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**SENATE COMMITTEE ON  
ELECTIONS AND CONSTITUTIONAL AMENDMENTS**  
Senator Steven Glazer, Chair  
2023 - 2024 Regular

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**Bill No:** SB 77 **Hearing Date:** 3/21/23  
**Author:** Umberg  
**Version:** 1/12/23  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Scott Matsumoto

**Subject:** Voting: signature verification: notice

**DIGEST**

This bill requires an election official to notify a voter by text message or email, if available, of the opportunity for a voter to verify their signature if the voter's signature did not compare to the signature on file, or to provide a signature if the voter's signature was missing.

**ANALYSIS**

Existing law:

- 1) Provides that vote by mail (VBM) voting shall be liberally construed in favor of the VBM voter.
- 2) Requires that a county election official compare the signature on the VBM ballot return envelope upon receiving a VBM ballot with a signature in the voter's file, as specified.
- 3) Provides that, if the election official determines that the signatures compare, the election official deposits the ballot, still in the return envelope, in a ballot container in the election official's office.
- 4) Requires an election official who determines that the signatures do not compare when comparing the signature on a VBM ballot envelope to the signature on that voter's registration records to write the cause of the rejection of the VBM ballot on the face of the identification envelope only after an election official has provided the voter with the opportunity to verify their signature, as specified.
- 5) Requires an election official to provide notice to all voters with a missing signature or a signature that does not compare with the voter's signature on file of the opportunity to verify or submit a signature no later than 5 p.m. two days prior to the certification of the election, as specified.
- 6) Requires that the processing of VBM ballot return envelopes as well as the processing and counting of VBM ballots be open to the public, both prior to and after the election. Provides, notwithstanding existing law, that VBM voter observers be allowed sufficiently close access to enable them to observe the VBM ballot return

envelopes and the signatures thereon and challenge whether those individuals handling VBM ballots are following established procedures, as specified.

- 7) Provides that a VBM voter observer shall not interfere with the orderly processing of VBM ballot return envelopes or the processing and counting of VBM ballots, including the touching or handling of the ballots.
- 8) Requires the election official make available a list of VBM voters for public inspection, from which challenges may be presented prior to processing and opening the identification envelopes of VBM voters. Provides that challenges may be made for the same reasons as those made against a voter voting at a polling place and provides a challenge may be entered on the grounds that the ballot was not received within the time provided by existing law or that a person is imprisoned for a conviction of a felony. Requires all challenges be made prior to the opening of the identification envelope of the challenged VBM voter.
- 9) Provides that the challenger of a voter has the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made because the voter is not present.
- 10) Provides that when comparing a voter's signature with the signature in the voter's registration record for signatures on the VBM identification envelope, signature verification statement, unsigned ballot statement, or provisional ballot envelope:
  - a) A presumption exists that the signature on the identification envelope, signature verification statement, unsigned ballot statement, or provisional ballot envelope is the voter's signature.
  - b) An exact match is not required for an election official to determine that a voter's signature is valid, as specified.
  - c) When comparing signatures, an election official shall not review or consider a voter's party preference, race, or ethnicity.
  - d) Characteristics and explanations in regulations promulgated by the SOS, as specified.
- 11) Provides that, when comparing signatures, the signature is rejected only if two additional election 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.
- 12) Requires the election official to send by first-class mail a notice to a voter of the opportunity to provide a signature or verify the voter's non-comparing signature on or before the next business day after a determination is made that the voter's signature is missing or does not compare with the signature on file unless certain conditions are met, as specified.

- 13) Permits county election officials to send additional written notices and notify the voter in person, by telephone or email, or by other means of the opportunity to either provide a signature or verify the voter's signature, as specified.
- 14) Defines, for purposes of the signature verification process, "certification of the election" to mean the date the particular election official submits a certified statement of the results of the election to the governing body even if that occurs before the deadline to submit the certified statement of the election results, as specified.
- 15) Requires an election official to adhere to all applicable regulations promulgated by the SOS when comparing signatures, as specified.
- 16) Requires the SOS to evaluate the necessity for procedures that will protect voters' personal identifying information from elections observers present during the signature comparison process, as specified.
- 17) Requires the SOS to evaluate the cost and necessity of requiring an election official to use information in the county's election management system, or otherwise in the election official's possession, for the purpose of notifying a voter of the opportunity to verify or provide a signature. Requires the SOS evaluate the cost and necessity of requiring an election official to send the additional written notices, as specified.
- 18) Requires the SOS to consult with recognized elections experts, voter access and advocacy stakeholders, and local election officials when promulgating or amending regulations pertaining to signature comparison, as specified.
- 19) Deletes verifying addresses on the VBM ballot return envelopes from the procedures that the observers may observe and challenge.
- 20) Requires election officials to identify and provide the SOS, within 31 days of the election, the number of ballots rejected, as specified. Requires the SOS to publish a report containing this information on the SOS website, as specified.

This bill:

- 1) Requires an election official to notify a voter by text message or email of the opportunity for a voter to verify their signature if the voter's signature did not compare to the signature on file or to provide a signature if the voter's signature was missing.

### **BACKGROUND**

Voting by Mail. California voters have increasingly utilized VBM ballots when voting in elections. In the 2022 general election, of 11,146,610 ballots cast, 9,755,188 were VBM ballots. This represents 87.52% of the votes cast in November 2022. When comparing the past two gubernatorial general elections (2018 and 2022), there were approximately 1.45 million more VBM ballots in November 2022 than in November 2018. According to data from the SOS, below are statistics of VBM voters and how that compares to the total number of voters.

<b><u>Vote by Mail Statistics in Statewide General Elections</u></b>			
<b>Election Date</b>	<b>VBM Voters*</b>	<b>Total Voters**</b>	<b>Percentage of VBM Voters</b>
November 2, 2010	4,989,852	10,300,392	48.44
November 6, 2012	6,753,688	13,202,158	51.16
November 4, 2014	4,547,705	7,513,972	60.52
November 8, 2016	8,443,594	14,610,509	57.79
November 6, 2018	8,302,488	12,712,542	65.31
November 3, 2020	15,423,301	17,785,151	86.72
November 8, 2022	9,755,188	11,146,610	87.52

\*VBM voters only consists of voted and counted VBM ballots.

\*\*Total voters only consists of voters who cast a ballot in the election.

It should be noted that the 2021 gubernatorial recall election was a special statewide election, and not a general election. However, in the gubernatorial recall election, of the 12,892,578 voters who voted, 11,733,429 voters submitted their VBM ballot. This represents 91.01% of voters who participated in the election.

VBM Rejection Rates. VBM ballots can be rejected for a variety of reasons. For example, the ballot may be missing from the envelope, multiple ballots might returned in one envelope, the ballot may arrive after the deadline, there may be a missing or incorrect address on the VBM envelope, the voter's signature might be missing, the voter's signature might not compare with the signature on file, etc. According to data from the SOS that was derived from VoteCal, California's statewide voter registration database, the November 2020 general election had 86,401 VBM ballots that were challenged. Of the 86,401 challenged VBM ballots, 14,666 ballots (16.97%) were rejected for a missing voter signature and 49,816 ballots (57.66%) were rejected for a signature that did not compare with the one on file. When combined, missing and non-comparing signatures amounted to 64,482 ballots or 74.63% of the total number of rejected ballots.

For the November 2022 election, the SOS indicated that 120,432 VBM ballots were challenged. Of the 120,432 challenged VBM ballots, 11,897 ballots (9.88%) were rejected for a missing voter signature and 47,963 ballots (39.83%) were rejected for a signature that did not compare with the one on file. When combined, missing and non-comparing signatures amounted to 76,379 ballots or 63.42% of the total number of rejected ballots.

An inquiry was sent to the SOS about the total number of ballot envelopes needing to be cured and the number of ballot envelopes that were actually cured as a result of a voter submitting a signature verification statement or an unsigned identification envelope statement. However, no response was received by the time of this printing.

Ballot Rejection Study – Sacramento, Santa Clara, and San Mateo Counties. In September 2020, the California Voter Foundation in collaboration with Dr. Mindy S. Romeo of the 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 was due to the ballot arriving after the acceptance deadline, a missing signature from the voter's VBM ballot

envelope, and a signature that did not sufficiently match their voter registration signature on file. A number of reforms were recommended for California to reduce the number of rejected ballots, including that California implement statewide regulations and periodically update those regulations to create more uniformity for the signature verification process. Additionally, among other recommendations, California should implement a more uniform coding process used by counties to designate the reasons that a ballot is rejected and require the SOS to report the number of ballots rejected as well as the reasons for the rejection.

Previous Legislation. While studies provide a snapshot of a particular election, legislation and policy changes have also been implemented to reduce the number of rejected ballots at an election. For example, prior to SB 29 (Correa), Chapter 618, Statutes of 2014, a VBM ballot had to be received by 8 p.m. on Election Day. SB 29 required that VBM ballots be counted if they are postmarked by Election Day and received by the election official by mail no later than three days after the election. For the November 2020 general election, AB 860 (Berman), Chapter 4, Statutes of 2020, extended the deadline by which VBM ballots must be received by a county election official to 17 days after Election Day.

The signature verification process is another example of a policy that has evolved over time. In 2013, the Legislature passed and Governor Brown signed AB 1135 (Mullin), Chapter 271, Statutes of 2013. AB 1135, among other provisions, provided counties with additional tools to verify a signature by allowing the use of signatures on documents on file in addition to the signature on a voter's registration.

In 2014, AB 2530 (Rodriguez), Chapter 906, Statutes of 2014, prohibited counties that use signature verification technology from rejecting a voter's VBM ballot envelope signature unless the election official visually examines it and verifies the signatures do not sufficiently compare.

In 2015, AB 477 (Mullin), Chapter 726, Statutes of 2015, allowed, among other provisions, a voter who did not sign their VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election in order to have their ballot counted.

In 2016, AB 1970 (Low), Chapter 821, Statutes of 2016, required the SOS to promulgate regulations establishing guidelines for county election officials relating to the processing of VBM and provisional ballots.

Additionally, in 2016, SB 450 (Allen), Chapter 832, Statutes of 2016, enacted the Voter's Choice Act and permitted counties to adopt a new voting model that, among additional provisions, replaced neighborhood polling places with county-wide vote centers, mailed every registered voter a VBM ballot, and provided ballot drop off locations. Among the provisions of SB 450, the bill required counties using this vote center model to make a reasonable effort to contact voters with missing signatures on their VBM envelopes and provided them with an opportunity to correct the issue.

In 2017, AB 840 (Quirk), Chapter 820, Statutes of 2017, among other provisions, permitted a voter who did not sign their VBM identification envelope to return a completed unsigned ballot statement by email.

In 2018, SB 759 (McGuire), Chapter 446, Statutes of 2018, permitted a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's record to return a completed signature verification statement in order to have their ballot counted.

In 2019, SB 523 (McGuire), Chapter 568, Statutes of 2019, required counties to notify a voter whose signature is missing on a VBM identification envelope and aligned the timeline for notices and the submission of an unsigned VBM ballot envelope with the deadlines established for mismatching signatures.

In 2021, SB 503 (Becker), Chapter 319, Statutes of 2021, provided additional parameters for election officials when comparing a voter's signature and notifying a voter of their missing or non-comparing signature.

Where's My Ballot? In February 2020, the SOS launched a "Where's My Ballot?" tool that allowed voters to receive notifications about their VBM ballots. Voters who signed up received automated notifications by voice call, email, or text when the county elections office mailed the voter's ballot, when the county received the voter's ballot, when the county counted the ballot, and when there were any issues with the voter's ballot. Pursuant to AB 860 (Berman), Chapter 4, Statutes of 2020, counties were required to use this ballot tracking system developed by the SOS or another system that meets or exceeds to SOS system. As a result, "Where's My Ballot?" was available in every county for the November statewide general election. According to the SOS, 5,075,808 voters signed up for ballot tracking for the November 2020 general election.

### **COMMENTS**

- 1) 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. There is also a required 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 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 of their rejected ballot if that information is available to the county.
- 2) Ballot Tracking. As previously mentioned, the SOS works with counties to provide a ballot tracking system. This system is an opt-in system where the voter submits their telephone number for notification purposes. It is unknown how adaptive the

“Where’s My Ballot?” program is to changes and notifications to voters. However, it is not inconceivable to think that the state’s ballot tracking notification system could someday be used to additionally inform voters of a missing or non-comparing signature.

- 3) Suggested Amendment – Phone Calls. Under existing law, the first notice of a missing or a non-comparing signature is sent by mail. Additionally, after that notice is mailed, an election official is permitted to notify the voter in person, by telephone or email, or by other means of the opportunity to cure their ballot.

This bill would require an election official to notify a voter by text message or email of the opportunity to verify the voter’s signature if the election official has a telephone number or email address on file. It is possible that a county election official does not have the functionality to send text messages to voters. Voters may feel like they did not choose to have their telephone number used for text messages or their email address used for notifications.

Committee staff recommends that if text messages are going to be one of the options required as a way to notify voters of an issue with their signature, then a telephone call should be an additional option. In order to send a text message, a telephone number is needed and a telephone call could be more effective, especially for voters who may not be email or text savvy. This amendment would require an election official to contact a voter by telephone call, text message, or email of the opportunity to verify a voter’s signature or submit a signature. This would be in addition to the required mail notice and the option to notify the voter in person or by other means.

- 4) Argument in Support. In a letter supporting SB 77, the California School Employees Association stated, in part, the following:

*The California School Employees Association, AFL-CIO, supports your Senate Bill (SB) 77, which would require election officials to expand the methods used to contact voters by requiring them to use text message or email if a voter's signature cannot be verified when receiving a vote by mail ballot.*

### **RELATED/PRIOR LEGISLATION**

AB 1037 (Berman) of 2023 would additionally require the instructions sent to voters to state that they may submit a signature verification statement or unsigned identification envelope statement by other electronic means made available by the local election official. AB 1037 is currently pending consideration in the Assembly Committee on Elections.

SB 503 (Becker), Chapter 319, Statutes of 2021, among other provisions, provided additional parameters for election officials when comparing a voter’s signature and notifying a voter of their missing or non-comparing signature.

SB 523 (McGuire), Chapter 568, Statutes of 2019, required counties to notify a voter whose signature is missing on a VBM identification envelope and aligned the timeline

for notices and the submission of an unsigned VBM ballot envelope with the deadlines established for mismatching signatures, as specified.

SB 759 (McGuire), Chapter 446, Statutes of 2018, permitted a voter whose signature on their VBM ballot identification envelope does not match the signature on file in the voter's record to return a completed signature verification statement in order to have their ballot counted, as specified.

AB 840 (Quirk), Chapter 820, Statutes of 2017, permitted, among other provisions, a voter who did not sign their VBM identification envelope to return a completed unsigned ballot statement by email.

### **POSITIONS**

**Sponsor:** Author

**Support:** California Common Cause  
California School Employees Association  
League of Women Voters of California

**Oppose:** None received

**-- END --**