

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 450

50th Legislature, 1st Session, 2011

Tracking Number: .184661.3

Short Title: School Elections by Mail

Sponsor(s): Representative Brian F. Egolf and Others

Analyst: Kevin Force

Date: February 28, 2011

Bill Summary:

HB 450 proposes to require all school elections to be conducted by mail.

Among its provisions, HB 450:

- creates new sections of the *School Election Law*, which establish:
 - the role of the Secretary of State in setting forth the procedures of the mail-in ballot process;
 - requirements for the form, the packaging, and the mailing of the ballots to voters;
 - the role of the “proper filing officer” in keeping a register of all school district voters, mailing ballots to voters, and delivering applicable information to the absent voter precinct;
 - the procedure that voters must follow in affirming, completing, and returning their votes;
 - the procedures that the county clerks must follow when receiving, recording, and securing the ballots;
 - the duties of the Absent Voter Precinct Board; and
 - procedures to be employed when a voter does not receive a mail-in ballot;
- amends certain sections of the *School Election Law*, which:
 - strike all references to “polling places”;
 - identifies the county clerk as the “proper filing officer”;
 - creates absent voter precincts for school district elections;
 - specifies that the proper filing officer shall *mail* ballots to voters; and
 - establishes procedures for the appointment of absent voter precinct board members;
- repeals the section of the *School Election Law* regarding absentee voting; and
- repeals the section of the *Mail Ballot Election Act* prohibiting mail ballot elections from being used for the nomination or election of candidates for public office.

Fiscal Impact:

HB 450 does not contain an appropriation.

Fiscal Issues:

The Public Education Department (PED), in its analysis, states:

- there will be costs associated with mailing ballots to all registered voters for school elections;
- that while that cost cannot be determined, it is likely to be less than maintaining numerous in-person polling stations; and
- a February 2, 2011 article from the *Albuquerque Journal* reports that:
 - a recent Albuquerque Public Schools board election where only 12,800 people voted cost \$385,000;
 - turnout in special elections is historically low; and
 - the Bernalillo County Clerk's Office reported that school board election turnout has slid from 8.0 percent in 2003 to less than 2.0 percent in 2009.

Substantive Issues:

According to the National Conference of State Legislatures (NCSL)¹, the use of mail-in ballots as a substitute for in-person voting at polling places is receiving renewed attention. A number of factors are influencing federal and state governments' decisions regarding mail-in ballots:

- Costs:
 - Savings can be significant. For instance, the Oregon secretary of state notes that the 1998 general election, the last to use traditional polling sites, cost \$1.81 per voter, while the January 2010 special election cost only \$1.05 per voter (not accounting for inflation).
 - In 2007, researchers from Reed College, Oregon, reported that the state saved approximately 17 percent of the costs of holding elections when it began all-mail elections.
 - However, some officials note that mail-in voting can raise costs. In Los Angeles, for example, the city clerk reported in 2009 that the city would need to hire 480 new employees to process ballots if it went to all-mail elections; that cost would have been prohibitive.
 - Inaccurate voter rolls also can affect cost. Printing and mailing ballots to voters who no longer are eligible or who have moved is an added expense.
- Turnout:
 - Hawaii's May 22, 2010 all-mail special election for Congress resulted in a 54 percent turnout rate, a 32 percent increase over the state's last congressional special election in 2003.

¹ See, *Vote-by-Mail Gets a Second Look*, by Tom Intorcio, National Conference of State Legislatures Legisbrief (<http://www.ncsl.org/LinkClick.aspx?fileticket=8jazO1U4jmE%3d&tabid=20555>)

- In Oregon, voter turnout has increased by 6.0 percent since all-mail elections began in 2000.
- However, a study conducted in several California counties concluded that, when required to vote by mail, citizens are 13.2 percent less likely to do so.
- Fraud and Privacy:
 - The bipartisan 2005 Commission on Federal Election Reform cautioned that “vote-by-mail raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.”²
 - While some states, such as Oregon, have appeared to avoid serious fraud problems by leveraging signature verification and ballot tracking technologies, others with more mobile populations or a history of election fraud are at greater risk:
 - In May 2010, a West Virginia county commissioner noted that at least 11 absentee ballots cast in the primary election contained the names of dead voters.
 - In the last decade, New Jersey, Washington, and Wisconsin were among states that experienced large-scale fraud involving at least hundreds, and potentially thousands, of absentee ballots discovered in protracted litigation or by investigators.
 - Opponents of mail-in ballot voting argue that such incidents undermine voter confidence.
- Convenience:
 - A March 2010 poll conducted by the Michigan League of Women Voters and the Michigan Association of Municipal Clerks found that 70 percent of respondents supported legislation that would allow no-excuse absentee and early voting.
 - Many election officials prefer mail elections because they do not involve the extensive poll worker training and the ballot supply and equipment allocation required for in-person voting.
 - One disadvantage, however, is that, because processing last-minute, mailed or dropped-off ballots can take longer, election results sometimes are delayed.

Further, the Director of the Elections Bureau in the Office of the Santa Fe County Clerk has advised the Legislative Education Study Committee staff that HB 450:

- is likely to increase voter participation, considering the experience of mail-in ballots in other jurisdictions; and

² See, Commission on Federal Election Reform (http://www1.american.edu/ia/cfer/report/CFER_section4.pdf)

- would reduce risks to voters and poll workers alike by not requiring them to travel in inclement weather, which has been the case in two of the last three school elections held in February.

Background:

- PED notes in its analysis that:
 - Oregon is the only state that has adopted a mandatory mail-in ballot process for all elections;
 - Oregon's mail-in election law was challenged on the basis that the measure violated federal law that sets the first Tuesday after the first Monday in November as election day;
 - the Ninth Circuit Court of Appeals upheld Oregon's mail-in ballot law;
 - Colorado, Nebraska, and North Dakota all permit some form of mail-in ballots; and
 - according to NCSL, in 2007 there were 28 bills introduced in 19 legislatures around the country to either create new or expand existing mail-in ballot elections, but most failed.
- According to NCSL, at the state level:
 - in 1996, 17 states allowed voting by mail in mostly local elections;
 - Oregon moved to all-mail elections in 1998;
 - in 2008, 19 states reported allowing voters who were registered for no-excuse absentee status to cast their ballots by mail;
 - in 2009, 29 states offered some form of no-excuse, absentee voting;
 - Washington is working to become an all-mail state: the Washington legislature gave counties discretion to conduct all-mail elections, and of the state's 39 counties, 38 now vote by mail;
 - limited all-mail voting is authorized in 14 additional states;
 - in both 2009 and 2010, at least eight states considered bills to adopt all-mail balloting for certain (special, primary or vacancy) elections;
 - in 2009, Colorado passed House Bill 105, authorizing county election officials to conduct any primary election by all-mail ballot. In 2010, it passed House Bill 1116 to require signature verification for mail-in elections;
 - in 2010, out of 31 election reform bills in 13 state legislatures concerning mail-in ballots, including pilot programs, 28 failed, two were vetoed, and only one passed;³
 - in Hawaii and Washington, bills to require statewide all-mail elections failed; and
 - in April, 2010 the California Assembly passed House Bill 1681 to institute an all-mail pilot program for all local elections in Yolo County.
- At the federal level:
 - The bipartisan *Military and Overseas Voter Empowerment Act* set standards to ensure overseas voters have sufficient time to vote, including a requirement that state chief election officials develop a free access system by which each uniformed or overseas voter can track whether his or her ballot was received.

³ See, <http://www.ncsl.org/default.aspx?tabid=16588>

- The standards of the act, effective with the November 2010 election, coupled with 29 states that now offer no-excuse absentee voting, has contributed to congressional interest in a federal mail-in balloting law.
- Several congressional bills under consideration would extend vote-by-mail or require no-excuse absentee voting.

Related Bills:

HJR 11 *Hold School Elections with General, CA*
HJR 16 *School Elections with Other Elections, CA*
SJR 16 *School Elections with Other Elections, CA*