

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON ELECTIONS  
Isaac G. Bryan, Chair  
AB 1660 (Nguyen) – As Amended April 21, 2022

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

**SUMMARY:** Requires an elections official to inspect a vote by mail (VBM) ballot envelope for signs of damage, and if any are found, to reject the ballot, notify the voter, and allow the voter to vote a new ballot, as specified. Specifically, **this bill**:

- 1) Requires an elections official, upon receiving a VBM ballot and in the process of verifying the voter's signature on the VBM ballot envelope, to examine the envelope for signs of damage, including, but not limited to, significant rips, tears, or attempts to unseal, open, or reseal the VBM envelope.
- 2) Requires the elections official, if the examination determines that the VBM identification envelope shows signs of damage, to send a notice to the voter by first class mail on or before the next business day, but not later than eight days before the certification of the election. Requires the notice to explain that the damaged ballot will not be processed and that the voter may vote a new ballot.
- 3) Requires a VBM voter whose envelope shows signs of damage to have the option to receive and submit a new VBM ballot, or to vote a nonprovisional ballot in person at the polling place designated for the voter's home precinct on or before election day, at a vote center established pursuant to existing law, or at the office or satellite office of an elections official where voting is permitted.
- 4) Prohibits an elections official from processing a ballot that arrives in an envelope that shows signs of damage, including, but not limited to, significant rips, tears, or attempts to unseal, open, or reseal the VBM envelope.

**EXISTING LAW:**

- 1) Requires laws governing the processing of VBM ballots to be liberally construed in favor of the VBM voter.
- 2) Requires a county elections official to mail a ballot to every active registered voter for every election in which the voter is eligible to participate, and provides that the distribution of VBM ballots to registered voters does not prevent a voter from voting in person at a polling place, vote center, or other authorized location.
- 3) Provides that a VBM ballot is timely cast if it is postmarked on or before election day and received by the voter's elections official no later than seven days after election day, as specified.
- 4) Provides a person in charge of a VBM ballot and who knowingly and willingly engages in a criminal act related to that ballot including, but not limited to, fraud, bribery, intimidation, and tampering with or failing to deliver the ballot in a timely fashion, is subject to certain

punishments pursuant to existing law.

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

**COMMENTS:**

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

During the 2020 General Election, nearly 18 million Californians cast their ballots mostly by mail. With the recent enactment of Assembly Bill 37, California voters will receive a vote-by-mail ballot (VBM) for local and state elections and will be able to return it either through the mail or at a county established drop-off location.

California law requires elections officials to notify a voter if the ballot they have returned is unsigned or if the signature does not match. There is no requirement for elections officials to notify a voter if their ballot and ballot envelope is received in damaged condition and shows signs of [damage] including rips, tears, or evidence of an attempt to open the official vote-by-mail envelope.

As California has transitioned to an entirely vote-by-mail system, it is incumbent upon state and local officials to take every step necessary to ensure the integrity of our elections. Every Californian deserves to have confidence in our state's elections and confidence that their vote is properly accounted for and their voice heard.

2) **Vote by Mail Ballots and Previous Legislation:** Due to concerns that conducting in-person voting during the spread of COVID-19 could threaten the health and safety of voters, election workers, and the public generally, the Legislature approved and Governor Newsom signed bills that made significant changes to the way that the state conducted the November 2020 presidential general election. Notably, AB 860 (Berman), Chapter 4, Statutes of 2020, required that a mail ballot be sent to every active registered voter, and provided voters in all counties with the ability to track their ballot, among other provisions. In February 2021, the Legislature passed and Governor Newsom signed SB 29 (Umberg), Chapter 3, Statutes of 2021, which continued the policy to mail a ballot to every active registered voter for any election proclaimed or conducted in 2021. Both of these measures were temporary and only applied for specific elections. Last year, AB 37 (Berman), Chapter 312, Statutes of 2021 was signed into law and made the policy to mail a ballot to every active registered voter permanent for all future elections.

3) **Damaged Vote by Mail Ballot Envelopes:** According to county elections officials, it is common for a VBM ballot identification envelope to arrive at an elections official's office with tears, rips, tape, staples, or other damage. Ballots that are returned by mail may be damaged as they pass through a mail sorter. Additionally, a voter may make a mistake and need to fix it. For example, some VBM ballot identification envelopes have signature security flaps that hide the voter's signature. According to county elections officials, there have been instances when a voter forgot to sign the envelope before sealing it, and subsequently broke the seal, signed the envelope, and taped the seal shut. Such a ballot

identification envelope could be considered to show signs of damage, and this bill could prohibit the ballot from being counted.

This bill prohibits an elections official from processing and counting a VBM ballot if the identification envelope shows signs of damage, even if the voter's signature and personal identifiable information matched the voter record. This is true even if the ballot itself does not show any signs of damage or tampering, as long as the identification envelope is damaged. In such a situation, the voter would need to cast a new ballot in order to participate in that election. Depending on when the voter's ballot is received by the elections official, however, there may not be sufficient time for the elections official to notify the voter and for the voter to cast a new ballot before election day. Consequently, there are a variety of scenarios in which a voter could be disenfranchised through no fault of their own.

Furthermore, while this bill provides examples of what "signs of damage" may mean, such as significant rips, tears, or attempts to unseal, open, or reseal the VBM envelope, it does not define the term, nor does the bill require the Secretary of State to adopt regulations to provide for a uniform application of this bill. The lack of specificity in this bill gives elections officials significant discretion to make those determinations. Consequently, this bill could result in inconsistent interpretation and application of what "signs of damage" means, and ballots could be treated differently across the state.

- 4) **Timeline Issues:** Under this bill, when an elections official determines that a VBM ballot identification envelope shows signs of damage, the elections official is required to send a notice to the voter on or before the next business day, but not later than eight days before the certification of the election. According to the author's office, this process is intended to mirror the cure process in current law which requires an elections official to contact a VBM voter if their VBM ballot identification envelope is missing the voter's signature or if there is a signature mismatch, to allow the voter the opportunity to submit a signature verification statement or an unsigned ballot statement to fix their signature.

Generally, under existing law, a VBM ballot that arrives by mail up until seven days after the election is eligible to be counted if the VBM ballot identification envelope is postmarked on or before election day. Accordingly, the notification timeline outlined in this bill would not necessarily protect a voter's ability to vote in an election, particularly if an elections official receives a VBM ballot after election day. In that case, a voter would not have an opportunity to vote a new ballot because the election would be over.

The provisions of this bill, however, could be interpreted to allow a voter to vote a new ballot after election day if their VBM ballot envelope shows signs of damage. It is unclear whether this is the author's intent. In any case, allowing a voter to cast a ballot after voting has ended would be a significant policy change, and could be in conflict with federal law.

Furthermore, the intent of the signature cure process is fundamentally different than the process outlined in this bill. The signature cure process and the timeline for notifying a voter provides a voter the opportunity to fix a signature issue. It does not allow a voter to cast a new ballot. If the voter returns a signature verification statement or an unsigned ballot statement and the signature still does not match the signatures in the voter's record, the ballot is set aside and not processed and the voter is not given an opportunity to vote a new ballot.

- 5) **Is There a Problem?** The author's office has not provided the committee with specific examples or evidence that VBM ballots are being tampered with after the voter completes the ballot and places it in the ballot identification envelope to be returned to the elections official. According to the author's office, the provisions of this bill are to serve as a preventative measure. The committee may wish to consider whether it's prudent to make policy changes without sufficient evidence.
- 6) **Arguments in Opposition:** In opposition to a prior version of this bill, the League of Women Voters of California wrote:

AB 1660 is a solution in search of a problem. As the Brennan Center states in its analysis "The False Narrative of Vote-by-Mail Fraud"

Despite this dramatic increase in mail voting over time, fraud rates remain infinitesimally small. None of the five states that hold their elections primarily by mail has had any voter fraud scandals since making that change. As the New York Times editorial board notes, "states that use vote-by-mail have encountered essentially zero fraud: Oregon, the pioneer in this area, has sent out more than 100 million mail-in ballots since 2000, and has documented only about a dozen cases of proven fraud." That's 0.00001 percent of all votes cast. An exhaustive investigative journalism analysis of all known voter fraud cases identified only 491 cases of absentee ballot fraud from 2000 to 2012. As election law professor Richard L. Hasen notes, during that period "literally billions of votes were cast." While mail ballots are more susceptible to fraud than in-person voting, it is still more likely for an American to be struck by lightning than to commit mail voting fraud.

AB 1660 is a particularly problematic scheme that, instead of protecting the integrity of elections, would result in significant disenfranchisement of California voters. As a threshold matter, the bill does not define "tampering" and it is not uncommon for ballot envelopes to bear normal signs of wear and tear from the mailing process. Sometimes voters need to unseal their envelope and then reseal it with tape or glue – would that constitute "tampering?" USPS mail sorting equipment sometimes marks or damages envelopes in ways that do not impact the condition of the ballot itself – would that constitute "tampering?" Furthermore, without a definition, each county would have to use their own discretion to identify tampered ballots – a recipe for inconsistent application that would undermine public trust in elections...

Finally, tampering is already illegal under California law and given the rarity of the problem's occurrence, it is apparent that the current law is sufficient to mitigate against any potential issue.

The League of Women Voters respectfully opposes AB 1660 (Nguyen) because there is no demonstrated need for the bill and the restrictions proposed create unnecessary impediments to voting, discourage civic participation, and promote meritless distrust in our election system. Prohibiting elections officials from processing ballots that show signs of vague and undefined "tampering" would cause valid votes to be rejected and is a draconian cure for a problem that has not

been shown to exist.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file.

**Opposition**

American Civil Liberties Union California Action (prior version)  
Asian Americans Advancing Justice-California (prior version)  
California Association of Clerks and Election Officials (prior version)  
California Environmental Voters (prior version)  
California Labor Federation (prior version)  
League of Women Voters of California (prior version)

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