

Date of Hearing: March 30, 2016

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Shirley Weber, Chair

AB 1970 (Low) – As Introduced February 16, 2016

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

**SUMMARY:** Requires the Secretary of State (SOS) to promulgate regulations to establish guidelines for county elections officials relating to the processing of vote by mail (VBM) and provisional ballots.

**EXISTING LAW:**

- 1) Provides that a VBM ballot must be received by the elections official from whom it was obtained, or by a precinct board in that jurisdiction, no later than the close of polls on election day in order for that ballot to be counted.
- 2) Requires a VBM ballot identification envelope to include specified information, including the following:
  - a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope;
  - b) The signature of the voter;
  - c) The residence address of the voter as shown on the affidavit of registration; and,
  - d) The date of signing.
- 3) Requires a county elections official, upon receiving a VBM ballot, to compare the signatures on the 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 that is part of the voter's registration record.
- 4) Permits a county elections official to use facsimiles of voters' signatures when determining if the signatures match provided that the method of preparing and displaying the facsimiles complies with existing law.
- 5) Requires the elections official, if it is determined that the signatures compare, to deposit the ballot, still in the identification envelope, in a ballot container.
- 6) 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.

- 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 does not compare, from rejecting the ballot unless he or she visually examines the signatures and verifies that the signatures do not compare.
- 8) Prohibits a variation of a signature caused by the substitution of initials for the first or middle name, or both, to be grounds for the elections official to determine that the signatures do not compare.
- 9) Allows VBM ballots to be counted if they are cast by election day and received by the elections official by mail no later than three days after the election, as specified.
- 10) Requires a county elections official to establish a free access system that allows a VBM voter to learn if his or her VBM or provisional ballot was counted and, if not, the reason why the ballot was not counted.
- 11) Requires a voter, whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the record on file with the county elections official, to be entitled to vote a provisional ballot. Requires the elections official to advise the voter of the voter's right to cast a provisional ballot.
- 12) Requires a voter who is casting a provisional ballot to execute, in the presence of an elections official, the written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote.
- 13) Requires the provisional ballot envelope to be a different color than the color of, but printed substantially similar to, the envelopes used for VBM ballots and to be completed in the same manner as VBM envelopes.
- 14) Requires the elections official to use the VBM signature comparison procedures in existing law to compare the signatures of provisional ballots.
- 15) Permits the SOS to adopt appropriate regulations for the purpose of ensuring the uniform application of laws regarding provisional voting.
- 16) Requires provisions of law pertaining to provisional voters to be liberally construed in favor of the voter.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

Increasingly each year, more California voters are choosing to cast their vote with a vote-by-mail (VBM) ballot. The year 2012 marked the first time that more than

50% of voters cast their vote with a VBM ballot during a statewide general election. In my district in Santa Clara County, the number of votes [cast] through VBM has increased dramatically—in 2010, 68% of ballots counted were VBM ballots, 70% in 2012, and 76% in 2014. A similar increasing rate is reflected in many counties across the state.

As county election officials see an increase in the number of VBM ballots returned to their office during an election, so has the number of ballots returned that are left uncounted. According to the Pew Center on the States' Election Performance Index, approximately 66,000 VBM ballots were not counted in the 2012 general election. This was only a 0.5% VBM rejection rate, but is still considerably high compared to most states. Despite the high use rate of VBM ballot in California, accurate, comprehensive data has not been collected at a statewide level to identify the reasons why voters' ballots are rejected, nor have we known the variation in how counties process rejected VBM ballots.

The California Voter Foundation (CVF) did a partial study, analyzing uncounted ballot data in three counties, Sacramento, Santa Cruz, and Orange, during the general elections from 2008 to 2012, as well as the primary election in 2012. The study found that while most ballots were counted, of the nearly 30,000 VBM ballots cast that were not counted, across the three counties on average:

- Ballots arriving late comprised of 61% of uncounted ballots
- Ballots lacking a signature accounted for 20%, and:
- Ballots with signatures that did not adequately compare to the signature on file accounted for 18%.

Further in Orange County, just six percent of uncounted VBM ballots were due to a signature mismatch; 34% in Sacramento County; and 15% in Santa Cruz County.

One reason for the difference in the number of mismatched signatures across counties could be attributed to the lack of guidelines or uniform standards for workers who are comparing signatures on a ballot envelope to a signature on file. Current law and regulations set by the Secretary of State require a voter's signature to be compared however not much is provided in terms of how to compare said signatures.

AB 1970 will require the Secretary of State to draft regulations establishing guidelines for county elections relating to the processing of vote by mail ballots.

The Elections Code allows election officials to construe statutes on provisional ballots to find ways to make a ballot count, versus finding ways to reject it. In fact, the California Association of Clerks and Elections Officials provide local officials with guidelines to compare signatures on a provisional ballot. The same practice should be available and enforced for VBM ballots. By providing elections officials with a proper and uniform set of guidelines, there will be decreased number in uncounted VBM ballots and an increased opportunity for citizens to make their vote count.

- 2) **Current Vote by Mail and Provisional Ballot Signature Verification Practices:** Current law requires a county elections official, upon receiving a VBM ballot or a provisional ballot, to compare the signature on the identification envelope with the signature appearing in the voter's registration record. Specifically, existing law requires a county elections official to compare the signatures on the envelope with either the signature appearing on the voter's affidavit of registration or any previous affidavit of registration of the voter, or the signature appearing on a form issued by an elections official that contains the voter's signature and that is part of the voter's registration record. If the signatures compare, current law requires the county elections official to deposit the ballot, still in the identification envelope, in a ballot container in his or her office. If the signatures does not compare, existing law requires the envelope to remain unopened and the ballot shall not be counted.

Due to an increase in VBM and provisional ballots, and to make the verification process more efficient, many county elections officials use signature verification technology to compare and verify signatures on ballot identification envelopes. Existing law, however, prohibits elections officials, if the signature verification technology determines the signatures does not compare, from rejecting the ballot unless he or she visually examines the signatures and verifies that the signatures do not compare.

- 3) **Lack of Signature Comparison Guidelines:** Over the past election cycles the number of voters choosing to vote by mail has significantly increased. In 2012, for the first time in a statewide general election, over 50% of voters chose to cast their votes using a VBM ballot. As discussed below, the increase in VBM voting has resulted in a significant increase in the number of VBM ballots that go uncounted. One of the top reasons VBM ballots are being rejected is due to signature mismatch.

In an effort to better understand how California's VBM process is working and to identify ways to improve mail ballot success rates, the California Voter Foundation, a nonpartisan, 501(c)(3) organization, conducted a three county (Sacramento, Orange, and Santa Cruz) study, focusing on each county's VBM process. Among its findings, the study points out that one of the reasons why counties may have varying signature mismatch rejection rates is because there are very few uniform standards for signature verification. The study states that while current state law requires county elections officials to compare a voter's signature on a VBM identification envelope to the signature on his or her affidavit of voter registration or other forms used by the elections officials, as specified, it is limited when it comes to what criteria should be used to compare the signatures. Moreover, according to the study, all three counties have written signature verification guidelines with slightly difference processes for handling situations when a voter's signature may not compare.

In an effort to address this issue, this bill requires the SOS to develop regulations related to the processing of VBM and provisional ballots.

While the author's intent and goal is laudable, it can be argued that this bill does not go far enough to resolve the lack of statewide uniform guidelines for processing VBM and provisional ballots, particularly with respect to signature verification. The author and the committee may wish to consider amending the bill to add more specificity and detail to the regulations promulgated by the SOS.

- 4) **Provisional Ballot Guidelines:** Existing law provides that any voter claiming to be properly registered, but whose qualifications cannot be immediately established upon examination of the list of registered voters for the precinct or the records on file with the county elections official, is entitled to cast a provisional ballot. Moreover, current law requires an elections official to advise a voter of his or her right to cast a provisional ballot and requires the voter to execute, in the presence of an elections official, a written affirmation stating that the voter is eligible to vote and registered in the county where the voter desires to vote. Elections officials are required to verify each provisional voter's registration and eligibility to vote before counting a provisional ballot.

To assist county elections officials in determining the eligibility of provisional voters, the California Association of Clerks and Election Officials has developed guidelines to help aid elections officials in processing provisional ballots. The goal of the guidelines is to provide some common ground for all counties to determine whether to count a provisional ballot. According to the background materials provided to the committee, these guidelines represent a majority of provisional situations and resolutions that will meet the needs of most counties. However, there likely will be times – due to provisional voting volume, logistics, time left in the canvas, or other reasons – when the scenarios do not perfectly resolve a given provisional ballot question. In such cases, the guidelines recommend a county elections official to document the situation, consult with their county counsel, make the best decision possible based on the specific facts involving the particular provisional ballot, and share the situation and resolution with other counties.

In addition, existing law permits the SOS to develop and adopt regulations for the purpose of processing provisional ballots. The committee, however, is unaware of any regulations that have been developed.

- 5) **Vote by Mail and Provisional Ballot Rejection Rates:** The UC Davis California Civic Engagement Project conducted a statewide survey of California's 58 county election offices to gain a better understanding of California's use of VBM ballots, including rejection rates. 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 via VBM. 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.

According to the study, counties rely on voter signature images to verify the identity of VBM voters and these images can sometimes not compare to a VBM ballot received by counties due to a change in voters' signatures over time or because the initial images (typically voter registration or Department of Motor Vehicles signatures) were not high quality or did not accurately represent a voter's signature.

Moreover, the systems used to process VBM ballots and verify voter signatures vary from county to county. According to the report, 78% of counties utilize a manual-based processing system, 20% employ an automated system, and one county uses both. The study points out that ballot processing systems have elements of subjectivity with regard to

signature comparison. For instance, manual-based systems rely on individual county standards in signature comparison, while automated systems, also known as signature verification systems, vary in their threshold settings for verification match. Furthermore, automated systems are from different vendors with different software, which also results in lack of signature threshold standardization.

According to the study, no identifiable pattern was found between counties with high non-match signature rates and the use of manual versus automated systems.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Voting Rights Task Force

**Opposition**

None on file.

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