

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 759 (McGuire) – As Amended June 20, 2018

**SENATE VOTE:** 27-12

**SUBJECT:** Elections: vote by mail ballots.

**SUMMARY:** Allows a voter whose signature on his or her vote by mail (VBM) ballot identification envelope does not match the signature on file in the voter's record to return a completed signature verification statement, as specified, in order to have his or her ballot counted. Specifically, **this bill:**

- 1) Requires an elections official who determines that the signatures do not compare when comparing the signature on a VBM ballot envelope to the signature on that voter's registration records, to write the cause of the rejection of the VBM ballot on the face of the identification envelope only after an elections official has provided the voter with the opportunity to verify his or her signature, as specified.
- 2) Requires an elections official, not less than eight days prior to the certification of the election, to notify each voter identified by the elections official as having a signature on the voter's VBM ballot that did not match the signature on that voter's registration record of the opportunity to verify his or her signature no later than 5 p.m. two days prior to the certification of the election.
- 3) Requires the notice and instructions sent by the elections official to be in substantially the following form:

**READ THESE INSTRUCTIONS CAREFULLY. FAILURE TO FOLLOW  
THESE INSTRUCTIONS MAY CAUSE YOUR VOTE BY MAIL BALLOT  
NOT TO COUNT.**

- 1) We have determined that the signature you provided on your vote by mail ballot does not match the signature(s) on file in your voter record. In order to ensure that your vote by mail ballot will be counted, the signature verification statement must be completed and returned as soon as possible.
- 2) The signature verification statement must be received by the elections official of the county where you are registered to vote no later than 5 p.m. two days prior to certification of the election.
- 3) You must sign your name where specified on the signature verification statement (Voter's Signature).
- 4) Place the signature verification statement into a mailing envelope addressed to your local elections official. Mail, deliver, or have the completed statement delivered to the elections official. Be sure there is sufficient postage if mailed and that the address of the elections official is correct.

- 5) If you do not wish to send the signature verification statement by mail or have it delivered, you may submit your completed statement by email or facsimile transmission to your local elections official using the information provided.
- 4) Prohibits an elections official from rejecting a VBM ballot with a mismatched signature if each of the following conditions are satisfied:
- a) The voter delivers, in person, by mail, or by email, a signature verification statement signed by the voter and the elections official receives the statement no later than 5 p.m. two days prior to the certification of the election, or the voter, before the close of the polls on election day, completes and submits a signature verification statement to a polling place within the county or a ballot dropoff box; and,
  - b) The elections official, upon receipt of the signature verification statement, shall process the ballot.
- 5) Requires the signature verification statement to be in substantially the following form and permits it to be included on the same page as the notice and instructions required by this bill:

**"SIGNATURE VERIFICATION STATEMENT"**

I, \_\_\_\_\_, am a registered voter of \_\_\_\_\_ County, State of California. I declare under penalty of perjury that I requested and returned a vote by mail ballot. I am a resident of the precinct in which I have voted, and I am the person whose name appears on the vote by mail ballot envelope. I understand that if I commit or attempt any fraud in connection with voting, or if I aid or abet fraud or attempt to aid or abet fraud in connection with voting, I may be convicted of a felony punishable by imprisonment for 16 months or two or three years. I understand that my failure to sign this statement means that my vote by mail ballot will be invalidated.

\_\_\_\_\_

Voter's Signature

- 6) Requires an elections official to include the VBM ballot signature verification statement and instructions required by this bill on his or her Internet Web site and provide the elections official's mailing address, email address, and facsimile transmission number on the Internet Web site page containing the statement and instructions.
- 7) Requires an elections official, if the official determines that the signatures compare, to use the signature in the signature verification statement, even if returned untimely, to update the voter's signature for future elections.
- 8) Provides that it is the intent of the Legislature that the procedures required by this bill apply only to signatures that do not compare because of a mismatched signature submitted by the voter himself or herself.

**EXISTING LAW:**

- 1) Requires a county elections official, upon receiving a VBM ballot, to compare the signature

on the VBM ballot identification envelope with either of the following:

- a) The signature appearing on the voter's affidavit of registration or any previous affidavit of registration of the voter; or,
  - b) The signature appearing on a form issued by an elections official that contains the voter's signature and is part of the voter's registration record.
- 2) Provides that if the ballot is rejected because the signatures do not compare, the envelope shall not be opened and the ballot shall not be counted. Requires the cause of the rejection to be written on the face of the identification envelope.
  - 3) Prohibits an elections official from rejecting a VBM ballot on the grounds that the voter failed to sign the ballot identification envelope if the voter does any of the following:
    - a) Signs the identification envelope at the office of the elections official during regular business hours before 5 p.m. on the eighth day after the election;
    - b) Before 5 p.m. on the eighth day after the election, completes and submits an unsigned ballot statement, as specified; or,
    - c) Before the close of the polls on election day, completes an unsigned ballot statement, and submits it to a polling place within the county or a ballot dropoff box.
  - 4) Allows a voter to return a completed unsigned ballot statement by mail, have it delivered, submitted by email or facsimile transmission, or alternatively returned to a polling place within the county or a ballot dropoff box before the polls close on election day.
  - 5) Requires an elections official to accept any completed unsigned ballot statement that is timely submitted. Requires the elections official, upon receipt of the unsigned ballot statement, to compare the voter's signature on the statement, as specified.
  - 6) Requires an elections official, if he or she determines that the signatures compare, to attach the unsigned ballot statement to the identification envelope and deposit the ballot, still in the identification envelope, in a ballot container in his or her office. Prohibits an identification envelope, if the elections official determines that the signatures do not compare, from being opened or counted.
  - 7) Authorizes an elections official, in comparing signatures, to use signature verification technology. Prohibits an elections official, if the signature verification technology determines the signatures do not compare, from rejecting the ballot unless he or she visually examines the signatures and verifies that the signatures do not compare.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:****1) Purpose of the Bill:** According to the author:

A strong democracy is dependent on a voter's belief that their right to vote counts. In California, tens of thousands of ballots are thrown out annually without any notification to the individual voter. In the November 2016 election, California discarded approximately 45,000 Vote by Mail ballots because of a mismatching signature. While mismatching signatures can occur for a number of reasons, there is no law that mandates local election officials notify voters that their ballot will be tossed out or provide them with an opportunity to correct the mistake.

There are many reasons a ballot may have a mismatched signature. It could be caused from: signatures being signed in another language due to language barriers, disabilities, inconsistent signatures and many more factors. To correct this, SB 759 ensures that all valid votes are counted by creating a process for elections officials to notify voters with mismatched signatures, and gives them the opportunity to correct the discrepancy.

- 2) Vote by Mail Ballots and Previous Legislation:** Last session the Legislature passed and the Governor signed AB 477 (Mullin), Chapter 726, Statutes of 2015, which allows a voter who failed to sign his or her VBM ballot identification envelope to complete and sign an unsigned ballot statement up to eight days after the election, as specified, in order to have his or her ballot counted. Specifically, AB 477 prohibited an elections official, if he or she determines that a voter has failed to sign the VBM identification envelope, from rejecting the VBM ballot if the voter does any of the following: 1) signs the identification envelope at the office of the elections official during regular business hours before 5 p.m. on the 8th day after the election; 2) before 5 p.m. on the 8th day after the election, completes and submits an unsigned ballot statement, as specified; or, 3) before the polls close on election day, completes and submits an unsigned ballot statement to a polling place within the county or ballot dropoff box. Additionally, AB 477 requires an elections official, if timely submitted, to accept any completed unsigned ballot statement, and upon receipt of the unsigned ballot statement, to compare the voter's signature on the statement in the manner provided by current law.

Additionally, the Legislature approved and the Governor signed AB 840 (Quirk), Chapter 820, Statutes of 2017, which authorized a voter who did not sign his or her VBM identification envelope to submit his or her completed unsigned ballot statement to the local elections official by email.

This bill sets up a similar cure process for a voter whose signature on his or her VBM ballot identification envelope does not match the signatures on file in the voter's record, as specified.

- 3) Processing Signature Verification Statements and Suggested Amendments:** As mentioned above, this bill prohibits an elections official from rejecting a VBM ballot with a mismatched signature if the following conditions are satisfied: 1) the voter submits a signature verification statement signed by the voter and the elections official receives the

statement no later than 5 p.m. two days prior to the certification of the election, and 2) the elections official, upon receipt of the signature verification statement, processes the ballot. This second condition is ambiguous, and does not specify how an elections official is supposed to process the signature verification statement, or what the elections official is supposed to do if the signatures do not compare. Upon receipt of the signature verification statement, does an elections official compare the signature on the statement with the signature on the VBM ballot identification envelope? Does an elections official reject the VBM ballot if the signatures do not match?

According to the author's office, it is the author's intent to require an elections official, upon receipt of a signature verification statement to compare the signature on the statement with a signature on file in the voter's record. Committee staff recommends the following amendments to clarify the author's intent and to clarify the procedures an elections official must follow upon receipt of a timely-submitted signature verification statement:

*On page 4, strike out lines 20 through 22 and insert the following:*

*Upon receipt of the signature verification statement, the elections official shall compare the signature on the statement with the signature on file in the voter's record.*

*If upon conducting the comparison of signatures the elections official determines that the signatures compare, he or she shall deposit ballot, still in the identification envelope, in a ballot container in his or her office.*

*If upon conducting the comparison of the signatures the elections determines that the signatures do not compare, the identification envelope shall not be opened and the ballot shall not be counted. The elections official shall write the cause of the rejection on the face of the identification envelope.*

*On page 5, starting in line 10, make the following changes:*

*If the elections official determines ~~pursuant to subparagraph (B) of paragraph (3)~~ that the signatures compare, the official shall use the signature in the signature verification statement, even if returned untimely, to update the voter's signature for future elections.*

- 4) **Logistical Issues:** As mentioned above, this bill requires an elections official, at a minimum of eight days prior to the certification of the election, to provide a notice to each voter identified by the elections official as having a signature mismatch of the opportunity to verify his or her signature no later than 5 p.m. two days prior to the certification of the election. This bill does not, however, specify how an elections official must notify a voter of the opportunity to cure a mismatching signature. Moreover, the timing requirements in the bill for when an elections official must notify a voter and for when a voter must return a completed signature verification statement are short and may be challenging to a voter to comply with. Theoretically, if an elections official notifies a voter by mail of the opportunity to cure a mismatching signature, it might be challenging for the voter to return the completed signature verification statement on time to the elections official. However, if an elections

official notifies a voter by telephone or email, the voter may have a better chance of submitting a completed statement on time.

- 5) **Pending Litigation Against the Sonoma County Registrar of Voters:** On November 13, 2017, an individual voter and the American Civil Liberties Union of Northern California filed a lawsuit in the Superior Court of California, County of San Francisco, against the Secretary of State (SOS) and the Sonoma County Registrar of Voters challenging Section 3019 of the Elections Code, which requires elections officials to reject VBM ballots when a voter's signature does not sufficiently compare to the signatures on file, as specified. The plaintiffs requested that the court declare Elections Code Section 3019 unconstitutional and prohibit the defendants from rejecting VBM ballots for mismatched signatures without providing notice and an opportunity for those voters to cure.

In March of this year, the judge ruled in favor of the plaintiffs stating that Elections Code Section 3019 violated due process clauses of both the federal and state constitutions. Additionally, the ruling ordered that no ballot may be rejected based on a mismatched signature without providing the voter with notice and an opportunity to cure before the election results are certified and required the SOS to inform elections officials of this ruling.

- 6) **Vote by Mail Ballot Rejection:** The California Civic Engagement Project, housed at the University of California at Davis, conducted a statewide survey of California's 58 county election offices to gain a better understanding of California's use of VBM ballots, including return methods. According to their September 2014 brief, entitled "California's Uncounted VBM Ballots: Identifying Variation in County Processing," in 2012, for the first time in a statewide general election, over 50 percent of California's voters chose to cast their ballot using a VBM ballot. This totaled 6.6 million ballots. However, approximately one percent of those VBM ballots received by the elections official were rejected during ballot processing. That amounts to approximately 69,000 ballots. According to the survey, late receipt was the most common reason why a VBM ballot was uncounted. Signature issues, such as a missing signature or a mismatching signature, were the other top two reasons for VBM ballot rejection.
- 7) **Voter's Choice Act and Previous Legislation:** Last session, the Legislature passed and the Governor signed SB 450, Chapter 832, Statutes of 2016, which enacted the California Voter's Choice Act (CVCA). The CVCA permits fourteen specified counties, starting this year, to conduct elections in which all voters are mailed ballots, and voters have the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Five counties (Sacramento, San Mateo, Napa, Nevada, and Madera) conducted elections under this system in June; the remaining counties may use this system beginning in 2020.
- 8) **Technical Amendments:** Committee staff recommends the following minor technical amendments:

*On page 4, in line 13, after the word "mail," insert "fax,"*

*On page 5, in line 7, after the word "and" insert "facsimile"*

- 9) **Arguments in Support:** In support, the American Civil Liberties Union of California (ACLU) writes:

State law requires elections officials – who may not be handwriting experts – to reject vote-by-mail ballots if they believe the signature on the ballot envelope does not match the signatures on file for the voter. As a result of perceived signature mismatches, thousands of eligible Californian voters are disenfranchised each election cycle. For example, in the November 2016 general election alone, approximately 33,000 to 45,000 ballots were rejected due to a perceived signature mismatch. Asian-American voters, Latino voters, and voters born outside the United States were disproportionately disenfranchised by perceived signature mismatches.

In January 2018, the ACLU filed a lawsuit challenging the practice on behalf of disenfranchised voters. In March 2018, the court held that the practice violated the state and federal constitutions, and that California elections officials must notify voters before rejecting their mail-in ballots over signature concerns. SB 759 would codify the court's ruling and create a consistent statewide framework for voters and local elections officials to ensure California voters have an opportunity to cure a problem with their ballots before they are rejected.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Secretary of State Alex Padilla (sponsor)  
American Civil Liberties Union of California  
California Labor Federation  
Courage Campaign  
Disability Rights California  
League of Women Voters of California

##### **Opposition**

None on file.

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