



# Shirley N. Weber, Ph.D.

## California Secretary of State

### Elections Division

1500 11th Street, 5th Floor | Sacramento, CA 95814 | 916.657.2166 | [elections@sos.ca.gov](mailto:elections@sos.ca.gov)

October 3, 2025

#### Overview of Senate Bill 851 (CC/ROV) Memorandum # 25126

TO: All County Clerks/Registrars of Voters

FROM: /s/ Robbie Anderson  
Elections Counsel

RE: Statewide Special Election: Senate Bill 851

This memorandum provides an overview of Senate Bill 851 (SB 851, Chapter 238 of the Statutes of 2025), which was signed into law October 1, 2025. SB 851 is an urgency bill and is effective as of October 1, 2025.

#### Required Notification of Legal Challenges

SB 851 adds Elections Code section 21 to require a state or local agency or political subdivision to provide written notice to the Secretary of State (SOS) and the Attorney General of any filing of or receipt of service of a court action relating to elections that contain a claim arising under federal law.

A "claim arising under federal law" includes, but is not limited to, a claim brought under the federal Voting Rights Act of 1965, the NVRA, HAVA, the Civil Rights Act of 1960, and the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the U.S. Constitution.

The notice is to be submitted within three court days of the filing or receipt of service, and must include the case number, case name, and venue.

In addition, at least 14 court days before a state or local agency or political subdivision enters into a settlement, consent decree, or other court-approved agreement in a court action relating to elections that contain a claim under federal law, the state or local agency or political subdivision shall provide a draft copy of the settlement, consent decree, or other court-approved agreement to the SOS and the Attorney General. This is to provide the opportunity for the SOS and/or the Attorney General to deliver guidance to the state or local agency or political subdivision to ensure the action is consistent with California law, including any applicable California regulations.

Section 21 specifically excludes any records or information exchanged under this section from disclosure under the California Public Records Act.

## **Election Certification**

SB 851 amends Elections Code sections 15371, 15372, and 15375 to include a statement in each of those sections that the requirement of elections officials to certify the election are “ministerial and nondiscretionary”. SB 851 also adds a similar statement to Section 15400 addressing the duties of the governing board. These statements were added to make it clear that an elections official or a governing board does not have the authority to refuse to certify an election.

In addition, SB 851 adds subdivision (d) to Elections Code section 15372 to provide that if an elections official fails to provide a certified statement of the results of an election, the SOS shall notify the district attorney of the county or the Attorney General of that failure, and may assist a county elections official in completing the canvass and certification duties of that elections official.

## **Penal Provisions**

### Firearms and Uniformed Persons

Prior to SB 851, Elections Code section 18545 made it a crime for any person who hired or arranged for a person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official.

SB 851 expands the penalties to remove the reference to a “peace officer” and replace it with “law enforcement” officer and added the office of the county elections official as a prohibited area for the purposes of this section. The definition of “law enforcement officer” includes a peace officer as defined in Penal Code section 830, or an officer or agent of a federal law enforcement agency or any person acting on behalf of a federal law enforcement agency.

In addition, SB 851 expands the exception that allowed specified individuals to be present at the specified location by written authorization by the elections official to now include written authorization by a federal court order.

### Unofficial Ballot Envelopes with Intent to Deceive Voter

Prior to SB 851, Elections Code section 18568 made it a crime for person to display a container for the purpose of collecting ballots with the intent to deceive a voter into casting

a ballot in an unofficial ballot box, or to direct or solicit a voter to place a ballot in such a container.

SB 851 expands the prohibitions in Section 18568 to make it a crime for any person to provide a ballot return envelope with the intent to deceive a voter into casting a ballot in that unofficial ballot return envelope. Evidence of intent to deceive may include the use of “official” on the ballot return envelope or design the ballot return envelope in a way that is likely to deceive a voter into believing the envelope is an official ballot return envelope that has been approved by an elections official.

## **Voting System Certification**

### California Voting System Standards

Prior to SB 851, Elections Code sections 19006 and 19101 required the Secretary of State to adopt and publish voting system standards and regulations governing the use of voting systems that meet or exceed federal voluntary voting system guidelines set forth by the United States Election Assistance Commission (EAC) or a successor agency.

SB 851 repeals those provisions and instead requires the SOS to adopt and publish voting standards that meet the minimum requirements of HAVA and incorporate best practices in election technology.

### Voting System Source Code Escrow

Prior to SB 851, Elections Code section 19212 required the SOS to cause an exact copy of any certified or conditionally approved voting system source code to be deposited into an approved escrow facility, and that copy had to come directly from either the EAC or from the voting system testing agency that evaluated it.

Senate Bill 851 removed the requirement relating to the EAC and now requires that the escrowed copy be obtained from the voting system testing agency that evaluated the voting system.

### Voting System and Remote Accessible Vote by Mail System Defect Reporting

Prior to SB 851, Elections Code sections 19215, 19284, and 19290 required the Secretary of State to notify the EAC or its successor agency in writing of any defect, fault, or failure of the hardware, software, or firmware of any voting system, remote accessible vote by mail system, or portion thereof.

SB 851 repeals the provision requiring the Secretary of State to make those notifications to the EAC or its successor agency.

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If you have any questions about this memorandum, please contact me at [aanderso@sos.ca.gov](mailto:aanderso@sos.ca.gov) or Rachelle Delucchi at [rdelucch@sos.ca.gov](mailto:rdelucch@sos.ca.gov).

For questions related to the changes voting system certification, please contact NaKesha Robinson at [nakesha.robinson@sos.ca.gov](mailto:nakesha.robinson@sos.ca.gov) or Rodney Rodriguez at [rrodriguez2@sos.ca.gov](mailto:rrodriguez2@sos.ca.gov).