.”
- 2) Changes the terminology used to describe the ballot that is issued to a voter after the issuance of the original VBM ballot for that voter from a “second vote by mail ballot” to a “replacement ballot.”
- 3) Makes technical and conforming changes.

BACKGROUND

Voting by Mail. California voters have increasingly utilized VBM ballots when voting in elections. In the 2022 general election, of 11,146,610 ballots cast, 9,755,188 were VBM ballots. This represents 87.52% of the votes cast in November 2022. When comparing the past two gubernatorial general elections (2018 and 2022), there were approximately 1.45 million more VBM ballots in November 2022 than in November 2018. According to data from the SOS, below are statistics of VBM voters and how that compares to the total number of voters.

<u>Vote by Mail Statistics in Statewide General Elections</u>			
Election Date	VBM Voters*	Total Voters**	Percentage of VBM Voters
November 2, 2010	4,989,852	10,300,392	48.44
November 6, 2012	6,753,688	13,202,158	51.16
November 4, 2014	4,547,705	7,513,972	60.52
November 8, 2016	8,443,594	14,610,509	57.79
November 6, 2018	8,302,488	12,712,542	65.31
November 3, 2020	15,423,301	17,785,151	86.72
November 8, 2022	9,755,188	11,146,610	87.52

*VBM voters consists only of voted and counted VBM ballots.

**Total voters consists only of voters who cast a ballot in the election.

It should be noted that the 2021 gubernatorial recall election was a special statewide election and not a general election. However, in the gubernatorial recall election, of the 12,892,578 voters who voted, 11,733,429 voters submitted their VBM ballot. This represents 91.01% of voters who participated in the election.

VBM Ballot Applications, Replacement Ballots, and Previous Legislation. Last year, the Legislature approved and Governor Newsom signed AB 2608 (Berman), Chapter 161, Statutes of 2022, which made various conforming changes to reflect state law requiring that every active registered voter be mailed a ballot for every election in which the voter is eligible to vote. Among other provisions, AB 2608 repealed provisions of law related to applications for VBM ballots (including laws that that allowed elections officials to offer voters the ability to apply for VBM ballots electronically or by telephone) and consolidated provisions of law that govern the issuance of a second VBM ballot to a voter.

On September 29, 2022, the SOS issued a memorandum to county elections officials to address the changes made by AB 2608 and the procedures for requesting a replacement ballot. That memorandum recognized that AB 2608 repealed the law that allowed voters to apply for a VBM ballot by telephone, and noted that “[u]nder amended Elections Code section 3014, a second [VBM] ballot shall be provided to a ‘voter upon receipt of a statement under penalty of perjury that the voter has failed to receive, lost, or destroyed their original ballot.’” The memorandum went on to note that because Section 3014 of the Elections Code requires a statement to be made under penalty of perjury, “our office is of the opinion that this request for a replacement ballot cannot be made telephonically.”

By repealing the requirement that a voter must provide a specified statement under penalty of perjury before the elections official can provide the voter with a replacement VBM ballot, and instead requiring the elections official to provide a replacement ballot to a voter upon request, this bill would allow elections officials to issue replacement ballots over the phone or through other means without the need for a written request that is signed by the voter.

It should be noted that nothing in this bill allows an elections official to issue a replacement ballot to a person other than the voter themselves without a written request from the voter. Existing law requires a voter to submit a written request, on a form prescribed by the SOS, signed by the voter under penalty of perjury, if the voter wants a replacement ballot to be delivered to the voter’s representative. This bill does not change that requirement.

COMMENTS

- 1) According to the author: During election season, there are many demands on the time and resources of elections workers. AB 398 simplifies the replacement ballot request system without compromising the integrity of elections as it relates to double votes. Removing the need to process physical replacement ballot requests will reduce both the workload of elections officials and speed up the process for voters.

Substituting “replacement ballot” for “second vote-by-mail ballot” in the Elections Code improves the specificity of the language and removes doubts as to the nature of these ballots.

- 2) Argument in Support. In a letter sponsoring AB 398, the California Association of Clerks and Election Officials stated, in part, the following:

AB 398 clears the way for elections officials to properly and more efficiently service voters by allowing election officials to quickly act on replacement ballot requests as they are received. Election officials will be able to initiate the replacement ballot process, in real time, as the voter makes the request. Additionally, AB 398 will treat voters equally by removing this same ballot replacement requirement for military and overseas voters thereby ensuring that they too have access to this same important service just like their domestic counterparts. Finally, as you may be aware, elections officials only count one ballot for each voter and have processes in the place to reject any additional ballots cast should a voter attempt to abuse the replacement ballot process to vote more than once.

RELATED/PRIOR LEGISLATION

AB 626 (Pellerin) of 2023 allows a voter to return their VBM ballot to an in-person voting location, without placing the ballot into a ballot identification envelope, if the ballot is returned to a vote center, as specified.

AB 2608 (Berman), Chapter 161, Statutes of 2022, among other provisions, repealed provisions of law related to applications for VBM ballots, including laws that that allowed elections officials to offer voters the ability to apply for VBM ballots electronically or by telephone, and consolidated provisions of law that govern the issuance of a second VBM ballot to a voter.

PRIOR ACTION

Assembly Floor:	60 - 14
Assembly Appropriations Committee:	10 - 3
Assembly Elections Committee:	5 - 1

POSITIONS

Sponsor: California Association of Clerks and Election Officials

Support: American Association of University Women California
 California Common Cause
 California Environmental Voters
 City Clerks Association of California
 Disability Rights California
 League of Women Voters of California

Oppose: None received

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