

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Gail Pellerin, Chair
SB 77 (Umberg) – As Amended June 14, 2023

AS PROPOSED TO BE AMENDED

SENATE VOTE: 37-0

SUBJECT: Voting: signature verification: notice.

SUMMARY: Requires an elections official to notify a voter by telephone, text, or email of the opportunity to fix a problem with the voter's signature on a vote by mail (VBM) ballot identification envelope so that the ballot can be counted. Specifically, **this bill:**

- 1) Requires an election official, if they have the telephone number or email address on file for a voter whose signature on a VBM ballot identification envelope does not compare with the signatures in the voter's registration record, or who failed to sign their VBM ballot identification envelope, to notify the voter by telephone, a text message, or email of the opportunity to verify their signature or provide a signature.
- 2) Requires an elections official, if they call the voter and the voter does not answer, to leave a voicemail message. Requires the elections official, if they are unable to leave a voicemail message, to send a text message or an email of the opportunity to verify their signature or provide a signature.
- 3) Requires an elections official, if they send a text message to the voter and are notified that the text message did not go through, to call the voter and leave a voicemail if there is no answer, or send an email of the opportunity to verify their signature or provide a signature.

EXISTING LAW:

- 1) Provides that provisions of law governing VBM voting shall be liberally construed in favor of the VBM voter. (Elections Code §3000)
- 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. (Elections Code §3000.5)
- 3) Authorizes any county, pursuant to the California Voter's Choice Act (CVCA), to conduct elections in which every active registered voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. (Elections Code §4005)
- 4) 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. (Elections Code §3019(a)(1))
- 5) Requires an elections official, when comparing the signature on the identification envelope, to apply certain presumptions, as specified. (Elections Code §3019(a)(2))
- 6) 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 additional procedures that provide that a signature shall 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. (Elections Code §3019(c))
- 7) Requires a notice sent to a voter who did not sign their VBM ballot identification envelope or whose signature does not compare to the signatures in the voter's registration record to be sent by first-class mail on or before the next business day following a determination that a voter's signature does not compare or is missing, as specified. (Elections Code §3019(d))
- 8) Allows a voter to return their signature verification statement or unsigned identification envelope statement by mail, email, facsimile transmission, or in person at a polling place within the county or to a ballot dropoff box. (Elections Code §§3019(d)(2); 3019(e)(2))
- 9) Provides that voter registration information is confidential. Permits voter registration information to be provided to candidates for federal, state, or local office, to any ballot measure committee, and to any person for election, scholarly, journalistic, or political purposes, or for governmental purposes as determined by the Secretary of State (SOS). (Elections Code §2194)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 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.
- The SOS does not anticipate a fiscal effect from the bill.

COMMENTS:

- 1) **Author's Amendments:** After the committee's deadline for pre-committee author's amendments, the author proposed an amendment to correct a drafting error. The amendments specify when an elections official must notify a voter via telephone, text message, or email of the opportunity to provide a signature. This analysis reflects those proposed amendments.
- 2) **Purpose of the Bill:** According to the author:

Over the past decade, mail-in voting has become the primary method of voting in California. This was especially true during the COVID-19 pandemic, as mail-in

voting is a safe and effective method of expanding access to voting, especially for California's most vulnerable communities. In the 2022 general election, almost 88% of California voters voted by mail. Over 120,000 of these ballots were rejected, with the leading cause being a mismatching signature or the lack of one.

Currently, when a county rejects a ballot that can be cured, they are required to send a mail notice to the voter of their rejected ballot and the opportunity to cure it. Some counties have an opt-in system for ballot notifications via text/email, however, many voters do not opt-in to this system. If a voter has not opted in to receive text or email updates regarding their ballot, they may not receive the mailed notice of their rejected ballot in a timely manner to verify their signature and cure their ballot. A lack of prompt notice can make it difficult for voters to arrange time off, secure childcare, or make arrangements to go to their county's registrar and cure their ballot. Therefore, this bill will ensure every voter whose ballot has been rejected is notified effectively and in a timely manner, and has the opportunity to cure their ballot and have their voice heard, by requiring counties to notify voters via text, email, or phone call, of their rejected ballot, if that information is available to the county.

- 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 requires 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 requires 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.

This bill requires an elections official, if they have the telephone number or email address on file for a voter whose signature does not compare, or who failed to sign their VBM ballot identification envelope, to notify the voter by telephone, a text message, or email of the opportunity to verify their signature or provide a signature, as specified.

- 4) **BallotTrax and Previous Legislation:** AB 2218 (Berman), Chapter 432, Statutes of 2018, required the SOS to establish a system that a county elections official may use to allow a VBM voter to track and receive information about the voter's VBM ballot as it moves through the mail system and as the VBM ballot is processed by the county elections official. In February 2020, the SOS officially launched that system, commonly referred to as BallotTrax or "Where's My Ballot," and 25 counties made that tool available to their voters for the March 3, 2020 statewide primary election. Subsequently, AB 860 (Berman), Chapter 4, Statutes of 2020, required all California counties to use BallotTrax for the purposes of the November 2020 statewide general election. However, any county that had its own ballot tracking system was able to use that system instead as long as it met or exceeded the level of service provided by the system developed by the SOS. According to the SOS, 5,075,808 voters signed up for ballot tracking for the November 2020 general election.
- 5) **Voter Authorization:** The BallotTrax system is an opt-in system where the voter submits their telephone number or email address for notification purposes. Unlike BallotTrax, this bill authorizes an elections official to notify a voter by telephone, text, or email without the voter opting in or agreeing to receive those notifications. This may be problematic as some voters may get charged by their phone carrier for receiving a text message.

However, it is unclear whether current law requires a voter to provide consent or authorization before an elections official may send the voter notifications via text message or email. Elections Code Section 13501 requires a county elections official to send a text notification to a voter who has declined to disclose a political party preference informing them of the option to obtain a partisan ballot if the voter has provided written consent to receive text messages from the county elections official. In contrast, Elections Code Section 2155.4 does not require consent from the voter to receive text messages from an elections official and permits an elections official to notify a voter upon receipt of a properly executed voter registration or address correction notice informing the voter that their voter registration information has been received and that they will receive a subsequent notification by mail.

Aside from these two code sections, committee staff is unaware of other provisions within the Elections Code that explicitly state whether or not a voter must provide consent before an elections official may send the voter notifications via text message. While the Elections Code does not explicitly address this issue, it may however, be addressed in other parts of the law that pertain to local governments.

If receiving consent from a voter to receive text message notification from an elections official is a common best practice, it may be prudent to explore codifying this requirement into statute.

- 6) **Vote by Mail Ballots and Previous Legislation:** 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 VBM voter. As a result, California voters have increasingly used VBM ballots to vote in elections.

In 2016, SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the CVCA, which permits 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 11 days, including election day. In 2018, five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) conducted elections under this system.

In 2020, fifteen counties chose to conduct elections pursuant to the CVCA (Amador, Butte, Calaveras, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne). According to the SOS's website, as of last year, an additional twelve counties have adopted the CVCA election model for a total of 27 counties.

- 7) **Elections, COVID-19, 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. Those changes largely were enacted through two bills—AB 860 (Berman), Chapter 4, Statutes of 2020, and SB 423 (Umberg), Chapter 31, Statutes of 2020. Notably, those bills required that a mail ballot be sent to every active registered voter, provided voters in all counties with the ability to track their ballot, authorized changes to in-person voting requirements, and made other changes to facilitate the expected surge in voting by mail at the November election.

In February 2021, SB 29 (Umberg), Chapter 3, Statutes of 2021, was signed into law and continued the practice of requiring county elections officials to mail a ballot to every active registered voter for all elections proclaimed or conducted prior to January 1, 2022. Subsequently, in September 2021, AB 37 (Berman), Chapter 312, Statutes of 2021, was signed into law which permanently requires an elections official to send every active voter a VBM ballot for each election in which they are eligible to vote, among other provisions.

- 8) **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 United States (US)-born voters, while US-born voters had higher rates of late and non-matching signatures.

- 9) **Mail Ballot Usage:** According to official election results compiled by the SOS, California voters are increasingly choosing to vote using a ballot sent to them, instead of voting in-person. The chart below shows historical use of VBM ballots in statewide elections since 2016. The results show a steady increase in the use of VBM ballots even before policy changes were made to send every eligible voter a ballot. That trend has continued after those policy changes were implemented.

Year	Statewide Election	Total Ballots Cast	VBM Ballots Cast	%	In-Person Ballots Cast	%
2016	Primary	8,548,301	5,036,262	58.92%	3,512,039	41.08%
	General	14,610,509	8,443,594	57.79%	6,166,915	42.21%
2018	Primary	7,141,987	4,834,975	67.70%	2,307,021	32.30%
	General	12,712,542	8,302,488	65.31%	4,410,054	34.69%
2020	Primary	9,687,076	6,982,750	72.08%	2,704,326	27.92%
	General	17,785,151	15,423,301	86.72%	2,361,850	13.28%
2021	Special	12,892,578	11,733,429	91.01%	1,159,149	8.99%
2022	Primary	7,285,230	6,647,212	91.24%	638,018	8.76%
	General	11,146,610	9,755,188	87.52%	1,391,422	12.48%

- 10) **Arguments in Support:** In support of this bill, California Common Cause writes:

Under current law, if the signature on a voter’s mail ballot identification envelope does not match the signature in that voter’s registration record or is not signed, then the elections official must contact the voter via mail no later than eight days before the certification of the election to give the voter the opportunity to verify that the voter cast that ballot, known as a “signature cure.” If the voter does not complete that verification process, then the ballot is ineligible to be counted.

First-time and elderly voters have the highest rates of ballot rejection, which can disenfranchise them simply for lack of knowledge or a simple mistake. Young and new voters, who were found most likely to have their ballots rejected due to a

mismatched signature, are also less likely to use traditional mail as a primary communication method. This issue is of particular importance as California has shifted to sending every voter a mail ballot, and thus greatly increasing the potential number of mail ballots with signature verification issues.

SB 77 would require the county elections official to notify a voter whose ballot has a signature-related issue by telephone, text message, or email, in addition to the existing mail notification, if the elections official has a telephone number or email address for the voter on file. Through the expansion of the signature curing process to reach voters electronically rather than solely through traditional mail, California has the opportunity to create a more equitable and modern democracy for all citizens.

11) **Arguments in Opposition:** With an oppose unless amended position, the California Association of Clerks and Election Officials (CACEO) writes:

CACEO's opposition is due to the current lack of consent from the voters to receive robo phone calls and text messages from county elections officials and the fiscal and labor impacts to counties if we were required to personally contact each voter individually who has not provided consent.

To ensure SB 77 would comply with the U.S. Telephone Consumer Protection Act, CACEO requests that the bill be amended to clarify that county elections officials are only required to call, text and email voters about the opportunity to cure a signature issue with their ballot if the voters have authorized the elections official to call, text or email them. This could be achieved by adding the words "authorization from a voter to use" in the following two places in the proposed amendments to Elections Code section 3019:

3019(d)(1)(B) If an elections official has *authorization from a voter to use* a telephone number or email address on file for a voter whose signature does not compare pursuant to subdivision (c), the elections official shall notify the voter by telephone, a text message, or email of the opportunity to verify the voter's signature.

3019(e)(1)(B)(ii) If an elections official has *authorization from a voter to use* a telephone number or email address on file for a voter who has failed to sign the identification envelope, the elections official shall notify the voter by telephone, a text message, or email of the opportunity to provide a signature.

This added language would align with the text notification requirements in Elections Code section 13501(c), which currently requires county elections officials to send a text notification about the availability of a partisan Presidential Primary Election ballot to voters who have declined to disclose a political party preference "if the voter has provided written consent to receive text messages from the county elections official."

California's voter registration system VoteCal and paper voter registration affidavits are not currently set up to request and track voter consent to receive calls and text messages. And, the two State-certified election management systems that counties use to maintain local voter registration records are likewise not equipped to collect and

track voter consent.

Until these systems might be updated to gather voter consent, the Secretary of State's Where's My Ballot ballot tracking and notification system does provide voters with a way to sign up and consent to receive notifications by robocall, text and email. And, one of the notifications sent by the Secretary of State's vendor BallotTrax to voters is an alert that the voter will receive a signature cure notification letter from their county elections official.

- 12) **Related Legislation:** AB 1037 (Berman) permits a voter who has a missing signature or a mismatched signature on their VBM ballot identification envelope to return a completed signature verification statement or unsigned identification envelope statement by electronic means, in addition to those permitted under existing law, if such means are made available by the elections official, as specified. AB 1037 passed out of this committee on a 6-2 vote, was approved by a vote of 61-16 on the Assembly Floor, and is pending in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Clean Money Campaign
California Common Cause
California Environmental Voters (formerly CLCV)
California School Employees Association (prior version)
Disability Rights California (prior version)
League of Women Voters of California
Peace Officers Research Association of California (PORAC)

Opposition

California Association of Clerks and Election Officials (unless amended)

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