

**COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE**

CITIZENS OVERSIGHT, INC., a Delaware)
non-profit corporation; RAYMOND LUTZ,)
an individual,)

Plaintiffs and Cross-Appellants,)

v.)

MICHEAL VU, San Diego Registrar of)
Voters, HELEN N. ROBBINS-MEYER,)
San Diego County Chief Administrative)
Officer, SAN DIEGO COUNTY, a public)
entity; DOES 1-10,)

Defendants and Appellants.)

4th Civil No. **D071907**

(San Diego Superior Court

Case No. 37-2016-00020273-CL-MC-CTL)

Appeal from a Judgment of the Superior Court,
State of California, County of San Diego
Honorable, Joel R. Wohlfeil, Judge Presiding

APPELLANTS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE

THOMAS E. MONTGOMERY, County Counsel
County of San Diego
TIMOTHY M. BARRY, Chief Deputy (SBN 89019)
Email: timothy.barry@sdcounty.ca.gov
STEPHANIE KARNAVAS, Senior Deputy
(SBN No. 255596)
Email: stephanie.karnavas@sdcounty.ca.gov
1600 Pacific Highway, Room 355
San Diego, CA 92101
Tel: (619) 531-6259; Fax: (619) 531-6005
Attorneys for Appellant County of San Diego

Received by Fourth District Court of Appeal, Division One

Appellants and cross-respondents previously requested that this court take judicial notice of documents on October 5, 2017. The Court granted that motion on October 31, 2017.

On May 8, 2018, the Court issued an order directing the parties to file supplemental briefing on whether the amendment of Elections Code section 15360, effective January 2, 2018, “might render this appeal moot” and further directed the parties to “address the effect of the amendment of the statute and potential mootness on the trial court’s award of attorney fees.”

Pursuant to rules 8.54 and 8.252 of the California Rules of Court, Evidence Code section 452 (d) and Evidence Code section 459, Appellants and cross-respondents hereby request the Court to permit them to supplement the previously judicially noticed documents with documents relating to the legislative history of AB 840 that amended Elections Code section 15360:

Attachment

16. Senate Rules Committee, re AB 840, Third Reading, as amended in Senate on 8/24/2017;
17. Senate Rules Committee, re AB 840, Third Reading, as amended in Senate on 9/7/2017;
18. Concurrence in Senate Amendments, re AB 840, as amended in Senate on 9/7/2017;
19. Assembly Committee on Elections and Redistricting, Concurrence in Senate Amendments, re AB 840, as amended in Senate on 9/7/2017, hearing date September 14, 2017;
20. Concurrence in Senate Amendments, re AB 840, as amended on 9/7/2017.

MEMORANDUM OF POINTS AND AUTHORITIES

Judicial notice is the appropriate procedure for bringing these documents before the court. (CRC rule 8.252.) Documents 16 through 20 referenced above are part of and relevant to the legislative history of the Elections Code section 15360 as amended AB 840 effective January 2, 2018, and are necessary to fully respond to the questions raised by the Court in its order of May 8, 2018. Published legislative materials, such as bill and their history, are judicially noticeable. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4; see also *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31-37. These documents were not available to the trial court in that the amendments implemented by AB 840 did not become effective until this matter had been appealed and appellants and cross-respondents had filed their opening brief on appeal.

Based on the foregoing legal authority, and for the reasons set forth above, Appellants respectfully request that this Court grant their motion for judicial notice.

DATE: May 22, 2018

THOMAS E. MONTGOMERY,
County Counsel

By: s/Timothy M. Barry
TIMOTHY M. BARRY, Chief Deputy
Attorneys for Appellants County of San
Diego and Michael Vu, Registrar of Voters

ATTACHMENT 16

THIRD READING

Bill No: AB 840
Author: Quirk (D) and Obernolte (R), et al.
Amended: 8/24/17 in Senate
Vote: 21

SENATE ELECTIONS & C.A. COMMITTEE: 4-0, 6/6/17
AYES: Anderson, Allen, Hertzberg, Leyva
NO VOTE RECORDED: Stern

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 74-0, 4/20/17 (Consent) - See last page for vote

SUBJECT: Elections: vote by mail and provisional ballots

SOURCE: Secretary of State Alex Padilla

DIGEST: This bill permits a voter who did not sign his or her vote by mail (VBM) identification envelope to return a completed unsigned ballot statement by email, and makes clarifying changes to the one percent manual tally of ballots, as specified.

Senate Floor Amendments of 8/24/17 clarify the code regarding existing interpretation and practice regarding the 1% manual tally of ballots.

ANALYSIS:

Existing law:

- 1) Requires a county elections official, upon receiving a VBM ballot, to compare the signatures on the 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.
- 2) Provides the form of a VBM voter identification envelope, and requires it contain among other things, a declaration signed by the voter under penalty of perjury, stating the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope.
 - 3) 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.
 - 4) Prohibits an elections official from rejecting a VBM ballot on the grounds that the voter failed to sign the ballot identification envelope if the voter does any of the following:
 - a) Signs the identification envelope at the office of the elections official during regular business hours before 5 p.m. on the eighth day after the election;
 - b) Before 5 p.m. on the eighth day after the election, completes and submits an unsigned ballot statement, as specified; or,
 - c) Before the close of the polls on Election Day, completes an unsigned ballot statement, and submits it to a polling place within the county or a ballot dropoff box.
 - 5) Allows a voter to return a completed unsigned ballot statement by mail, have it delivered, submitted by facsimile transmission, or alternatively returned to a polling place within the county or a ballot dropoff box before the polls close on Election Day.
 - 6) Requires an elections official to accept any completed unsigned ballot statement that is timely submitted. Requires the elections official, upon receipt of the unsigned ballot statement, to compare the voter's signature on the statement, as specified.
 - 7) Requires an elections official to include the unsigned ballot statement and instructions on his or her Internet Web site and to provide the election official's mailing address and facsimile transmission number.

- 8) Requires an elections official, if he or she determines that the signatures compare, to attach the unsigned ballot statement to the identification envelope and deposit the ballot, still in the identification envelope, in a ballot container in his or her office. Prohibits an identification envelope, if the elections official determines that the signatures do not compare, from being opened or counted.
- 9) Provides that during the canvass of every election where ballots are tabulated by automated vote tabulation systems the elections official must conduct a public manual tally of the ballots, including VBM ballots, cast in one percent of the precincts chosen at random, as specified. Provisional ballots are not required to be included in the manual tally. In practice, the manual tally is conducted using ballots tabulated during the semifinal official canvass so that machine tabulation errors can be identified and rectified prior to the final official canvass.

This bill:

- 1) Authorizes a voter who did not sign his or her VBM identification envelope to submit his or her completed unsigned ballot statement to the local elections official by email.
- 2) Requires the unsigned ballot statement be signed under penalty of perjury, provide the voter be a resident of the precinct in which they have voted, and are the person whose name appears on the VBM ballot envelope.
- 3) Requires the instructions that accompany the unsigned ballot statement inform the voter that a completed unsigned ballot statement may be submitted by email.
- 4) Requires among other information, that an elections official provide the election official's email address on the Internet Web page containing the unsigned ballot statement and instructions.
- 5) Creates a new crime by requiring the unsigned ballot statement be signed under penalty of perjury.
- 6) Conforms the Elections code to current accepted interpretation and practice by clarifying that the one percent manual tally of ballots cast are those ballots and

VBM ballots tabulated during the semiofficial canvass and do not include provisional ballots.

Background

Current VBM procedure. Existing law requires a county elections official, upon receiving a VBM ballot, to verify the voter signed the identification envelope and compare the signature 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 is part of the voter's registration record. Existing law also prohibits an elections official from rejecting a VBM ballot on the grounds that the voter failed to sign the ballot identification envelope if the voter signs the identification envelope at the office of the elections official before 5 p.m. on the eighth day after the election, or submits an unsigned ballot statement under the same timeframe.

Existing law also allows a voter to return a completed unsigned ballot statement by mail, have it delivered, submitted by facsimile transmission, or alternatively returned to a polling place within the county or a ballot dropoff box before the polls close on Election Day.

VBM ballot rejection. The California Civic Engagement Project, housed at the University of California at Davis, conducted a statewide survey of California's 58 county election offices to gain a better understanding of California's use of VBM ballots, including return methods. 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 using a VBM ballot. 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.

Manual Tally. After an election, election officials are required to complete the official canvass and certify election results to the Secretary of State's office generally no later than 30 days after an election. As part of the official canvass, existing law directs election officials to conduct a "public manual tally of the ballots tabulated by [the vote tabulating system], including vote by mail ballots."

Elections officials must complete a “manual tally of the ballots, including vote by mail ballots, cast at one percent of the precincts chosen at random” and, for each race not included in the initial group of precincts, one additional precinct. The purpose of the manual tally is to verify the accuracy of the voting systems that are used to count the ballots. It is not a recount of election results.

Petitioners filed an action in superior court on June 16, 2016, challenging the methodology used by the San Diego Registrar of Voters (ROV) in conducting the one percent manual tally during the canvass of elections. Petitioners asserted that all VBM and provisional ballots must be included in the random selection process for determining which ballots are included in the manual tally.

The ROV uses the election night results for determining which precincts are randomly selected for inclusion in the manual tally. Election night results include all ballots cast at the polls on Election Day and all VBM ballots received and processed by the ROV prior to election night. The ROV does not include VBM ballots or provisional ballots processed during the official canvass in the manual tally. This practice is consistent with the methodology used by other large counties, including Los Angeles, Sacramento, Contra Costa, Sonoma, Kern, and Riverside and in a manner approved by the Secretary of State.

Initially, petitioners requested a preliminary injunction to prevent the ROV from certifying the election results without first complying with the manual tally requirements as interpreted by petitioners. After an expedited briefing schedule, the court heard oral arguments on petitioners’ request on July 6, 2016, one day before the ROV had to certify the election results. The court delayed action on this request until after the election had been certified, which made the request moot.

By agreement of the parties, the court set this matter for trial on an expedited basis. Trial was held on October 4-6 and 11, 2016. On December 19, 2016, after the November General Election, the court issued a Statement of Decision wherein the court ruled that provisional ballots do not need to be included in the one percent manual tally but that all VBM need to be included in the random draw for the one percent manual tally. Judgment was entered on January 10, 2017, and the County of San Diego and petitioner have moved to appeal.

The California Association of Clerks and Election Officials (CACEO) recognizes the effect any court ruling may have on the inclusion of all mail ballots as part of the one percent manual tally. Any adverse ruling would effectively redefine the purpose and intent of the one percent manual tally and change the long-standing

practice many counties use. There is a high risk of counties not being able to certify their elections within the 30-day statutory timeframe. This risk is exacerbated with the dramatic increase in voters wishing to vote by mail throughout the State and the passage of recent legislation that increases mail balloting and the acceptance of them. As a result, CACEO is sponsoring this legislation to clarify existing law.

Comments

- 1) According to the author, “the number of Californians who choose to use a vote-by-mail ballot continues to rise. In the 2016 General Election, over 57% of California voters received their ballot by mail. In 23 counties, the vote by mail rate is over 70%. This makes California one of the leading states in vote-by-mail balloting. Unfortunately, California is also a leader in the number of ballots that are [rejected] year after year.

“Voters are required to sign the envelope in which they return their vote-by-mail ballot. In both the 2014 and 2012 November General Election nearly 10,000 voters had their vote-by-mail ballot rejected because of a missing signature. Under current law, a voter has until 5 pm on the eighth day after the election to submit a hard copy of their signature (fax, mail, or in person). To decrease the amount of rejected ballots, AB 840 modernizes the process.”

- 2) *Manual Tally*. The most recent amendments to this bill will clarify the code to conform it to existing accepted interpretation and practice regarding conduct of the one percent manual tally. The purpose of the manual tally is to ensure that vote tabulation equipment is operating correctly during the *semifinal* official canvass in order that machine tabulation errors can be identified and rectified prior to the *final* official canvass. Due to their lengthy processing time, provisional ballots are usually the last type of ballots to be canvassed. Waiting to include provisional ballots or waiting until after the final official canvass would defeat the purpose of the manual tally.

Related/Prior Legislation

AB 477 (Mullin, Chapter 726, Statutes of 2015) (1) allowed a voter who failed to sign his or her VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election, as specified, in order to have his or her ballot counted; (2) allowed an unsigned ballot statement to be submitted to a polling place within the county or a ballot drop-off box or alternately, a voter may return an unsigned ballot statement by mail, have it delivered, or submit it by

facsimile; (3) authorized a voter to return a completed unsigned ballot statement via email; and (4) required the unsigned ballot statement instructions to include the election official's email address.

SB 29 (Correa, Chapter 618, Statutes of 2014) allowed 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/29/17)

Secretary of State Alex Padilla (source)
American Civil Liberties Union
California Association of Clerks and Election Officials
County of San Diego
Disability Rights California
Santa Cruz County Clerk/Registrar of Voters

OPPOSITION: (Verified 8/29/17)

None received

ASSEMBLY FLOOR: 74-0, 4/20/17

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Cervantes, Chau, Chávez, Chen, Chiu, Chu, Cooley, Cooper, Cunningham, Dababneh, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Quirk, Quirk-Silva, Reyes, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: Brough, Choi, Gallagher, Mathis, Patterson, Ridley-Thomas

Prepared by: Darren Chesin / E. & C.A. / (916) 651-4106
8/29/17 15:17:15

**** END ****

ATTACHMENT 17

THIRD READING

Bill No: AB 840
Author: Quirk (D), et al.
Amended: 9/7/17 in Senate
Vote: 21

SENATE ELECTIONS & C.A. COMMITTEE: 4-0, 6/6/17
AYES: Anderson, Allen, Hertzberg, Leyva
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SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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SOURCE: Secretary of State Alex Padilla

DIGEST: This bill permits a voter who did not sign his or her vote by mail (VBM) identification envelope to return a completed unsigned ballot statement by email, and makes clarifying changes to the one percent manual tally of ballots, as specified.

Senate Floor Amendments of 9/7/17 clarify that an elections official may select additional precincts for the manual tally, which may include VBM and provisional ballots.

Senate Floor Amendments of 8/24/17 clarify the code regarding existing interpretation and practice regarding the 1% manual tally of ballots.

ANALYSIS:

Existing law:

- 1) Requires a county elections official, upon receiving a VBM ballot, to compare the signatures on the 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.
- 2) Provides the form of a VBM voter identification envelope, and requires it contain among other things, a declaration signed by the voter under penalty of perjury, stating the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope.
 - 3) 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.
 - 4) Prohibits an elections official from rejecting a VBM ballot on the grounds that the voter failed to sign the ballot identification envelope if the voter does any of the following:
 - a) Signs the identification envelope at the office of the elections official during regular business hours before 5 p.m. on the eighth day after the election;
 - b) Before 5 p.m. on the eighth day after the election, completes and submits an unsigned ballot statement, as specified; or,
 - c) Before the close of the polls on Election Day, completes an unsigned ballot statement, and submits it to a polling place within the county or a ballot dropoff box.
 - 5) Allows a voter to return a completed unsigned ballot statement by mail, have it delivered, submitted by facsimile transmission, or alternatively returned to a polling place within the county or a ballot dropoff box before the polls close on Election Day.
 - 6) Requires an elections official to accept any completed unsigned ballot statement that is timely submitted. Requires the elections official, upon receipt of the unsigned ballot statement, to compare the voter's signature on the statement, as specified.
 - 7) Requires an elections official to include the unsigned ballot statement and instructions on his or her Internet Web site and to provide the election official's mailing address and facsimile transmission number.

- 8) Requires an elections official, if he or she determines that the signatures compare, to attach the unsigned ballot statement to the identification envelope and deposit the ballot, still in the identification envelope, in a ballot container in his or her office. Prohibits an identification envelope, if the elections official determines that the signatures do not compare, from being opened or counted.
- 9) Provides that during the canvass of every election where ballots are tabulated by automated vote tabulation systems the elections official must conduct a public manual tally of the ballots, including VBM ballots, cast in one percent of the precincts chosen at random, as specified. Provisional ballots are not required to be included in the manual tally. In practice, the manual tally is conducted using ballots tabulated during the semifinal official canvass so that machine tabulation errors can be identified and rectified prior to the final official canvass.

This bill:

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- 2) Requires the unsigned ballot statement be signed under penalty of perjury, provide the voter be a resident of the precinct in which they have voted, and are the person whose name appears on the VBM ballot envelope.
- 3) Requires the instructions that accompany the unsigned ballot statement inform the voter that a completed unsigned ballot statement may be submitted by email.
- 4) Requires among other information, that an elections official provide the election official's email address on the Internet Web page containing the unsigned ballot statement and instructions.
- 5) Creates a new crime by requiring the unsigned ballot statement be signed under penalty of perjury.
- 6) Conforms the Elections code to current accepted interpretation and practice by clarifying that the one percent manual tally of ballots cast are those ballots and VBM ballots tabulated during the semiofficial canvass and do not include provisional ballots. Also clarifies that an elections official may select additional precincts for the manual tally, which may include vote by mail and provisional ballots.

Background

Current VBM procedure. Existing law requires a county elections official, upon receiving a VBM ballot, to verify the voter signed the identification envelope and compare the signature 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 is part of the voter's registration record. Existing law also prohibits an elections official from rejecting a VBM ballot on the grounds that the voter failed to sign the ballot identification envelope if the voter signs the identification envelope at the office of the elections official before 5 p.m. on the eighth day after the election, or submits an unsigned ballot statement under the same timeframe.

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Manual Tally. After an election, election officials are required to complete the official canvass and certify election results to the Secretary of State's office generally no later than 30 days after an election. As part of the official canvass, existing law directs election officials to conduct a "public manual tally of the ballots tabulated by [the vote tabulating system], including vote by mail ballots." Elections officials must complete a "manual tally of the ballots, including vote by mail ballots, cast at one percent of the precincts chosen at random" and, for each race not included in the initial group of precincts, one additional precinct. The

purpose of the manual tally is to verify the accuracy of the voting systems that are used to count the ballots. It is not a recount of election results.

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The ROV uses the election night results for determining which precincts are randomly selected for inclusion in the manual tally. Election night results include all ballots cast at the polls on Election Day and all VBM ballots received and processed by the ROV prior to election night. The ROV does not include VBM ballots or provisional ballots processed during the official canvass in the manual tally. This practice is consistent with the methodology used by other large counties, including Los Angeles, Sacramento, Contra Costa, Sonoma, Kern, and Riverside and in a manner approved by the Secretary of State.

Initially, petitioners requested a preliminary injunction to prevent the ROV from certifying the election results without first complying with the manual tally requirements as interpreted by petitioners. After an expedited briefing schedule, the court heard oral arguments on petitioners' request on July 6, 2016, one day before the ROV had to certify the election results. The court delayed action on this request until after the election had been certified, which made the request moot.

By agreement of the parties, the court set this matter for trial on an expedited basis. Trial was held on October 4-6 and 11, 2016. On December 19, 2016, after the November General Election, the court issued a Statement of Decision wherein the court ruled that provisional ballots do not need to be included in the one percent manual tally but that all VBM need to be included in the random draw for the one percent manual tally. Judgment was entered on January 10, 2017, and the County of San Diego and petitioner have moved to appeal.

The California Association of Clerks and Election Officials (CACEO) recognizes the effect any court ruling may have on the inclusion of all mail ballots as part of the one percent manual tally. Any adverse ruling would effectively redefine the purpose and intent of the one percent manual tally and change the long-standing practice many counties use. There is a high risk of counties not being able to certify their elections within the 30-day statutory timeframe. This risk is exacerbated with the dramatic increase in voters wishing to vote by mail throughout the State and the passage of recent legislation that increases mail

balloting and the acceptance of them. As a result, CACEO is sponsoring this legislation to clarify existing law.

Comments

- 1) According to the author, “the number of Californians who choose to use a vote-by-mail ballot continues to rise. In the 2016 General Election, over 57% of California voters received their ballot by mail. In 23 counties, the vote by mail rate is over 70%. This makes California one of the leading states in vote-by-mail balloting. Unfortunately, California is also a leader in the number of ballots that are [rejected] year after year.

“Voters are required to sign the envelope in which they return their vote-by-mail ballot. In both the 2014 and 2012 November General Election nearly 10,000 voters had their vote-by-mail ballot rejected because of a missing signature. Under current law, a voter has until 5 pm on the eighth day after the election to submit a hard copy of their signature (fax, mail, or in person). To decrease the amount of rejected ballots, AB 840 modernizes the process.”

- 2) *Manual Tally*. The most recent amendments to this bill will clarify the code to conform it to existing accepted interpretation and practice regarding conduct of the one percent manual tally. The purpose of the manual tally is to ensure that vote tabulation equipment is operating correctly during the *semifinal* official canvass in order that machine tabulation errors can be identified and rectified prior to the *final* official canvass. Due to their lengthy processing time, provisional ballots are usually the last type of ballots to be canvassed. Waiting to include provisional ballots or waiting until after the final official canvass would defeat the purpose of the manual tally.

Related/Prior Legislation

AB 477 (Mullin, Chapter 726, Statutes of 2015) (1) allowed a voter who failed to sign his or her VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election, as specified, in order to have his or her ballot counted; (2) allowed an unsigned ballot statement to be submitted to a polling place within the county or a ballot drop-off box or alternately, a voter may return an unsigned ballot statement by mail, have it delivered, or submit it by facsimile; (3) authorized a voter to return a completed unsigned ballot statement via email; and (4) required the unsigned ballot statement instructions to include the election official's email address.

SB 29 (Correa, Chapter 618, Statutes of 2014) allowed 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 9/7/17)

Secretary of State Alex Padilla (source)
American Civil Liberties Union
California Association of Clerks and Election Officials
County of San Diego
Disability Rights California
Santa Cruz County Clerk/Registrar of Voters

OPPOSITION: (Verified 9/12/17)

California Voter Foundation
Citizens' Oversight Projects
Inyo County Clerk Recorder
Sonoma County Democratic Party

ARGUMENTS IN SUPPORT: In a letter supporting this bill, the Secretary of State stated the following:

AB 840 also includes clarifying language to ensure county elections officials may continue to conduct the 1 % manual tally as they historically have after every election. A recent court ruling suggested that counties may have to conduct the tally in a manner that would be near impossible for many to complete.

The tally uses ballots that were tabulated on Election Night to determine whether the machine tabulators are accurate. Ballots tabulated after Election Night may be included at the discretion of the elections officials. The tally takes several weeks for many counties.

A few counties are capable of processing and tabulating every ballot before beginning the tally. However, many counties do not complete ballot tabulation until just before the 30 day deadline to certify the election results. This is one reason why counties often conduct the tally while simultaneously completing ballot tabulation - to get both done on time. Another reason for conducting the tally and tabulation simultaneously is that elections officials are able to quickly identify and troubleshoot possible issues should they arise.

A different interpretation suggests that all counties may have to finish tabulating all ballots before beginning the tally. While this is possible for some counties, many others would not be able to complete the tally and tabulation before the certification deadline. Additionally, there are benefits to the integrity of the election to conduct them at the same time.

AB 840 simply clarifies that counties are allowed to continue completing the 1 % manual tally and ballot tabulation on time while protecting the integrity of our elections, and makes it more convenient for voters to provide their missing signature by allowing them to use email.

ARGUMENTS IN OPPOSITION: In a letter opposing this bill, the Inyo County Clerk-Recorder stated the following:

County Registrars have other checks and balances in place to ensure accurate vote totals, but these rely on trust in their employees and/or election volunteers. As one of the 58 Registrars that are charged with overseeing the vote tabulation process, I would like to ensure that there are codified procedures in place that do not rely simply on trust. The public deserves a process that provides them with full faith that every vote count is accurate. This can only be accomplished by ensuring that all ballots cast in the election will have possible inclusion in the manual count (i.e., early voting, absentee and provisional).

ASSEMBLY FLOOR: 74-0, 4/20/17

AYES: Acosta, Aguiar-Curry, Travis Allen, Arambula, Baker, Berman, Bigelow, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Cervantes, Chau, Chávez, Chen, Chiu, Chu, Cooley, Cooper, Cunningham, Dababneh, Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Gray, Grayson, Harper, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Quirk, Quirk-Silva, Reyes, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Voepel, Waldron, Weber, Wood, Rendon

NO VOTE RECORDED: Brough, Choi, Gallagher, Mathis, Patterson, Ridley-Thomas

Prepared by: Darren Chesin / E. & C.A. / (916) 651-4106
9/12/17 14:09:00

**** END ****

ATTACHMENT 18

CONCURRENCE IN SENATE AMENDMENTS

AB 840 (Quirk)

As Amended September 7, 2017

Majority vote

ASSEMBLY: 74-0 (April 20, 2017) SENATE: 40-0 (September 12, 2017)

Original Committee Reference: E. & R.

SUMMARY: Permits a voter who did not sign his or her vote by mail (VBM) identification envelope to return a completed unsigned ballot statement by email, as specified. Specifically, **this bill:**

- 1) Authorizes a voter who did not sign his or her VBM identification envelope to submit his or her completed unsigned ballot statement to the local elections official by email.
- 2) Requires the unsigned ballot statement to be signed under penalty of perjury and declare the voter is a resident of the precinct in which he or she voted and is the person whose name appears on the VBM ballot envelope.
- 3) Requires the instructions that accompany the unsigned ballot statement to inform a voter that a completed unsigned ballot statement may be submitted by email.
- 4) Requires an elections official to provide the elections official's email address on the Internet Web page containing the unsigned ballot statement and instructions.

The Senate amendments make the following changes:

- 1) Add a joint-author.
- 2) Clarify that the one percent manual tally of ballots cast are those canvassed during the semiofficial canvass and do not include provisional ballots.
- 3) Clarify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots.
- 4) Make non-substantive technical changes to the bill.

EXISTING LAW:

- 1) Allows a voter to return a completed unsigned ballot statement by mail, have it delivered, submitted by facsimile transmission, or alternatively returned to a polling place within the county or a ballot dropoff box before the polls close on election day.
- 2) Requires an elections official, during the official canvass of every election in which a voting system is used, to conduct a public manual tally of the ballots tabulated by those devices, including VBM ballots, using either of the following methods:
 - a)* A public manual tally of the ballots, including VBM ballots, cast in one percent of the precincts chosen at random by the elections official, as specified.

- b) A two-part tally of the ballots, not including VBM ballots, cast in one percent of the precincts chosen at random by the elections official, as specified and a public manual tally of not less than one percent of the VBM ballots, as specified.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, "The number of Californians who choose to use a vote-by-mail ballot continues to rise. In the 2016 General Election, over 57% of California voters received their ballot by mail. In 23 counties, the vote by mail rate is over 70%. This makes California one of the leading states in vote-by-mail balloting. Unfortunately, California is also a leader in the number of ballots that are [rejected] year after year.

"Voters are required to sign the envelope in which they return their vote-by-mail ballot. In both the 2014 and 2012 November General Election nearly 10,000 voters had their vote-by-mail ballot rejected because of a missing signature.

"Under current law, a voter has until 5 pm on the eighth day after the election to submit a hard copy of their signature (fax, mail, or in person). To decrease the amount of rejected ballots, AB 840 modernizes the process."

The California Civic Engagement Project, housed at the University of California at Davis, conducted a statewide survey of California's 58 county election offices to gain a better understanding of California's use of VBM ballots, including return methods. 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% of California's voters chose to cast their ballot using a VBM ballot. 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.

Existing law requires elections officials to conduct a manual tally of ballots cast in one percent of the precincts chosen at random in order to ensure that vote tabulation equipment is operating correctly before the final official canvass is completed. The Senate amendments clarify that the one percent manual tally of ballots cast are those canvassed during the semiofficial canvass and do not include provisional ballots. Additionally the Senate amendments clarify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots. Finally, the Senate amendments make non-substantive technical changes.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

FN: 0002169

ATTACHMENT 19

Date of Hearing: September 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 840 (Quirk) – As Amended September 7, 2017

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: 74-0 (April 20, 2017) SENATE: 40-0 (September 12, 2017)

SUBJECT: Elections: vote by mail and provisional ballots.

SUMMARY: Permits a voter who did not sign his or her vote by mail (VBM) identification envelope to return a completed unsigned ballot statement by email, as specified. Specifically, this bill:

- 1) Authorizes a voter who did not sign his or her VBM identification envelope to submit his or her completed unsigned ballot statement to the local elections official by email.
- 2) Requires the unsigned ballot statement to be signed under penalty of perjury and declare the voter is a resident of the precinct in which he or she voted and is the person whose name appears on the VBM ballot envelope.
- 3) Requires the instructions that accompany the unsigned ballot statement to inform a voter that a completed unsigned ballot statement may be submitted by email.
- 4) Requires an elections official to provide the elections official's email address on the Internet Web page containing the unsigned ballot statement and instructions.

The Senate amendments:

- 1) Specify that the one percent manual tally of ballots cast are those canvassed during the semifinal official canvass and do not include provisional ballots.
- 2) Specify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots.
- 3) Make a non-substantive technical change to the bill.

EXISTING LAW:

- 1) Requires a county elections official, upon receiving a VBM ballot, to compare the signatures on the 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.

- 2) 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.
- 3) Prohibits an elections official from rejecting a VBM ballot on the grounds that the voter failed to sign the ballot identification envelope if the voter does any of the following:
 - a) Signs the identification envelope at the office of the elections official during regular business hours before 5 p.m. on the eighth day after the election;
 - b) Before 5 p.m. on the eighth day after the election, completes and submits an unsigned ballot statement, as specified; or,
 - c) Before the close of the polls on election day, completes an unsigned ballot statement, and submits it to a polling place within the county or a ballot dropoff box.
- 4) Allows a voter to return a completed unsigned ballot statement by mail, have it delivered, submitted by facsimile transmission, or alternatively returned to a polling place within the county or a ballot dropoff box before the polls close on election day.
- 5) Requires an elections official to accept any completed unsigned ballot statement that is timely submitted. Requires the elections official, upon receipt of the unsigned ballot statement, to compare the voter's signature on the statement, as specified.
- 6) Requires an elections official, if he or she determines that the signatures compare, to attach the unsigned ballot statement to the identification envelope and deposit the ballot, still in the identification envelope, in a ballot container in his or her office. Prohibits an identification envelope, if the elections official determines that the signatures do not compare, from being opened or counted.
- 7) Requires an elections official, during the official canvass of every election in which a voting system is used, to conduct a public manual tally of the ballots tabulated by those devices, including VBM ballots, using either of the following methods:
 - a) A public manual tally of the ballots, including VBM ballots, cast in one percent of the precincts chosen at random by the elections official, as specified.
 - b) A two-part tally of the ballots, including a public manual tally of ballots, not including VBM ballots, cast in one percent of the precincts chosen at random by the elections official, as specified, and a public manual tally of not less than one percent of the VBM ballots, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Prior Assembly Consideration of this Bill:** As approved by the Assembly in April, this bill permits a voter who did not sign his or her VBM identification envelope to return a completed unsigned ballot statement by email, as specified. Subsequent to the Assembly's

approval of this bill, it was amended in the Senate to specify that the one percent manual tally of ballots cast are those canvassed during the semifinal official canvass and does not include provisional ballots. Additionally the Senate amendments specify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

2) **Purpose of the Bill:** According to the author:

The number of Californians who choose to use a vote-by-mail (VBM) ballot continues to rise. In the 2016 General Election, over 57% of California voters received their ballot by mail. In 23 counties, the VBM rate is over 70%. This makes California one of the leading states in VBM balloting. Unfortunately, California is also a leader in the number of ballots that are rejection year after year.

Voters are required to sign the envelope in which they return their [VBM] ballot. In both the 2014 and 2012 November General Election nearly 10,000 voters had their [VBM] ballot rejected because of a missing signature.

Under current law, a voter has until 5 pm on the eighth day after the election to submit a hard copy of their signature (fax, mail, or in person). To decrease the amount of rejected ballots, AB 840 modernizes the process by allowing a voter who did not sign his or her VBM envelope to electronically submit a signature through email.

Preserving and protecting voter integrity is one of the most important jobs held by the Secretary of State and County Election Officials. A recent decision in San Diego's lower court jeopardizes that. AB 840 also clarifies existing law regarding the purpose of the 1% Manual Tally, which is to ensure the automated tabulation system is counting ballots accurately during the semifinal official canvass. While this has been the accepted interpretation of the law by many election officials, without additional clarification, we put our County Registrars in danger of being unable to certify election results on schedule.

- 3) **Vote by Mail Ballot Rejection:** The California Civic Engagement Project, housed at the University of California at Davis, conducted a statewide survey of California's 58 county election offices to gain a better understanding of California's use of VBM ballots, including return methods. 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 using a VBM ballot. 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.

- 4) **Previous Legislation:** In an effort to remedy the significant VBM ballot rejection rate, in 2014 the Legislature approved and Governor Brown signed SB 29 (Correa), Chapter 618, Statutes of 2014, which allowed 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. The signing and implementation of SB 29 (Correa) represented the first time that California state law explicitly allowed any ballot which was received after election day to be counted.

Additionally, in 2015, the Legislature passed and the Governor signed AB 477 (Mullin), Chapter 726, Statutes of 2015, which allows a voter who failed to sign his or her VBM identification envelope to complete and sign an unsigned ballot statement up to eight days after the election, as specified, in order to have his or her ballot counted. AB 477 allows an unsigned ballot statement to be submitted to a polling place within the county or a ballot drop-off box. Alternately, a voter may return an unsigned ballot statement by mail, have it delivered, or submit it by facsimile. This bill further authorizes a voter to return a completed unsigned ballot statement via email, and requires the unsigned ballot statement instructions to include the election official's email address.

- 5) **Colorado Law:** AB 477 (Mullin), Chapter 726, Statutes of 2015, which set up the unsigned ballot statement process, was inspired by a Colorado election law pertaining to unsigned mail or provisional ballots. Colorado requires an elections official, if a mail or provisional ballot return envelope lacks a signature, to contact the voter in writing no later than two calendar days after election day. The elections official is required to send a letter informing the voter that he or she must sign and return a Signature Affidavit Form in person or by mail, facsimile, or email no later than eight days after the election. This bill similarly would allow unsigned ballot statements to be returned by email.
- 6) **Current Manual Tally Practice:** After an election, election officials are required to complete the official canvass and certify election results to the Secretary of State's office no later than 30 days after an election. As part of the official canvass, existing law requires elections officials to conduct a public manual tally of ballots cast in one percent of the precincts chosen at random in order to ensure that vote tabulation equipment is operating correctly before the final official canvass is completed. Current law provides two alternative methods to conduct the manual tally. The first method permits a county elections official to conduct a public manual tally of the ballots, including VBM ballots, cast in one percent of precincts chosen at random, as specified. The second method permits an elections official to conduct a two-part public manual tally, which includes a public manual tally of the ballots, not including VBM ballots, cast in one percent of the precincts chosen at random and conduct a public manual tally of not less than one percent of the VBM ballots cast in the election chosen at random, as specified. Under both methods, current law permits an elections official to select additional precincts to be added to the one percent manual tally. However, in both practices, current law does not require provisional ballots to be included.

According to a September 15, 2016 memorandum from the SOS to county elections officials, "the one percent manual tally requirement set forth in Elections Code section 15360 does not require provisional ballots or all vote-by-mail ballots to be included in the tally. Such a requirement would be inconsistent with the stated purpose of the one percent manual tally, which is to tabulate ballots in which voting system devices are used '[d]uring the official canvass.'" Additionally, the memorandum states that "Sections 15360(a)(1)(B)(i) and

(a)(2)(B)(iii)(II) specifically provide elections officials with the discretion to include additional precincts and batches of vote-by-mail ballots." Furthermore, the memorandum contends that the legislative history of Elections Code Section 15360 confirms that the interpretation of Section 15360 does not require the inclusion of provisional ballots or the inclusion of all VBM ballots.

This bill codifies the SOS's interpretation, as detailed above, of the requirement for elections officials to conduct the one percent manual tally. That interpretation is consistent with the manner in which the one percent manual tally has been conducted by many county elections officials. In other words, this bill would not require any county to change their current practice for conducting the one percent manual tally.

- 7) **San Diego County Lawsuit:** On June 16, 2016, a lawsuit was filed in the San Diego Superior Court challenging the methodology used by the San Diego Registrar of Voters (ROV) in conducting the one percent manual tally during the canvass of elections. In the court filing, petitioners contended that all VBM and provisional ballots must be included when conducting the manual tally in selected precincts. (*Citizens Oversight, Inc. v. Vu*, San Diego County Superior Court case number 37-2016-00020273-CLMC-CTL)

Per court documents, the San Diego ROV used the election night results for determining the ballots that were included in the manual tally. The election night results included all ballots cast at the polls on election day and all VBM ballots received and processed by the San Diego ROV prior to election night. The San Diego ROV did not include VBM or provisional ballots processed after election night in the manual tally.

Initially, petitioners requested a preliminary injunction to prevent the San Diego ROV from certifying the election results without first complying with the manual tally requirements as interpreted by petitioners. After an expedited briefing schedule, the court heard oral arguments on petitioners' request on July 6, 2016, one day before the San Diego ROV had to certify the election results. The court delayed action on this request until after the election had been certified, which made the request moot.

On December 19, 2016, after the November general election, the court issued a Statement of Decision wherein the court ruled that provisional ballots do not need to be included in the one percent manual tally but that all VBM ballots need to be included for precincts selected in the random draw for the one percent manual tally. Judgment was entered on January 10, 2017, and the County of San Diego and petitioner have both moved to appeal.

- 8) **Related Legislation:** AB 1154 (Nazarian), Chapter 88, Statutes of 2017, prohibits elections officials from randomly choosing the initial precincts or selecting an additional precinct for the one-percent manual tally, which is required by existing law, until after the close of the polls on election day.
- 9) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes:

AB 840 also includes clarifying language to ensure county elections officials may continue to conduct the 1% manual tally as they historically have after every election. A recent court ruling suggested that counties may have to conduct the

tally in a manner that would be near impossible for many to complete.

The tally uses ballots that were tabulated on Election Night to determine whether the machine tabulators are accurate. Ballots tabulated after Election Night may be included at the discretion of the elections officials. The tally takes several weeks for many counties.

A few counties are capable of processing and tabulating every ballot before beginning the tally. However, many counties do not complete ballot tabulation until just before the 30 day deadline to certify the election results. This is one reason why counties often conduct the tally while simultaneously completing ballot tabulation - to get both done on time. Another reason for conducting the tally and tabulation simultaneously is that elections officials are able to quickly identify and troubleshoot possible issues should they arise.

A different interpretation suggests that all counties may have to finish tabulating all ballots before beginning the tally. While this is possible for some counties, many others would not be able to complete the tally and tabulation before the certification deadline. Additionally, there are benefits to the integrity of the election to conduct them at the same time.

AB 840 simply clarifies that counties are allowed to continue completing the 1% manual tally and ballot tabulation on time while protecting the integrity of our elections, and makes it more convenient for voters to provide their missing signature by allowing them to use email.

10) Arguments in Opposition: In opposition, Kammi Foote, the Inyo County Clerk/Recorder writes:

The amendments added to AB 840 substantially change [Elections Code Section] 15360 (a)(1)(A). There are several California counties that do not interpret the provisions of [Elections Code Section] 15360 et. Seq. to only require the semiofficial vote totals to be subject to the audit, including Inyo, San Francisco, Santa Clara, Orange and Alameda. This is not an exhaustive list but is meant to illustrate that these proposed amendments are not merely codifying current practice, but changing current practice for many areas of California.

County Registrars have other checks and balances in place to ensure accurate vote total, but these rely entirely on trust in their employee and/or election volunteers. As one of the 58 Registrars that are charged with overseeing the vote tabulation process, I would like to ensure that there are codified procedures in place that do not rely simply on trust. The public deserves a process that provides them with full faith that every vote is counted as cast, and the 1% public manual tally is an important part of ensuring that the vote count is accurate. This can only be accomplished by ensuring that all ballots cast in the election will have possible inclusion in the manual count (i.e. early voting, absentee and provisional ballot).

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)
American Civil Liberties Union of California (prior version)
California Association of Clerks and Election Officials
California State Association of Counties
County of Santa Cruz (prior version)
County of San Diego
County of Sonoma
Disability Rights California (prior version)
Urban Counties of California

Opposition

California Voter Foundation
Citizens' Oversight Projects
Kammi Foote, Inyo County Clerk/Recorder
Los Angeles County Democratic Party
Sonoma County Democratic Party
Verified Voting
Approximately 6 dozen individuals

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

CONCURRENCE IN SENATE AMENDMENTS

AB 840 (Quirk)

As Amended September 7, 2017

Majority vote

ASSEMBLY: 74-0 (April 20, 2017) SENATE: 40-0 (September 12, 2017)

COMMITTEE VOTE: 6-0 (September 14, 2017) RECOMMENDATION: concur
E.&R.

Original Committee Reference: E. & R.

SUMMARY: Permits a voter who did not sign his or her vote by mail (VBM) identification envelope to return a completed unsigned ballot statement by email, as specified. Specifically, this bill:

- 1) Authorizes a voter who did not sign his or her VBM identification envelope to submit his or her completed unsigned ballot statement to the local elections official by email.
- 2) Requires the unsigned ballot statement to be signed under penalty of perjury and declare the voter is a resident of the precinct in which he or she voted and is the person whose name appears on the VBM ballot envelope.
- 3) Requires the instructions that accompany the unsigned ballot statement to inform a voter that a completed unsigned ballot statement may be submitted by email.
- 4) Requires an elections official to provide the elections official's email address on the Internet Web site containing the unsigned ballot statement and instructions.

The Senate amendments:

- 1) Specify that the one percent manual tally of ballots cast are those canvassed during the semiofficial canvass and do not include provisional ballots.
- 2) Specify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots.
- 3) Make non-substantive technical changes to the bill.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, "The number of Californians who choose to use a vote-by-mail (VBM) ballot continues to rise. In the 2016 General Election, over 57% of California voters received their ballot by mail. In 23 counties, the VBM rate is over 70%. This makes California one of the leading states in VBM balloting. Unfortunately, California is also a leader in the number of ballots that are [rejected] year after year..."

"Under current law, a voter has until 5 pm on the eighth day after the election to submit a hard copy of their signature (fax, mail, or in person). To decrease the amount of rejected ballots, AB

840 modernizes the process by allowing a voter who did not sign his or her VBM envelope to electronically submit a signature through email.

"Preserving and protecting voter integrity is one of the most important jobs held by the Secretary of State and County Election Officials. A recent decision in San Diego's lower court jeopardizes that. AB 840 also clarifies existing law regarding the purpose of the 1% Manual Tally, which is to ensure the automated tabulation system is counting ballots accurately during the semifinal official canvass. While this has been the accepted interpretation of the law by many election officials, without additional clarification, we put our County Registrars in danger of being unable to certify election results on schedule."

The California Civic Engagement Project, housed at the University of California at Davis, conducted a statewide survey of California's 58 county election offices to gain a better understanding of California's use of VBM ballots, including return methods. 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% of California's voters chose to cast their ballot using a VBM ballot. 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 a September 15, 2016 memorandum from the SOS to county elections officials, "the one percent manual tally requirement set forth in Elections Code section 15360 does not require provisional ballots or all vote-by-mail ballots to be included in the tally. Such a requirement would be inconsistent with the stated purpose of the one percent manual tally, which is to tabulate ballots in which voting system devices are used '[d]uring the official canvass.'" Additionally, the memorandum states that "Sections 15360(a)(1)(B)(ii) and (a)(2)(B)(iii)(II) specifically provide elections officials with the discretion to include additional precincts and batches of vote-by-mail ballots." Furthermore, the memorandum contends that the legislative history of Elections Code Section 15360 confirms that the interpretation of Section 15360 does not require the inclusion of provisional ballots or the inclusion of all VBM ballots.

This bill codifies the SOS's interpretation, as detailed above, of the requirement for elections officials to conduct the one percent manual tally. That interpretation is consistent with the manner in which the one percent manual tally has been conducted by many county elections officials. In other words, this bill would not require any county to change their current practice for conducting the one percent manual tally.

The Senate amendments specify that the one percent manual tally of ballots cast are those canvassed during the semifinal official canvass and do not include provisional ballots. Additionally the Senate amendments specify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots. Finally, the Senate amendments make non-substantive technical changes.

This bill was substantially amended in the Senate and as a result, this bill was re-referred to the Assembly Elections and Redistricting Committee pursuant to Assembly Rule 77.2, which subsequently recommended that the Assembly concur in the Senate amendments.

Please see the policy committee analysis for a full discussion on this bill.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

FN: 0002362

ATTACHMENT 20

CONCURRENCE IN SENATE AMENDMENTS

AB 840 (Quirk)

As Amended September 7, 2017

Majority vote

ASSEMBLY: 74-0 (April 20, 2017) SENATE: 40-0 (September 12, 2017)

COMMITTEE VOTE: 6-0 (September 14, 2017) RECOMMENDATION: concur
E.&R.

Original Committee Reference: E. & R.

SUMMARY: Permits a voter who did not sign his or her vote by mail (VBM) identification envelope to return a completed unsigned ballot statement by email, as specified. Specifically, **this bill:**

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- 2) Requires the unsigned ballot statement to be signed under penalty of perjury and declare the voter is a resident of the precinct in which he or she voted and is the person whose name appears on the VBM ballot envelope.
- 3) Requires the instructions that accompany the unsigned ballot statement to inform a voter that a completed unsigned ballot statement may be submitted by email.
- 4) Requires an elections official to provide the elections official's email address on the Internet Web site containing the unsigned ballot statement and instructions.

The Senate amendments:

- 1) Specify that the one percent manual tally of ballots cast are those canvassed during the semiofficial canvass and do not include provisional ballots.
- 2) Specify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots.
- 3) Make non-substantive technical changes to the bill.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, "The number of Californians who choose to use a vote-by-mail (VBM) ballot continues to rise. In the 2016 General Election, over 57% of California voters received their ballot by mail. In 23 counties, the VBM rate is over 70%. This makes California one of the leading states in VBM balloting. Unfortunately, California is also a leader in the number of ballots that are [rejected] year after year..."

"Under current law, a voter has until 5 pm on the eighth day after the election to submit a hard copy of their signature (fax, mail, or in person). To decrease the amount of rejected ballots, AB

840 modernizes the process by allowing a voter who did not sign his or her VBM envelope to electronically submit a signature through email.

"Preserving and protecting voter integrity is one of the most important jobs held by the Secretary of State and County Election Officials. A recent decision in San Diego's lower court jeopardizes that. AB 840 also clarifies existing law regarding the purpose of the 1% Manual Tally, which is to ensure the automated tabulation system is counting ballots accurately during the semifinal official canvass. While this has been the accepted interpretation of the law by many election officials, without additional clarification, we put our County Registrars in danger of being unable to certify election results on schedule."

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According to a September 15, 2016 memorandum from the SOS to county elections officials, "the one percent manual tally requirement set forth in Elections Code section 15360 does not require provisional ballots or all vote-by-mail ballots to be included in the tally. Such a requirement would be inconsistent with the stated purpose of the one percent manual tally, which is to tabulate ballots in which voting system devices are used '[d]uring the official canvass.'" Additionally, the memorandum states that "Sections 15360(a)(1)(B)(ii) and (a)(2)(B)(iii)(1) specifically provide elections officials with the discretion to include additional precincts and batches of vote-by-mail ballots." Furthermore, the memorandum contends that the legislative history of Elections Code Section 15360 confirms that the interpretation of Section 15360 does not require the inclusion of provisional ballots or the inclusion of all VBM ballots.

This bill codifies the SOS's interpretation, as detailed above, of the requirement for elections officials to conduct the one percent manual tally. That interpretation is consistent with the manner in which the one percent manual tally has been conducted by many county elections officials. In other words, this bill would not require any county to change their current practice for conducting the one percent manual tally.

The Senate amendments specify that the one percent manual tally of ballots cast are those canvassed during the semifinal official canvass and do not include provisional ballots. Additionally the Senate amendments specify that an elections official, when conducting the one percent manual tally, may select additional precincts, which may include VBM and provisional ballots. Finally, the Senate amendments make non-substantive technical changes.

This bill was substantially amended in the Senate and as a result, this bill was re-referred to the Assembly Elections and Redistricting Committee pursuant to Assembly Rule 77.2, which subsequently recommended that the Assembly concur in the Senate amendments.

Please see the policy committee analysis for a full discussion on this bill.

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094

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