

Senate Bill No. 740

CHAPTER 611

An act to amend Sections 14310, 17301, and 17302 of the Elections Code, relating to elections.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 740, Cedillo. Elections: provisional ballots.

Existing law authorizes a voter claiming to be registered, to vote a provisional ballot if his or her qualification or entitlement to vote cannot be immediately established. Under existing law, once voted, the ballot is sealed in a provisional ballot envelope, and during the official canvass, the signature on the envelope is compared with the one on the voter's affidavit of registration, and the ballot is rejected if the 2 signatures do not compare.

This bill would additionally require that the provisional ballot be rejected if the provisional ballot envelope is not signed. The bill would also require that elections officials retain voted provisional ballots and their envelopes for a specified period after the election.

Because the bill would increase the duties of local elections officials, it would impose a state-mandated local program.

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.

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

SECTION 1. Section 14310 of the Elections Code is amended to read:

14310. (a) At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot as follows:

- (1) An elections official shall advise the voter of the voter's right to cast a provisional ballot.
- (2) The voter shall be provided a provisional ballot, written instructions regarding the process and procedures for casting the provisional ballot, and a written affirmation regarding the voter's registration and eligibility to

vote. The written instructions shall include the information set forth in subdivisions (c) and (d).

(3) The voter shall be required to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.

(b) Once voted, the voter's ballot shall be sealed in a provisional ballot envelope, and the ballot in its envelope shall be deposited in the ballot box. All provisional ballots voted shall remain sealed in their envelopes for return to the elections official in accordance with the elections official's instructions. The provisional ballot envelopes specified in this subdivision shall be a color different than the color of, but printed substantially similar to, the envelopes used for vote by mail ballots, and shall be completed in the same manner as vote by mail envelopes.

(c) (1) During the official canvass, the elections official shall examine the records with respect to all provisional ballots cast. Using the procedures that apply to the comparison of signatures on vote by mail ballots, the elections official shall compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. If the signatures do not compare or the provisional ballot envelope is not signed, the ballot shall be rejected. A variation of the signature caused by the substitution of initials for the first or middle name, or both, shall not invalidate the ballot.

(2) Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters. No fee shall be charged to the claimant by the clerk of the court for services rendered in an action under this section.

(3) The provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast his or her ballot in the precinct to which he or she was assigned by the elections official.

(A) If the ballot cast by the voter contains the same candidates and measures on which the voter would have been entitled to vote in his or her assigned precinct, the elections official shall count the votes for the entire ballot.

(B) If the ballot cast by the voter contains candidates or measures on which the voter would not have been entitled to vote in his or her assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote in his or her assigned precinct.

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

(e) The Secretary of State may adopt appropriate regulations for purposes of ensuring the uniform application of this section.

(f) This section shall apply to any vote by mail voter described by Section 3015 who is unable to surrender his or her unvoted vote by mail voter's ballot.

(g) Any existing supply of envelopes marked "special challenged ballot" may be used until the supply is exhausted.

SEC. 2. Section 17301 of the Elections Code is amended to read:

17301. (a) The following provisions shall apply to those elections where candidates for one or more of the following offices are voted upon: President, Vice President, United States Senator, and United States Representative.

(b) The packages containing the following ballots and identification envelope shall be kept by the elections official, unopened and unaltered, for 22 months from the date of the election:

- (1) Voted polling place ballots.
- (2) Paper record copies, as defined by Section 19251, if any, of voted polling place ballots.
- (3) Voted vote by mail voter ballots.
- (4) Vote by mail voter identification envelopes.
- (5) Voted provisional voter ballots.
- (6) Provisional ballot voter identification envelopes.
- (7) Spoiled ballots.
- (8) Canceled ballots.
- (9) Unused vote by mail ballots surrendered by the voter pursuant to Section 3015.
- (10) Ballot receipts.

(c) If a contest is not commenced within the 22-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters' signatures is not commenced within the 22-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the ballots destroyed or recycled. The packages shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 3. Section 17302 of the Elections Code is amended to read:

17302. (a) The following provisions shall apply to all state or local elections not provided for in subdivision (a) of Section 17301. An election is not deemed a state or local election if votes for candidates for federal office may be cast on the same ballot as votes for candidates for state or local office.

(b) The packages containing the following ballots and identification envelopes shall be kept by the elections official, unopened and unaltered, for six months from the date of the election:

- (1) Voted polling place ballots.
- (2) Paper record copies, as defined by Section 19251, if any, of voted polling place ballots.
- (3) Voted vote by mail voter ballots.
- (4) Vote by mail voter identification envelopes.

- (5) Voted provisional voter ballots.
- (6) Provisional ballot voter identification envelopes.
- (7) Spoiled ballots.
- (8) Canceled ballots.
- (9) Unused vote by mail ballots surrendered by the voter pursuant to Section 3015.
- (10) Ballot receipts.

(c) If a contest is not commenced within the six-month period, or if a criminal prosecution involving fraudulent use, marking or falsification of ballots, or forgery of vote by mail voters' signatures is not commenced within the six-month period, either of which may involve the vote of the precinct from which voted ballots were received, the elections official shall have the packages destroyed or recycled. The packages shall otherwise remain unopened until the ballots are destroyed or recycled.

SEC. 4. 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.