

AMENDED IN SENATE JULY 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1340

**Introduced by Assembly Members Bonnie Lowenthal and
V. Manuel Perez**
(Coauthor: Senator Ducheny)

February 27, 2009

An act to amend Sections 3102, 3103, and 3103.5 of, and to add Section 3103.6 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1340, as amended, Bonnie Lowenthal. ~~Absentee-Special absentee~~ voters.

Existing law provides that *every voter, including* a special absentee voter who is temporarily living outside of the United States or is called for military service within the United States, must return his or her ballot to the appropriate elections official by the close of the polls on election day to have that ballot counted.

This bill would give ~~that~~ a special absentee voter *who is temporarily living outside of the territorial limits of the United States or the District of Columbia, or who is called for military service within the United States on or after the final date to apply for a vote by mail ballot*, 10 days after the election to return his or her ballot *by mail* to the appropriate elections official and have it counted. ~~The bill would make additional changes in special absentee voter provisions.~~

Because this bill would change the duties of 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 3102 of the Elections Code, as amended
2 by Section 1 of Chapter 252 of the Statutes of 2008, is amended
3 to read:

4 3102. (a) Applications for the ballots of special absentee voters
5 shall be received and, except as provided in Sections 3103.5 and
6 3103.6, the ballots shall be received and canvassed, ~~at the same~~
7 ~~time and~~ under the same procedure as vote by mail ballots, insofar
8 as that procedure is not inconsistent with this chapter.

9 (b) This section shall remain in effect only until January 1, 2011,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2011, deletes or extends that date.

12 SEC. 2. Section 3102 of the Elections Code, as amended by
13 Section 2 of Chapter 252 of the Statutes of 2008, is amended to
14 read:

15 3102. (a) Applications for the ballots of special absentee voters
16 shall be received, and the ballots shall be received and canvassed
17 under the same procedure as vote by mail ballots, insofar as that
18 procedure is not inconsistent with this chapter.

19 (b) This section shall become operative January 1, 2011.

20 SEC. 3. Section 3103 of the Elections Code, as amended by
21 Section 3 of Chapter 252 of the Statutes of 2008, is amended to
22 read:

23 3103. (a) Any application made pursuant to this chapter that
24 is received by the elections official prior to the 60th day before
25 the election shall be kept and processed on or after the 60th day
26 before the election.

27 (b) The elections official shall immediately send the voter a
28 ballot in a form prescribed and provided by the Secretary of State.

1 The elections official shall send with the ballot a list of all
2 candidates who have qualified for the ballot by the 60th day before
3 the election and a list of all measures that are to be submitted to
4 the voters and on which the voter is qualified to vote. The voter
5 shall be entitled to write in the name of any specific candidate
6 seeking nomination or election to any office listed on the ballot.

7 (c) Notwithstanding Section 15341 or any other provision of
8 law, any name written upon a ballot for a particular office pursuant
9 to subdivision (b) shall be counted for the office or nomination,
10 providing the candidate whose name has been written on the ballot
11 has, as of the date of the election, qualified to have his or her name
12 placed on the ballot for the office, or has qualified as a write-in
13 candidate for the office.

14 (d) Except as provided in Sections 3103.5 and 3103.6, the
15 elections official shall receive and canvass special absentee voter
16 ballots described in this section under the same procedure as vote
17 by mail ballots, insofar as that procedure is not inconsistent with
18 this section.

19 (e) In the event that a voter executes a special absentee ballot
20 pursuant to this section and an application for a vote by mail ballot
21 pursuant to Section 3101, the elections official shall cancel the
22 voter's permanent vote by mail status, and process the application
23 in accordance with Chapter 1 (commencing with Section 3000).

24 (f) Notwithstanding any other provision of law, a special
25 absentee voter who qualifies pursuant to this section may, by
26 facsimile transmission, register to vote and apply for a special
27 absentee ballot or a vote by mail ballot. Upon request, the elections
28 official may send to the qualified special absentee voter either by
29 mail, facsimile, or electronic transmission the special absentee
30 ballot or, if available, a vote by mail ballot pursuant to Chapter 1
31 (commencing with Section 3000).

32 (g) This section shall remain in effect only until January 1, 2011,
33 and as of that date is repealed, unless a later enacted statute, that
34 is enacted before January 1, 2011, deletes or extends that date.

35 SEC. 4. Section 3103.5 of the Elections Code is amended to
36 read:

37 3103.5. (a) (1) A special absentee voter who is temporarily
38 living outside of the territorial limits of the United States or the
39 District of Columbia, or is called for military service within the
40 United States on or after the final date to make application for a

1 special absentee ballot or a vote by mail ballot, may return his or
2 her ballot by facsimile transmission. To be counted, the ballot
3 returned by facsimile transmission must be received by the voter's
4 elections official no later than the closing of the polls on election
5 day and must be accompanied by an identification envelope
6 containing all of the information required by Section 3011 and an
7 oath of voter declaration in substantially the following form:

8
9 OATH OF VOTER

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

16
17 My residence address is _____.
18 (Street Address) (City) (ZIP Code)

19
20 My current mailing address is _____.
21 (Street Address) (City) (ZIP Code)

22 -
23 My e-mail address is _____. My facsimile transmission
24 number is _____.

25 -
26 I am a resident of _____ County, State of California, and I have not
27 applied, nor intend to apply, for a vote by mail ballot from any other jurisdiction
28 for the same election.

29 -
30 I declare under penalty of perjury under the laws of the State of California
31 that the foregoing is true and correct.

32 -
33 Dated this _____ day of _____, 20____.

34
35 (Signature) _____
36 _____ voter (power of attorney cannot be accepted)

37 -
38 YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE
39 ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND

1 ~~IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED~~
2 ~~BY FACSIMILE TRANSMISSION.~~

3
4 OATH OF VOTER

5
6 I, _____, acknowledge that by returning my voted
7 ballot by facsimile transmission I have waived my right to have my ballot
8 kept secret. Nevertheless, I understand that, as with any vote by mail
9 voter, my signature, whether on this oath of voter form or my identification
10 envelope, will be permanently separated from my voted ballot to maintain
11 its secrecy at the outset of the tabulation process and thereafter.

12
13 My residence address is _____.
14 (Street Address) (City) (ZIP Code)

15
16 My current mailing address is _____.
17 (Street Address) (City) (ZIP Code)

18
19 My e-mail address is _____. My facsimile transmission
20 number is _____.

21
22 I am a resident of _____ County, State of California, and I have not
23 applied, nor intend to apply, for a vote by mail ballot from any other
24 jurisdiction for the same election.

25
26 I declare under penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct.

28
29 Dated this _____ day of _____, 20____.

30
31 (Signature) _____
32 Voter (Power of Attorney Cannot be Accepted)

33
34 YOUR BALLOT CANNOT BE COUNTED UNLESS YOU SIGN THE
35 ABOVE OATH AND INCLUDE IT WITH YOUR BALLOT AND
36 IDENTIFICATION ENVELOPE, ALL OF WHICH ARE RETURNED
37 BY FACSIMILE TRANSMISSION.
38

(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) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

SEC. 5. Section 3103.6 is added to the Elections Code, to read:

3103.6. 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 mail ballot, may return his or her ballot by mail. To be counted, the ballot shall meet both of the following criteria:

~~(1)~~

~~(a)~~ Be postmarked on or before election day.

~~(2)~~

~~(b)~~ Be received by the voter's county elections official on or before the 10th day following the election.

SEC. 6. 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.