

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ELECTIONS

Marc Berman, Chair

SB 503 (Becker) – As Amended June 15, 2021

**SENATE VOTE:** 31-8

**SUBJECT:** Voting: ballots and signature verification.

**SUMMARY:** Requires an elections official, upon receiving a vote by mail (VBM) ballot and comparing the voter's signature on the identification envelope with signatures in the voter's registration record, to apply certain presumptions, as specified. Specifically, **this bill:**

- 1) Requires an elections official, upon receiving a VBM ballot and comparing the signature on the identification envelope to apply all of the following presumptions:
  - a) A presumption exists that the signature on the identification envelope, signature verification statement, unsigned ballot statement, or provisional ballot envelope is the voter's signature.
  - b) An exact match is not required for an elections official to determine that a voter's signature is valid. Provides that the fact that signatures share similar characteristics is sufficient to determine that a signature is valid.
  - c) Requires an elections official to consider explanations for discrepancies between signatures that are specified in regulations promulgated by the Secretary of State (SOS), except as specified. Provides that explanations include a variation in signature style over time and the haste with which a signature is written.
  - d) Prohibits an elections official, when comparing signatures, to review or consider a voter's party preference, race, or ethnicity.
  - e) Permits an elections official to consider characteristics of the written signature that are specified in regulations promulgated by the SOS. Provides that characteristics include the slant of the signature, letter formation, and whether the signature is printed or written in cursive.
- 2) Provides that if the elections official determines, upon comparing signatures, that the signature possesses multiple, significant, and obvious differing characteristics when compared to all signatures in the voter's registration record, the signature is subject to the additional procedures that require a signature to be rejected only if two additional elections officials each find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects from all signatures in the voter's registration record.
- 3) Requires a notice sent to a voter who did not sign their VBM ballot identification envelope or whose signature does not compare to the signature in the voter's record pursuant to existing law to be sent by first-class mail, and on or before the next business day after a determination is made that a voter's signature does not compare. Requires the notice to include a return

envelope, with postage paid, for the voter to return a signature verification statement. Requires an elections official, if it is impracticable under the circumstances for the elections official to send the notice on or before the next business day, including in the event of technological failure, to send the notice as soon as practicable, but not later than eight days prior to the certification of the election.

- 4) Permits an elections official to send additional written notices to a voter, and to notify the voter in person, by telephone or email, or by other means of the opportunity to verify the voter's signature. Permits an elections official to use any information in a county's election management system, or otherwise in the elections official's possession, for the purpose of notifying the voter of the opportunity to verify the voter's signature.
- 5) Defines "certification of the election" to mean the date the particular elections official sends all results to the SOS pursuant to existing law, even if that occurs before the end of the 31-day certification period.
- 6) Requires an elections official, in comparing signatures, including when using signature verification software or other technology, to adhere to all applicable regulations promulgated by the SOS.
- 7) Requires the SOS to evaluate the necessity for procedures that will protect voters' personally identifying information from elections observers present during the signature comparison process and permits these procedures to be included in regulations promulgated pursuant to existing law.
- 8) Requires the SOS, when promulgating or amending regulations pertaining to signature comparison, to consult with recognized elections experts, voter access and advocacy stakeholders, and local elections officials.
- 9) Requires an elections official to identify and provide to the SOS, within 31 days of an election, the number of ballots rejected, categorized according to the reason for the rejection. Requires the SOS to provide uniform reason codes for each category of rejection to be used by elections officials for reporting pursuant to these provisions. Requires the SOS, upon receipt of the information, to publish a report containing this information on the SOS's internet website.
- 10) Makes technical and conforming changes.

**EXISTING LAW:**

- 1) Provides that provisions of law governing VBM voting shall be liberally construed in favor of the VBM voter.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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 their signature, as specified.
- 6) Requires an elections official to provide notice to all voters with a missing signature or a signature that does not compare with the voter's signature on file of the opportunity to verify or submit a signature no later than 5 p.m. two days prior to the certification of the election, as specified.
- 7) Requires the processing of VBM ballot return envelopes and the processing and counting of VBM ballots be open to the public, both prior to and after the election. Requires VBM voter observers to be allowed sufficiently close access to enable them to observe the VBM ballot return envelopes and the signatures thereon and challenge whether those individuals handling VBM ballots are following established procedures, including all of the following:
  - a) Verifying signatures and addresses on the VBM ballot return envelopes by comparing them to voter registration information.
  - b) Duplicating accurately damaged or defective ballots.
  - c) Securing VBM ballots to prevent tampering with them before they are counted on election day.
- 8) Prohibits a VBM voter observer from interfering with the orderly processing of VBM ballot return envelopes or the processing and counting of VBM ballots, including the touching or handling of the ballots.
- 9) Requires an elections official, prior to processing and opening the identification envelopes of VBM voters, to make available a list of VBM voters for public inspection, from which challenges may be presented. Permits challenges to be made for the same reasons as those made against a voter voting at a polling place and permits a challenge to be entered on the grounds that the ballot was not received within the time provided by existing law or that a person is imprisoned for a conviction of a felony. Requires all challenges be made prior to the opening of the identification envelope of the challenged VBM voter.

10) Requires a challenger to have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made because the voter is not present.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- By expanding elections officials' duties related to VBM ballots, 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.
- This bill would potentially result in General Fund costs to the SOS related to the promulgation of regulations. These costs would be one-time, and would likely be about \$50,000.

**COMMENTS:**

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

SB 503 is all about transparency, increasing communications with voters, better data, and codifying what we know works from the November 2020 election. Californians like to vote from home. In the last two presidential cycles, our state has gone from less than 60% voting by mail to almost 87% vote-by-mail. But prior to the November 2020 election, there were no clear statewide standards for evaluating signatures. One year ago, Stanford Law students identified significant disparities from county to county in how they evaluated signatures, notified and cured challenged mail-in ballots. The number of rejected mail-in ballots surpassed 100,000 in the March 2020 Primary alone. SB 503 ensures that counties across the state are using the same uniform practices for signature assessment and reporting rejections. Challenged signatures disproportionately impact the most vulnerable Californians - those with limited English proficiency, disabilities, first-time and aging voters, and voters of color. SB 503 gives confidence to all Californians that valid votes are, in fact, counted.

2) **SOS Emergency Regulations:** Last September, the SOS adopted emergency regulations pertaining to signature verification, ballot processing, and ballot counting. The regulations are effective between September 28, 2020, through July 28, 2021, *unless extended*. According to a memorandum from the SOS to county elections officials, the regulations were designed to “provide clear and uniform guidance to California’s 58 counties’ elections officials for consistent practices relating to verifying signatures on elections related petitions, vote-by-mail identification envelopes, and provisional ballot envelopes.” In addition, the regulations were intended to provide guidance for uniform ballot processing and ballot counting and ensure uniform practices throughout the California for the November 3, 2020, General Election.

The emergency regulations include the following: 1) a basic presumption that the signature on the petition or ballot envelope is the voter’s signature; 2) that exact signature matches are not required for an elections official to confirm a valid signature; and 3) that the elections officials may not review or consider a voter’s party preference, race, or ethnicity when

comparing signatures. Additionally, the emergency regulations permit the elections official to consider certain characteristics when visually comparing a signature to determine whether the signatures are from the same signer; to consider certain explanations for the certain discrepancies in signatures, such as it may have changed over time or was written with a stylus pen or other electronic signature tool; and to consider factors applicable to a particular voter, such as the age of the voter, and the age of the signatures contained in the voter's record.

On June 23, 2021, the SOS released another memorandum stating that the SOS is proposing to readopt these emergency regulations and that the purpose of the readoption is to keep the emergency regulations in effect during the time of the regular rulemaking process to make the emergency regulations permanent.

This bill codifies various provisions of the SOS's signature verification emergency regulations into state statute, as specified.

- 3) **Current Vote by Mail Ballot Use in California:** In 2001, the Legislature approved and Governor Davis signed AB 1520 (Shelley), Chapter 922, Statutes of 2001, which, among other provisions, authorized any voter to become a permanent vote by mail (PVBM) voter. As a result, California voters have increasingly used VBM ballots to vote in elections. According to data from the SOS's office, over 69% of voters (14.4 million) were registered as PVBM voters for the March 2020 primary election, and over 75% of voters (over 16.5 million) were registered as PVBM voters for the November 2020 general election.

Additionally, there are three counties (Alpine, Plumas, and Sierra), in which 100 percent of their precincts are small enough that they are deemed all-mail ballot precincts. Moreover, fifteen counties have chosen to conduct elections pursuant to the California Voter's Choice Act (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne), which requires an elections official to mail every active registered voter a ballot. As a result, nearly 90% of California's registered voters receive a ballot in the mail for each election in which they are eligible to vote.

In the 2020 November general election, of the 17,785,151 ballots cast, 15,423,301 (86.72%) were VBM ballots.

- 4) **VBM Ballots Accepted and Rejected:** According to the SOS's office, approximately 99.4% of VBM ballots cast in the November 2020 general election were counted, which is the lowest rejection rate since at least 2008 when comprehensive statistics began to be available. This was a significant improvement from the March 2020 primary election when 98.6% of VBM ballots cast were counted.

Despite this low VBM rejection rate, VBM ballots were rejected due to a variety of reasons. According to data from the SOS's office, for the November 2020 election the top three reasons why a VBM ballot was not counted was due to: 1) a non-matching signature; 2) a missing signature, and 3) ballots arriving after the deadline. Specifically, 49,816 ballots were rejected for a signature that did not compare, 14,666 ballots were rejected for a missing voter signature, and 15,040 ballots were rejected for arriving after the deadline.

- 5) **Stanford Law School, Election Law Project Case Study:** In May 2020, the Election Law Project at Stanford Law School published a study examining the signature verification process among California's counties. The study examined the signature verification process for VBM ballot envelopes and the notification and remedy process for voters whose signatures were being challenged. The team reviewed the practices in 33 of 58 counties and found that counties use a variety of approaches for signature verification, notice, and signature remedy. The study provided a number of recommendations for the Legislature, including requiring the SOS to develop and publish more specific signature verification guidelines for use by county elections officials. Additionally, the study recommended requiring counties to send voters with mismatched signatures a second follow up letter if the first letter is not timely returned and requiring counties to include a postage-paid return envelope with the remedy letters.
- 6) **Vote by Mail Ballot Rejection Study:** In September 2020, the California Voter Foundation in collaboration with Dr. Mindy S. Romeo of the University of Southern California Center for Inclusive Democracy examined demographic and voting methods of voters in Sacramento, Santa Clara, and San Mateo counties whose November 2018 VBM ballots were rejected and the reasons for the rejection. The study found that the top three reasons a VBM ballot was rejected were late arrivals of VBM ballots, missing signatures on VBM ballot identification envelopes, and signatures that did not sufficiently match the voter registration signatures on file.

The study recommended the following reforms to reduce the number of rejected VBM ballots:

- A longer grace period for accepting ballots postmarked by election day;
- Requiring counties to use Intelligent Mail Barcodes on mailed ballots;
- Requiring all counties to provide voters with the opportunity to sign up for mail ballot tracking services;
- Expanding the number of ballot drop boxes and drop-off locations so voters can return their ballots in person rather than through the U.S. Mail to avoid ballot rejection due to late postmarks or delivery;
- Urging voters to return their ballots early;
- Adopting enhanced statewide signature verification standards to ensure voters' signatures are evaluated consistently across all counties;
- Emphasizing outreach to young voters who are less familiar with voting, the U.S. Postal Service, and using signatures for verification purposes; and,
- Sending more than the one notice than is currently required by law to voters with missing or mismatched signatures to help ensure that more voters have their ballots accepted instead of rejected.

- 7) **Signature Cure Process and Previous Legislation:** In an effort to reduce the number of rejected VBM ballots, the Legislature has taken a number of steps to modify the signature verification process for those ballots. In 2015, the Legislature passed and the Governor Brown 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. In 2017, the Legislature approved and Governor Brown 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.

In 2018, SB 759 (McGuire), Chapter 446, Statutes of 2018, created a cure process for a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's registration record, as specified. Moreover, in 2019, SB 523 (McGuire), Chapter 568, Statutes of 2019, required counties to notify a voter whose signature was missing on a VBM identification envelope, and aligned the processes for addressing unsigned VBM ballot envelopes with the processes for addressing VBM ballot envelopes with signatures that do not match the signatures on file in the voter's registration record.

- 8) **Technical Amendment:** Committee staff suggestions the following technical amendment:

On page 12, starting in line 20 make the following changes:

(g) For purposes of this section, “certification of the election” means the date the particular elections official ~~sends all results to the Secretary of State~~ submits a certified statement of results to the governing body pursuant to Section 15375, 15372, even if that ~~occurs before the end of the 31-day certification period~~ deadline to submit the certified statement of results set forth in Section 15375, 15372.

- 9) **Arguments in Support:** In support of a prior version of this bill, the California Labor Federation wrote:

A voter's ballot is “rejected” when it is received by the local election official, but not counted for a variety of reasons. Yet, these reasons are not standardized across county elections offices. By setting up standards and criteria for verification, county elections offices can examine rates of VBM rejection that can identify population groups that are disenfranchised at higher rates when their submitted VBM ballots are left uncounted. It is also an important step towards finding solutions to address VBM problems.

Studies have shown that signature matches disproportionately impact voters with disabilities and those with Limited English Proficiency. A signature match requirement is an additional unnecessary barrier that is detrimental for these voters. According to an issue brief published by Asian Americans Advancing Justice in 2017, 1.02% of Asian American VBM voters (in targeted counties) had their ballots rejected in November 2016, a rate 15% higher than average...

- 10) **Arguments in Opposition:** In opposition to a prior version of this bill, the Election Integrity Project California, Inc. wrote:

The curing process protects voters whose signature has genuinely changed. Further, it protects voters who sign casually or carelessly as a result of ignorance as to the importance of providing an authentic signature.

But the curing process has additional benefit: it also provides elections officials liberty for greater scrutiny and demand for signature legitimacy without fear of disenfranchising legitimate voters. In light of the fact that no voter identification other than a signature is required in California, a strict adjudication of signature match is vital to election integrity. Because vote by mail voters have the protection of a very liberal curing process (up to 2 days before certification), more signatures should be initially challenged, not fewer.

Yet section 3019(a)(2)(A) of SB 503, copying “Emergency” Regulation 20960(b), would unjustifiably provide that each signature not be viewed from a neutral perspective but from a “presumption...that the signature on the identification envelope, signature verification statement, unsigned ballot statement, or provisional ballot envelope is the voter’s signature.”

This mandate erodes any chance of a legitimate effort to validate and authenticate signatures.

- 11) **Related Legislation:** AB 37 (Berman), which is pending in the Senate Elections & Constitutional Amendments Committee, requires county elections officials to mail a ballot to every active registered voter and to allow voters to use a VBM ballot tracking system for all elections, among other provisions. AB 37 was approved by this committee on a 6-1 vote.

SB 29 (Umberg), Chapter 3, Statutes of 2021, requires county elections officials to mail a ballot to every active registered voter, and to allow voters to use a VBM ballot tracking system, for all elections proclaimed or conducted prior to January 1, 2022.

- 12) **Previous Legislation:** AB 1970 (Low), Chapter 821, Statutes of 2016, required the SOS to promulgate regulations establishing guidelines for county elections officials relating to the processing of VBM and provisional ballots.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Election Law Project, Student Group at Stanford Law School (prior version)  
California Labor Federation (prior version)  
Disability Rights California (prior version)  
Microsoft (prior version)

### **Opposition**

Election Integrity Project California, Inc. (prior version)



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