Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Marc Berman, Chair
SB 523 (McGuire) – As Introduced February 21, 2019

Updated Analysis: 9:00 a.m. on July 2, 2019

SENATE VOTE: 29-9

SUBJECT: Elections: vote by mail ballots.

SUMMARY: Aligns the timelines and procedures for processing an unsigned ballot statement from a voter who did not sign their vote by mail (VBM) ballot with the deadlines established in existing law for a signature verification statement submitted from a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's record, as specified. Specifically, **this bill**:

1) Extends the deadline for a voter who did not sign their VBM ballot identification envelope to sign the envelope, or sign and deliver an unsigned ballot statement, to no later than 5 p.m. two days before the certification of the election, instead of before 5 p.m. on the 8th day after the election.

2) Requires an elections official, a minimum of eight days prior to the certification of the election, to provide notice and instructions to all voters who did not sign their VBM ballot identification envelope of the opportunity to provide a signature no later than 5 p.m. two days prior to the certification of the election.

3) Requires the notice and instructions sent to a voter who did not sign their VBM ballot identification envelope or whose signature does not match the signature on file in the voter's record to be translated in all languages pursuant to existing state law and the federal Voting Rights Act of 1965.

4) Makes technical and conforming changes.

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) Permits the elections official, in comparing the signatures, to use facsimiles of voters' signatures, provided that the method of preparing and displaying the facsimiles complies with the law.

3) Requires the elections official, if upon conducting the comparison of signatures pursuant to existing law and determining that the signatures compare, to deposit the ballot, still in the identification envelope, in a ballot container in their office.

4) Prohibits the identification envelope, if upon conducting the comparison of signatures and the elections official determines that the signatures do not compare, from being opened and prohibits the ballot from being counted. Requires an elections official to write the cause of the rejection on the face of the identification envelope only after completing the following procedures:

   a) Requires an elections official, a minimum of eight days prior to the certification of the election, to provide notice to all voters with a mismatching signature on their VBM ballot identification envelope of the opportunity to verify their signatures no later than 5 p.m. two days prior to the certification of the election.

   b) Requires the notice and instructions 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."

   c) Prohibits an elections official from rejecting a VBM ballot identification envelope with a mismatching signature if each of the following conditions is satisfied:

      i) The voter delivers, in person, by mail, by fax, 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.

    ii)   Requires an elections official, upon receipt of the signature verification statement, to compare the signature on the statement with the signature on file in the voter's record in accordance with existing law.

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.

<div align="center">"SIGNATURE VERIFICATION STATEMENT</div>

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

Address"

6) Requires an elections official to include the VBM signature verification statement and instructions on their internet website, and to provide the election official's mailing address, email address, and facsimile transmission number on the internet webpage containing the statement and instructions.

7) Requires an elections official, if the elections 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) Prohibits an elections official, if they determine that a voter has failed to sign the identification envelope, from rejecting the VBM ballot 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 8th day after the election.

    b) Before 5 p.m. on the 8th day after the election, completes and submits an unsigned ballot statement in substantially the following form:

<div align="center">"UNSIGNED BALLOT STATEMENT</div>

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 and that I have not and will not vote more than one ballot in this election. 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

Address"

   c) Before the close of the polls on election day, completes and submits an unsigned ballot statement, in the form pursuant to existing law, to a polling place within the county or a ballot drop-off box.

9) Requires an elections official, if timely submitted, to accept any completed unsigned ballot statement. Requires an elections official, upon receipt of the unsigned ballot statement, to compare the voter's signature on the statement pursuant to existing law.

10) Requires instructions to accompany the unsigned ballot statement in substantially the following form:

"READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE STATEMENT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote by mail ballot will be counted, your statement should be completed and returned as soon as possible so that it can reach the elections official of the county in which your precinct is located no later than 5 p.m. on the eighth day after the election.

2. You must sign your name on the line above (Voter's Signature).

3. Place the statement into a mailing envelope addressed to your local elections official. Mail, deliver, or have delivered the completed statement to the elections official. Be sure there is sufficient postage if mailed and that the address of the elections official is correct.

4. If you do not wish to send the statement by mail or have it delivered, you may submit your completed statement by facsimile or email transmission to your local elections official, or submit your completed statement to a polling place within the county or a ballot drop-off box before the close of the polls on election day."

11) Requires an elections official to include the unsigned ballot statement and instructions on their internet website, and to provide the elections official's mailing address, email address, and facsimile transmission number on the internet webpage containing the statement and instructions.

12) Prohibits a ballot from being removed from its identification envelope until the time for processing ballots and prohibits a ballot from being rejected for cause after the identification envelope has been opened.

FISCAL EFFECT: According to the Senate Appropriations Committee:

1) By requiring elections officials to notify specified voters, this bill creates a state-mandated local program. To the extent that the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs (General Fund). The annual amount is unknown, but potentially over $50,000.

2) This bill would not result in administration costs to the Secretary of State (SOS).

COMMENTS:

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

> A strong democracy depends on a voter's belief that their vote counts. In the Golden State, where over half of Californians vote by mail, the chances that there will be a mistake on a [VBM] ballot, such as a missing or mismatched signature, increases their chances of getting their ballot rejected.
>
> Two separate timelines for re-submission of mismatching and missing signature ballots makes California's voting processes more complex, and gives less time to some voters to fix their previously submitted ballots. To remedy this, SB 523 aligns California's two processes for notifying voters and gives them more flexibility to correct their signatures.

2) **Vote by Mail Ballots and Previous Legislation**: Four years ago, the Legislature passed and the Governor signed AB 477 (Mullin), Chapter 726, Statutes of 2015, which allows a voter who failed to sign their 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 their ballot counted. Specifically, AB 477 prohibited an elections official, if they determine 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 drop-off 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, last session the Legislature approved and the Governor signed AB 840 (Quirk), Chapter 820, Statutes of 2017, which authorized a voter who did not sign their VBM identification envelope to submit their completed unsigned ballot statement to the local elections official by email.

Last year, SB 759 (McGuire), Chapter 446, Statutes of 2018, was signed into law and set up a similar cure process for a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's record, as specified. SB 759, however, established different timelines than those that are currently in place for an unsigned ballot statement. Specifically, SB 759 prohibits an elections official from rejecting a VBM ballot identification envelope with a mismatching signature if the voter submits a signature verification statement signed by the voter to the elections official no later than 5 p.m. two days prior to the certification of the election, as specified. Additionally, SB 759 requires a county elections official to notify a voter of a mismatching signature and of the opportunity to verify their signature, as specified.

This bill makes changes to the unsigned ballot statement process and aligns it with the timeframes established for mismatching signatures. Additionally, this bill mirrors the notification requirement under existing law for a mismatching signature and requires an elections official to notify a voter of an unsigned VBM ballot and of their opportunity to complete and submit an unsigned ballot statement, as specified.

3) **Voting by Mail:** California voters have increasingly utilized VBM ballots when voting in elections. In the 2018 general election, of 12,712,542 ballots cast, 8,302,488 were VBM ballots. This represents 65.31% of the votes cast in November 2018 and is the highest VBM participation percentage for a general election in the state's history.

4) **Vote by Mail Ballot Rejection**: According to a 2014 report issued by the California Civic Engagement Project entitled, Disparities in California's Uncounted Vote-by-Mail Ballots: Youth, Language Preference and Military Status, the frequency of VBM ballot rejection reasons varies for English versus non-English VBM ballots. According to the report, lateness was overwhelmingly the number one reason English language VBM ballots were rejected in November 2012 and not having a signature was the most common reason why a non-English language VBM ballot was rejected.

5) **Voter's Choice Act and Previous Legislation**: In 2016, the Legislature passed and the Governor signed SB 450 (Allen), Chapter 832, Statutes of 2016, which enacted the California Voter's Choice Act (CVCA). The CVCA permits 14 specified counties, starting last 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 (Madera, Napa, Nevada, Sacramento, and San Mateo) all conducted elections under this system last year; the remaining counties may use this system beginning in 2020. According to the SOS, next year at least 14 counties (Amador, Butte, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) are expected to conduct elections pursuant to the CVCA.

6) **Unsigned Ballot Statements and the November 2018 Election**. On November 13, 2018, the SOS's office issued a memorandum to county elections officials regarding the signature cure period for unsigned VBM ballots. The memorandum stated the following:

> "We have received inquiries regarding whether a county elections official must reject an Unsigned Ballot Statement that is submitted after 5:00 p.m. on the eighth day after the election. (Elections Code § 3019, subd. (e).)

While the Elections Code specifically requires the elections official to 'not reject' a vote-by-mail ballot if an Unsigned Ballot Statement is submitted before 5:00 p.m. on the eighth day after the election, it is silent as to what an elections official must do if a statement is submitted after that time.

In the absence of a direct mandate to reject a vote-by-mail ballot if submitted after 5 p.m. on the eighth day after the election, and keeping Elections Code section 3000's directive that "[t]his division shall be liberally construed in favor of the vote by mail voter," our recommendation is for a county elections official to accept an Unsigned Ballot Statement up to the point in time where it would interfere with the duties of completing the county's official canvass."

7) **Arguments in Support:** In support the California Voter Foundation writes:

Voting by mail has expanded significantly in California but counties provide varying ballot envelope designs and instructions to voters for how to complete and submit a vote-by-mail ballot envelope. This lack of standardization adds to voter confusion, especially for first-time or infrequent voters, or voters casting non-English language ballots. Research conducted by the California Civic Engagement Project found that missing signatures was the leading cause for non-English language ballot rejection in the 2012 General Election.

While some counties contact voters whose signatures are missing from their ballot envelopes, not all do so, resulting in unequal treatment for California voters.

In Sacramento County, for last November's General Election, the Registrar of Voters' office sent 2,192 letters to voters whose envelope signatures were missing, and 1,234 voters submitted a signature after being notified, resulting in a 56 percent "cure" rate and 1,234 voters having their votes counted instead of being disenfranchised. Similarly, in June 2018, Sacramento sent out 1,798 "no signature" letters, and 973 voters sent in valid signatures, resulting in a 52 percent cure rate.

8) **Argument Requested:** With a support if amended position, the California Association of Clerks and Election Officials writes:

Our Committee would like to propose that subdivisions 3019(d)(3) and 3019 (e)(3) be stricken from your bill. These subdivisions state that "The notice and instructions shall be translated in all languages required by Section 14201 and Section 203 of the federal Voting Rights Act of 1965." This would mandate that all counties translate their notices and letters into the 16 languages outlined in Section 203 and Section 14201 even when a language is not spoken by the population of that county.

9) **Arguments in Opposition**: In opposition the Election Integrity Project California, Inc. writes:

The expansion of the canvassing timeline for Vote by Mail ballots proposed in SB 523 is unnecessary and problematic, and will likely lead to disenfranchisement and undetected fraudulent voting.

The "curing" process already in place provides adequate protection for Vote by Mail voters. The law currently requires that voters who fail to sign their Vote by Mail (VBM) ballots, or whose signature on the envelope is deemed to be a mismatch, be notified within 8 days of Election Day and given an opportunity to validate or provide a signature so that their ballot can be counted.

SB [523] expands the amount of time that Registrars have to notify those voters (up to and including 8 days before certification) and allows for voter responses to arrive any time up to and including a mere 2 days prior to certification.

That expansion of time is unneeded and fraught with potential for erroneous results.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)
American Civil Liberties Union of California
Asian Americans Advancing Justice – California
California Association of Clerks and Election Officials (if amended)
California Voter Foundation
Disability Rights California
League of Women Voters of California
NextGen California

Opposition

Election Integrity Project California, Inc.

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