

Assembly Bill No. 223

CHAPTER 359

An act to amend Sections 3103.5 and 3110 of the Elections Code, relating to voting.

[Approved by Governor October 9, 2007. Filed with Secretary of State October 9, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 223, Sharon Runner. Absentee voting: military service.

(1) Existing law permits a special absentee voter, as defined, who is temporarily living outside of the territorial limits of the United States or the District of Columbia, to return his or her ballot by facsimile transmission.

This bill would apply these provisions to a person called for military service within the United States on or after the final date to make application for an absent voter's ballot.

(2) Existing law provides that if a special absentee voter is unable to appear at his or her polling place because of being recalled to military service after the final day for making application for an absent voter's ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official and make application for an absent voter's ballot.

This bill would revise these provisions to provide that a special absentee voter may appear before the elections official either in his or her county of registration or, if within the state, in the county in which he or she is recalled to military service to make application for an absent voter's ballot which may be submitted by facsimile or by e-mail or online transmission to be counted, as specified. By increasing the duties of local elections officials, the bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) This bill would incorporate additional changes to Sections 3103.5 and 3110 of the Elections Code, proposed by both this bill and AB 1243, to be operative only if AB 1243 and this bill are both enacted, each bill amends the respective sections, and this bill is enacted after AB 1243.

The people of the State of California do enact as follows:

SECTION 1. Section 3103.5 of the Elections Code is amended to read:
3103.5. (a) (1) A special absentee voter who is temporarily 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 make application for an absent voter’s ballot, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission must be received by the voter’s elections official no later than the closing of the polls on election day and must be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, _____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any absentee voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain its secrecy at the outset of the tabulation process and thereafter.

My residence address is _____.
(Street Address) (City) (ZIP Code)

My current mailing address is _____.
(Street Address) (City) (ZIP Code)

My e-mail address is _____. My facsimile transmission number is _____.

I am a resident of _____ County, State of California, and I have not applied, nor intend to apply, for an absentee ballot from any other jurisdiction for the same election.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this _____ day of _____, 20_____.

(Signature) _____
voter (power of attorney cannot be accepted)

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED BY FACSIMILE TRANSMISSION.

(2) Notwithstanding the voter’s waiver of the right to a secret ballot, each elections official shall adopt appropriate procedures to protect the secrecy of absentee ballots returned by facsimile transmission.

(3) Upon receipt of an absentee ballot returned by facsimile transmission, the elections official shall determine the voter’s eligibility to vote by comparing the signature on the return information with the signature on the voter’s affidavit of registration. The ballot shall be duplicated and all materials preserved according to procedures set forth in this code.

(4) Notwithstanding paragraph (1), a special absentee voter who is permitted to return his or her ballot by facsimile transmission is, nonetheless, encouraged to return his or her ballot by mail or in person if possible. A special absentee voter should return a ballot by facsimile transmission only if doing so is necessary for the ballot to be received before the close of polls on election day.

(b) The Secretary of State shall make a recommendation to the Legislature, no later than December 31, 2008, on the benefits and problems, if any, derived from permitting qualified special absentee voters to return their ballots by facsimile transmission, and shall include in the recommendation the number of ballots returned by facsimile transmission pursuant to this section.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 1.5. Section 3103.5 of the Elections Code is amended to read:

3103.5. (a) (1) A special absentee voter who is temporarily 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 make application for a vote by absent voter ballot, may return his or her ballot by facsimile transmission. To be counted, the ballot returned by facsimile transmission must be received by the voter’s elections official no later than the closing of the polls on election day and must be accompanied by an identification envelope containing all of the information required by Section 3011 and an oath of voter declaration in substantially the following form:

OATH OF VOTER

I, _____, acknowledge that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret. Nevertheless, I understand that, as with any vote by mail voter, my signature, whether on this oath of voter form or my identification envelope, will be permanently separated from my voted ballot to maintain

its secrecy at the outset of the tabulation process and thereafter.

My residence address is _____.
(Street Address) (City) (ZIP Code)

My current mailing address is _____.
(Street Address) (City) (ZIP Code)

My e-mail address is _____. My facsimile transmission number is _____.

I am a resident of _____ County, State of California, and I have not applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction for the same election.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this _____ day of _____, 20_____.

(Signature) _____ voter (power of attorney cannot be accepted)

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED BY FACSIMILE TRANSMISSION.

(2) Notwithstanding the voter’s waiver of the right to a secret ballot, each elections official shall adopt appropriate procedures to protect the secrecy of ballots returned by facsimile transmission.

(3) Upon receipt of a ballot returned by facsimile transmission, the elections official shall determine the voter’s eligibility to vote by comparing the signature on the return information with the signature on the voter’s affidavit of registration. The ballot shall be duplicated and all materials preserved according to procedures set forth in this code.

(4) Notwithstanding paragraph (1), a special absentee voter who is permitted to return his or her ballot by facsimile transmission is, nonetheless, encouraged to return his or her ballot by mail or in person if possible. A special absentee voter should return a ballot by facsimile transmission only if doing so is necessary for the ballot to be received before the close of polls on election day.

(b) The Secretary of State shall make a recommendation to the Legislature, no later than December 31, 2008, on the benefits and problems, if any, derived from permitting qualified special absentee voters to return their ballots by facsimile transmission, and shall include in the

recommendation the number of ballots returned by facsimile transmission pursuant to this section.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 3110 of the Elections Code is amended to read:

3110. If a special absentee voter is unable to appear at his or her polling place because of being recalled to service after the final day for making application for an absent voter's ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official in the county in which the special absentee voter is registered or, if within the state, in the county in which he or she is recalled to service and make application for an absent voter's ballot, which may be submitted by facsimile, or by e-mail or online transmission if the elections official makes the transmission option available. The elections official shall deliver to him or her an absent voter's ballot which may be voted in the elections official's office or voted outside the elections official's office on or before the close of the polls on the day of election and returned as are other absent voter's ballots. To be counted, the ballot must be returned to the elections official's office in person, by facsimile transmission, or by an authorized person on or before the close of the polls on the day of the election. If the special absentee voter appears in the county in which he or she is recalled to service, rather than the county to which he or she is registered, the elections official shall coordinate with the elections official in the county in which the special absentee voter is registered to provide the absent voter's ballot that contains the appropriate measures and races for the precinct in which the special absentee voter is registered.

SEC. 2.5. Section 3110 of the Elections Code is amended to read:

3110. If a special absentee voter is unable to appear at his or her polling place because of being recalled to service after the final day for making application for a vote by mail ballot, but before 5 p.m. on the day before the day of election, he or she may appear before the elections official in the county in which the special absentee voter is registered or, if within the state, in the county in which he or she is recalled to service and make application for a vote by mail ballot, which may be submitted by facsimile, or by e-mail or online transmission if the elections official makes the transmission option available. The elections official shall deliver to him or her a vote by mail ballot which may be voted in the elections official's office or voted outside the elections official's office on or before the close of the polls on the day of election and returned as are other vote by mail ballots. To be counted, the ballot must be returned to the elections official's office in person, by facsimile transmission, or by an authorized person on or before the close of the polls on the day of the election. If the special absentee voter appears in the county in which he or she is recalled to service, rather than the county to which he or she is registered, the elections official shall coordinate with the elections official in the county in which the special absentee voter is registered to provide the absentee ballot that contains the

appropriate measures and races for the precinct in which the special absentee voter is registered.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 3103.5 of the Elections Code proposed by both this bill and AB 1243. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 3103.5 of the Elections Code, and (3) this bill is enacted after AB 1243, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 3110 of the Elections Code proposed by both this bill and AB 1243. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 3110 of the Elections Code, and (3) this bill is enacted after AB 1243, in which case Section 2 of this bill shall not become operative.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.