

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 566 (Berman & Mullin) – As Amended March 19, 2019

**SUBJECT:** Elections: official canvass period.

**SUMMARY:** Requires a county elections official to send “unprocessed ballot” updates to the Secretary of State (SOS), as specified. Specifically, **this bill:**

- 1) Defines, for the purposes of this bill, an “unprocessed ballot” to mean a voted polling place ballot, a voted vote by mail (VBM) ballot, a voted provisional ballot, or a voted conditional registration ballot that has not yet been counted or processed for counting.
- 2) Requires the elections official, on the second day after the election, to send the SOS an initial report containing the estimated number of outstanding unprocessed ballots.
- 3) Requires the elections official, commencing on the sixth day after the election, to send to the SOS, on any day that the elections official publicly releases updated election results, 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 requires the last report to be delivered upon the completion of the official canvass.

**EXISTING LAW:**

- 1) Requires an elections official to prepare the certified statement of the results of an election and submit it to the governing body within 30 days of the election, as specified.
- 2) 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.
- 3) 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 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 United State; and,
  - d) Statewide ballot measures.
- 4) Requires the official canvass for an election to commence no later than the Thursday following the election, to be open to the public, and to be continued daily, Saturdays, Sundays, and holidays excepted, for not less than six hours each day until completed.
- 5) 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 existing law, 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; and,
  - g) Reporting the final results to the governing board and the SOS, as required.

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

**COMMENTS:**

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

As Californians continue to embrace voting-by-mail and as we transition to vote center voting, the number of ballots that need processing during the official canvass period will continue to grow. Current law does not require counties to provide daily updates to the Secretary of State of unprocessed ballots during the official canvass period following an election. This information should be readily reported, reliable, and available to the public during the official canvass. The reporting requirements of AB 566 will ensure the availability of accurate information about vote totals and increased election transparency for the public.

- 2) **Current Practice:** As mentioned above, current law requires an elections official to transmit the semifinal official results to the SOS in the manner and according to the schedule prescribed by the SOS, as specified. In practice, many elections officials provide updates on the semifinal canvass as well as an estimate of the number of unprocessed ballots that

remain. For example, according to the Orange County Registrar of Voters' internet website, daily estimates of the number of ballots left to be counted are posted on its internet website. These estimates include estimates of the number of VBM ballots that remain to be processed, the number of provisional ballots left to be processed, the number of election day ballots that remain to be processed, the number of eligible VBM ballots received after election day left to be processed, and an estimate of eligible conditional voter registrations that remain to be processed. Additionally, many counties post on their internet website the date and time of the elections results were last updated and the date and time of the next expected results update.

This practice, however, is not required nor is it standardized. Consequently, election results updates vary across counties. Some county elections officials report election results updates daily or every few days, while others provide very few updates or no updates at all until the final statement of the vote is required to be reported. Critics argue that the lack of updates available decreases transparency and can cause voter confusion.

- 3) **Vote by Mail Data:** Since California law was amended in 2001 to allow any voter to become a permanent VBM voter (known at the time as a "permanent absentee voter,") the percentage of voters who vote using a ballot that was mailed to them generally has increased from election-to-election. In fact, in each statewide election going back to the 2012 primary election, a majority of ballots cast in the election were cast on a VBM ballot. In the 2016 statewide general election, 57.8% of ballots were cast on a VBM ballot, including a majority of the ballots in 55 of the state's 58 counties.

In the 2018 statewide general election, the percentage of voters who cast VBM ballots increased and approximately 65% of ballots were cast using VBM ballots. Part of the increase may be attributed to the implementation of vote centers in five counties. Specifically, SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the California Voter's Choice Act (CVCA), which permitted counties 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. Last year Madera, Napa, Nevada, Sacramento, and San Mateo counties conducted elections under this system. The percentage of VBM ballots may increase again as additional counties are permitted to begin using CVCA in 2020.

- 4) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes in support:

With over 20 million registered voters, election administrators have never had to process so many ballots. Additionally, unlike traditional poll voters, ballots cast by mail may be returned by the postal service up to three days after the election date, and each envelope must be reviewed for a signature that matches the voter's registration file. During the time period after the election, the public obtains an understanding of this workload from an elections official's estimate of unprocessed ballots. This number provides the public with transparency as to the workload that an administrator has and why results may take the full 30 days to certify.

Current law provides elections officials must provide the Secretary of State an

estimate of unprocessed ballots on election night. While some counties provide daily updates, others provide only one, causing confusion in multiple races, and skewing the projection for when the elections results can be projected.

AB 566 will require election officials to provide more frequent estimates for how many unprocessed ballots remain. This act of transparency provides the public with an insight into the amount of administrative work necessary to certify an election result.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Secretary of State Alex Padilla (sponsor)

**Opposition**

None on file.

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