

Date of Hearing: June 21, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
SB 718 (Wilk) – As Amended March 30, 2023

SENATE VOTE: 40-0

SUBJECT: Elections: official canvass: unprocessed ballots.

SUMMARY: Requires an election official to include in the unprocessed ballot reports sent to the Secretary of State (SOS) the number of vote by mail (VBM) ballots that have been processed but not counted because the ballot identification envelope is missing the voter's signature, and the number of VBM ballots that have been processed but not counted because the ballot identification envelope has a signature that does not compare to the signature in the voter's file.

EXISTING LAW:

- 1) 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. (Elections Code §3000.5)
- 2) Requires an elections official to prepare a certified statement of the results of the election and submit it to the governing body within 30 days of the election, as specified. (Elections Code §15372)
- 3) Requires an elections official, for every election, to conduct a semifinal official canvass by tabulating VBM and precinct ballots and compiling the results. Requires the semifinal canvass to commence immediately upon the close of the polls and to continue without adjournment until all precincts are accounted for, as specified. (Elections Code §15150)
- 4) Requires an elections official to transmit, as specified, the semifinal official results to the SOS in the manner and according to the schedule prescribed by the SOS for the following:
 - a) All candidates voted for statewide office;
 - b) All candidates voted for the following offices:
 - i) State Assembly;
 - ii) State Senate;
 - iii) Member of the United States (US) House of Representatives;
 - iv) Member of the State Board of Equalization; and,
 - v) Justice of the Court of Appeals.
 - c) All persons voted for at the presidential primary or for electors of President and Vice President of the US; and,

- d) Statewide ballot measures. (Elections Code §15151)
- 5) Requires the official canvass to commence no later than the Thursday following the election, to be open to the public, and, for state or statewide elections, to result in a report of results to the SOS. Requires the canvass to continue daily, Saturdays, Sundays, and holidays excepted, for not less than six hours each day until completed. (Elections Code §15301)
- 6) Requires the official canvass to include, but not be limited to, the following tasks:
 - a) An inspection of all materials and supplies returned by poll workers.
 - b) A reconciliation of the number of signatures on the roster with the number of ballots recorded on the ballot statement. In the event of a discrepancy in the reconciliation, the number of ballots received from each polling place shall be reconciled with the number of ballots cast, as indicated on the ballot statement.
 - c) A reconciliation of the number of ballots counted, spoiled, canceled, or invalidated due to identifying marks, overvotes, or as otherwise provided by statute, with the number of votes recorded, including VBM and provisional ballots, by the vote counting system.
 - d) Processing and counting any valid VBM and provisional ballots not included in the semifinal official canvass.
 - e) Counting any valid write-in votes.
 - f) Reproducing any damaged ballots, if necessary.
 - g) Reporting final results to the governing board and the SOS, as required. (Elections Code §15302)
- 7) Defines the term “unprocessed ballot” to mean a voted polling place ballot, voted VBM ballot, voted provisional ballot, or voted conditional registration ballot that has not yet been counted or processed for counting. (Elections Code §15305(a))
- 8) Requires an elections official, on the second day after the election, to send to the SOS an initial report containing the estimated number of outstanding unprocessed ballots. Requires an elections officials, commencing on the sixth day after the election, on any day that the elections official publicly releases updated election results, to send to the a report on the estimated number of outstanding unprocessed ballots. Requires the report to be submitted to the SOS in the form and manner prescribed by the SOS, and the last report to be delivered upon the completion of the official canvass (Elections Code §§15305(b), Elections Code §15305(c))
- 9) Requires the SOS, commencing with the first results from the semifinal official canvass received from the elections officials, to compile the results for the offices and measures in accordance with existing law, which compilation shall be continued without adjournment until completed. Requires to SOS to immediately make public the results of the compilation

as to those offices and measures, and to compile and make those results reported pursuant to existing law available to any person or organization upon request. (Elections Code §15500)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- The SOS indicates that this bill would result in one-time General Fund costs of \$35,000 for information technology modifications.
- By imposing additional requirements on local elections officials, this bill creates a state-mandated local program. To the extent 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 magnitude is unknown, but potentially in excess of \$50,000 annually.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author, “SB 718 will ensure that the public is aware of how many mailed ballots were rejected because of a missing or mismatched signature. After every election, California voters deserve to be informed in a transparent and understandable manner.”
- 2) **Unprocessed Ballot Reports and Previous Legislation:** As mentioned above, current law requires an elections official to transmit results during the semifinal official canvass to the SOS in the manner and according to the schedule prescribed by the SOS, as specified. In practice, most elections officials continue to provide periodic updates to the elections results during the official canvass. As the number of ballots that are processed after election night increased, many elections officials also begin preparing an estimate of the number of unprocessed ballots that remain to be counted, and updated those estimates as the official canvass progressed. Additionally, many counties began posting the date and time that elections results were last updated and the date and time of the next expected results update on their internet websites.

In an effort to provide transparency and standardize this practice, the Legislature approved and Governor Newsom signed AB 566 (Berman), Chapter 91, Statutes of 2019, which requires an election official to send “unprocessed ballot” report updates to the SOS the second day after the election and on any day the elections official publicly releases updated election results. As the unprocessed ballot reports are updated, they are posted and publicly available on the SOS’s website where the data is separated by county and divided into five categories that includes the number of unprocessed VBM ballots, provisional ballots, conditional voter registrations (i.e. “same day” registration) ballots, “other” ballots, and the estimated total number of remaining ballots. “Other” ballots include unprocessed ballots that are damaged or could not be machine-read and need to be remade, and ballots diverted for further review.

This bill requires an elections official to additionally include in the unprocessed ballot report the number of VBM ballots that have been processed but not counted because the ballot identification envelope is missing the voter’s signature or has a mismatched signature.

- 3) **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 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, sign, and return by mail or facsimile an unsigned ballot statement up to eight days after the election, as specified, in order to have their ballot counted. In 2017, AB 840 (Quirk), Chapter 820, Statutes of 2017, was signed into law and authorized a voter to submit their completed unsigned ballot statement to the local elections official by email.

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. SB 523 (McGuire), Chapter 568, Statutes of 2019, requires counties to notify a voter whose signature was missing on a VBM ballot identification envelope, and aligns the processes for handling unsigned VBM ballot envelopes with the processes for handling VBM ballot envelopes with signatures that do not match the signatures on file in the voter's registration record.

Additionally, last session SB 503 (Becker), Chapter 319, Statutes of 2021, was signed into law to provide clear and uniform statewide signature verification standards to ensure voters' signatures are evaluated consistently across all counties. SB 503 required various provisions of the SOS's signature verification emergency regulations to be codified into state statute. Specifically, SB 503 requires an elections official, upon receiving a VBM ballot and comparing the voter's signature on the identification envelope with signatures in the voter's registration record, to apply certain presumptions, and provides for 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, as specified. Additionally, SB 503 required the SOS, when promulgating regulations pertaining to signature comparisons, to consult with elections experts, voter access and advocacy stakeholders, and elections officials, among other provisions.

- 4) **Vote by Mail Ballot Rejection Rates:** According to data from the SOS, in the November 2020 general election, 86,401 VBM ballots that were returned by voters were not counted. Out of that total, 14,666 VBM ballots (16.97%) were rejected for a missing voter signature on their VBM identification envelope, and 49,816 ballots (57.65%) were not counted for a mismatched signature.

For the November 2022 election, 120,609 VBM ballots were not counted. Out of that total, 11,905 VBM ballots (9.87%) were rejected for a missing voter signature on their VBM identification envelope, and 47,984 VBM ballots (39.78%) were rejected for a mismatched signature.

- 5) **Vote by Mail Ballot Rejection Studies:** In September 2020, the California Voter Foundation in collaboration with the University of Southern California (USC) 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.

In a 2021 study, the USC Center for Inclusive Democracy found that of all the VBM ballots cast (both counted and rejected) in California, 0.5% (80,363 ballots) were rejected in the 2020 general election. Latino, young voters, new voters, and previous polling place voters had higher rates of VBM ballot rejections than the general population. Asian-American voters had similar rejection rates as the general population

According to the study, in the 2020 general election, the majority (76.8%) of rejected VBM ballots were not counted due to signature issues. Over 59% (47,785 ballots) of all rejected VBM ballots in California had non-matching signatures and 17.3% (13,913 ballots) had missing signatures. Another 16.1% (12,969 ballots) of rejected VBM ballots were rejected for arriving late and 7.1% (5,696 ballots) were rejected for other reasons. Key takeaways from the report state that Latino and previous polling place voters had higher rates of non-matching signatures than the general population. Asian-American voters had higher rates of missing signatures than the general population. Young voters (aged 18 to 24) had higher rates of non-matching signatures than older voters (aged 65 and over), while older voters had higher rates of late VBM ballots than young voters. Foreign-born voters had higher rates of missing signatures than U.S.-born voters, while U.S.-born voters had higher rates of late and non-matching signatures.

- 6) **Amendments Sought:** With an oppose unless amended position, Secretary of State Shirley N. Weber, PhD., writes:

This bill requires county elections officials to report critical information to the SOS about vote-by-mail ballots (VBM) which are missing a signature or require a signature verification. However, the requirement in SB 718 for the Secretary of State to make these results immediately available is not a practice that the SOS Elections Division staff can easily absorb in their current workload. Three additional temporary staff members would need to be hired for each related election cycle to provide for immediate reporting.

For the reasons stated, the SOS requests that SB 718 be amended to strike the requirement for immediate reporting and instead require that the SOS update reports subject to SB 718 twice daily. This requested amendment is consistent with existing SOS procedures for reporting vote-by-mail reports currently required by statute and would provide the type of enhanced transparency that SB 718 seeks to achieve.

In addition, the requirements of SB 718 appear to be drafted in a code section not related to existing vote-by-mail ballot reports and should be amended to consolidate the requirements of this bill with similar requirements in Elections Code section 15305.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Secretary of State Shirley N. Weber, PhD. (unless amended)

Analysis Prepared by: Nichole Becker / ELECTIONS / (916) 319-2094