SENATE, No. 3891

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JUNE 10, 2021

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator NIA H. GILL
District 34 (Essex and Passaic)

SYNOPSIS

Expands mail-in ballot technical defects eligible for curing; makes various changes concerning mail-in ballot cure processing and documentation.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/17/2021)

AN ACT concerning the ability of voters to cure defects in their voted mail-in ballots and amending various parts of the statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 4 of P.L.2004, c.88 (C.19:61-4) is amended to read as follows:

4. a. The Secretary of State shall establish a free-access system, such as a toll-free telephone number, an Internet website or any combination thereof, that any individual who casts a provisional ballot, mail-in ballot, or overseas ballot in all elections where they are qualified to vote, may access to ascertain whether the ballot of that individual was <u>received,</u> accepted for counting and, if the vote was not counted, the reason for the rejection of the ballot. The system shall at all times preserve the confidentiality of each voter, and shall ensure that no person, other than the individual who cast the ballot, may discover whether or not that individual's ballot was <u>received,</u> accepted<u>,</u> or rejected, unless so informed by the voter.

b. The free-access system shall be prominently displayed on the New Jersey Division of Elections website under a "Track My Ballot" user portal.

c. To applicable situations, the free-access system shall record the date that the mail-in ballot was mailed; the date that the overseas ballot was mailed or transmitted via electronic mail; the date the ballot was received <u>and the notation “Received”</u>; the notation that the ballot was "Accepted" or "Rejected;" and the code for rejection.

d. Beginning on February 1, 2021, the free-access system shall provide a publicly viewable macro-report of the total number of rejected ballots by county and by code along with the totals for votes cast by mail-in ballot, overseas ballots, and total ballots cast. This report shall be kept and made available on the Secretary of State's website for a period of 10 years.

(cf: P.L.2020, c.70, s.2)

2. Section 17 of P.L.2009, c.79 (C.19:63-17) is amended to read as follows:

17. a. The county board of elections shall, **[**promptly after**]** <u>within 24 hours of</u> receiving each mail-in ballot, <u>enter a notation “Received” into the Statewide voter registration system and the free-access system established under section 4 of P.L.2004, c.88 (C.19:61-4) for each ballot received, and shall proceed to</u> remove

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

the inner envelope containing the ballot from the outer envelope and shall compare the signature and the information contained on the flap of the inner envelope with the signature and information contained in the respective requests for mail-in ballots and the signature and information contained in the Statewide voter registration system. The county board of elections shall conduct the signature comparison in accordance with the provisions of subsection c. of section 5 of P.L.2020, c.70 (C.19:63-17.2), with the presumption that the signature on the flap of the inner envelope is the voter's signature. In addition, as to mail-in ballots issued less than seven days prior to an election, the county board of elections shall also check to establish that the mail-in voter did not vote in person. The county board shall reject such a ballot if it is not satisfied, pursuant to a comparison with the Statewide voter registration system, that the voter is legally entitled to vote and that the ballot conforms with the requirements of this act. The county board of elections shall conduct the determination of qualification of each voter in accordance with the requirements of the Certificate of Mail-in Voter pursuant to section 13 of P.L.2009, c.79 (C.19:63-13).

In the case of a mail-in ballot to be voted at a primary election for the general election, the ballot shall be rejected if the mail-in voter has indicated in the certificate the voter's intention to vote in a primary election of any political party in which the voter is not entitled to vote according to the Statewide voter registration system, and if it shall appear from the record that the voter is not entitled to vote in a primary election of the political party which has been so indicated.

Any mail-in ballot which is received by a county board of elections shall be rejected if the inner envelope is unsealed or if either the inner or outer envelope has a seal that has been tampered with. Mail-in ballots shall not be rejected due to any defect arising out of or relating to the preparation or mailing of the ballot or envelope that was not reasonably caused by the voters, such as a torn envelope and missing or insufficient glue to allow the ballot to be sealed.

Disputes about the qualifications of a mail-in voter to vote or about whether or not or how any mail-in ballot shall be counted in such election shall be referred to the Superior Court for determination, as provided under section 4 of P.L.2020, c.70 (C.19:63-17.1).

After such investigation, the county board of elections shall detach or separate the certificate from the inner envelope containing the mail-in ballot, unless it has been rejected by it or by the Superior Court, marking the envelope so as to identify the election district in which the ballot contained therein is to be voted as indicated by the voter's home address appearing on the certificate attached to or accompanying the inner envelope and, in the case of

ballots to be voted at a primary election for a general election, so as to identify the political party in the primary election of which it is to be voted.

The location at which a county board of elections determines whether a mail-in ballot shall be accepted or rejected shall be considered an election district for the purposes of appointment of challengers.

b. Any mail-in ballot received by a county board of elections that contains technical defects that would cause the ballot to be rejected, including a missing or discrepant signature, missing Certificate of Mail-in Voter, missing inner envelope, missing mail-in ballot, incomplete or incorrect information of the person who provided assistance to the voter, or incorrect outer envelope, shall be temporarily rejected and subject to curing in accordance with this subsection. The county board of elections shall, promptly after receiving each mail-in ballot, undertake the following procedures and requirements concerning the acceptance or rejection of each mail-in ballot:

(1) within 24 hours after the decision has been made to reject a voter's mail-in or provisional ballot on the basis of a missing signature or discrepant signature, missing Certificate of Mail-in Voter, missing inner envelope, missing mail-in ballot, incomplete or incorrect information of the person who provided assistance to the voter, or incorrect outer envelope, issue a "Cure Letter" by mail or email to the voter whose ballot was rejected, which shall inform the voter of that fact and provide the reasoning for rejection, and attempt to contact the voter by telephone, if a telephone number is available. The cure letter shall include a "Cure Form" and the form shall include the voter's name and instruct the voter on how to cure the alleged or actual deficiency. All cure forms shall inform voters that they have the right to receive assistance in completing the cure form and any materials necessary to cure their ballot defect, provided that the person assisting the voter completes the following assistor portion that shall be included in all cure forms: “I do hereby certify that I am the person who provided assistance to this voter. (signature, printed name, and address of person providing assistance).” Cure forms shall also include the following language: “IT IS IMPORTANT THAT YOU COMPLETE AND RETURN THIS CURE FORM AND ANY NECESSARY MATERIALS REQUESTED. If there is a discrepancy with your ballot signature and the signature on file, your updated signature on this cure form will be added to your voter registration record and will be used for signature verification in future elections. Please fully complete the form and any necessary materials and return promptly.” Cure forms shall not be referred to as affidavits or certifications and shall not be required to be sworn;

(2) when the alleged or actual deficiency involves the signature of the voter, instruct the voter that they may cure the deficiency by

completing the cure form and returning it to the county board of elections in person, by fax, or by email, not later than 48 hours prior to the final certification of the results of the election, or by returning it to the county board of elections by mail, and that the completed cure form must be received by the county board of elections not later than 48 hours prior to the final certification of the results of the election;

(3) include, with the cure letter, when sent by mail, a pre-printed cure form and a postage-paid return envelope addressed to the county board of elections which the voter may use to return the cure form [; and] . On the outside and front of all return envelopes sent to voters for the return of the necessary forms and materials to cure their ballot in accordance with this section, there shall be printed "Official Election Material" "Return Service Requested." All return envelopes shall also include a bearer authorization portion that shall be substantively the same as that required for mail-in ballot outer envelopes pursuant to section 12 of P.L.2009, c.79 (C.19:63-12);

(4) inform voters that they shall not be required to submit any form of hard-copy identification document or copy thereof in order to cure a signature deficiency, but may do so by declaring that they submitted their provisional ballot or mail-in ballot, and verifying their identity by either: (a) providing a valid New Jersey driver's license number or Motor Vehicle Commission non-driver identification number; or (b) if the voter does not have a valid New Jersey driver's license number or Motor Vehicle Commission non-driver identification number, then by providing the last four digits of their Social Security Number; or (c) if the voter does not have the identification in (a) or (b), then attaching a legible copy of a New Jersey State-accepted form of identification, including either a sample ballot which lists the voter's name and address, an official federal, State, county, or municipal document which lists the voter's name and address, or a utility bill, telephone bill, or tax or rent receipt which lists the voter's name and address; and (d) signing and dating the cure form prior to returning it;

(5) in cases of a missing Certificate of Mail-in Voter, missing inner envelope, missing mail-in ballot, incomplete or incorrect information of the person who provided assistance to the voter, or incorrect outer envelope, the county board of elections shall follow the same requirements, procedures, and timeframes established under this section, and shall issue to the voter along with the cure letter and cure form a replacement Certificate of Mail-in Voter, inner envelope, mail-in ballot, form for the person who provided assistance to the voter, or incorrect outer envelope, as the case may be, as may be necessary for the voter to cure the ballot defect;

(6) in all cases, issue the cure letter, cure form, and any other necessary materials only to the voter, provided that the voter shall be entitled to receive assistance in completing the ballot curing materials, use the messenger designated by the voter in the voter's

application to vote by mail to receive the ballot curing materials, and use a bearer to return the completed ballot curing materials, in accordance with the limits established by P.L.2009, c.79 (C.19:63-1 et seq.), and the county board of elections shall inform the voter of their right to receive assistance, use a messenger, and use a bearer; and

(7) in all cases, issue the cure letter, cure form, and any other necessary ballot curing materials in the same languages as may be required for ballots under any State or federal law, as applicable to the county.

c. If a voter returns a completed cure form and any other materials required for curing the defect, as the case may be, in a timely manner and the information provided verifies the voter's identity, pursuant to this section, their otherwise valid mail-in or provisional ballot shall be counted in the final election results irrespective of any signature deficiency previously identified and, under those circumstances, the cure form may not be verified or authenticated using signature matching.

d. In accordance with this section, variations in voter signatures caused by the substitution of initials for the first name, middle name, or both, shall not be grounds for the county board of elections to determine that the signatures are non-conforming or do not match.

e. In cases of rejected ballots, the county board of elections shall retain the voter's outer envelope, inner envelope, self-certification certificate, and mail-in ballot in a bundle unique to each voter for a period of two years in accordance with section 24 of P.L.2009, c.79 (C.19:63-24).

f. County boards of elections shall be required to meet at least once each week **[**during the three-week period**]** starting 45 days preceding each election to conduct the ballot processing and curing provisions specified in this section, and shall meet more frequently as may be required by the Secretary of State to ensure the timely processing of ballots. County boards of elections shall enter on a weekly basis into the Statewide voter registration system and the free-access system established under section 4 of P.L.2004, c.88 (C.19:61-4) the status of each ballot.

The Secretary of State shall prepare educational materials regarding this section that all employed county boards of elections employees handling ballots shall read and have available for review. The materials shall provide clear information regarding the standards for acceptance and rejection of mail-in ballots and the safe-keeping of all materials in the case of rejection. The materials shall serve an educational purpose for the county board of elections and shall not replace, supersede, or void the authority of the county board or a judge of the Superior Court to accept or reject a mail-in ballot.

g. Each county board of elections shall maintain on its website a list of the name and street address of each voter who is entitled to cure their ballot pursuant to the provisions of this section, subject to laws protecting a voter's privacy. The list shall be available starting 30 days before each election, shall be updated every 24 hours, and shall remain available until 24 hours after the certification of the election results.

h. Each county board of elections shall process the mail-in ballots in its possession in a timely manner and shall notify voters who are qualified to cure their ballot pursuant to the provisions of this section no later than eight days prior to the certification of the results election.

(cf: P.L.2020, c.71, s.12)

3. Section 5 of P.L.2020, c.70 (C.19:63-17.2) is amended to read as follows:

5. a. The Secretary of State shall prepare educational materials regarding the provisions of section 17 of P.L.2009, c.79 (C.19:63-17) that all county boards of elections persons handling ballots shall be required to read or view prior to the election. The materials shall provide clear information regarding the standards for acceptance and rejection of mail-in ballots and the safe holding of all materials in the case of rejection.

b. Prior to each election, the Secretary of State shall direct all county boards of elections and their members, agents, employees, and representatives, who shall be collectively known as the "evaluators," and who are responsible for authenticating or verifying mail-in ballots pursuant to section 17 of P.L.2009, c.79 (C.19:63-17), or authenticating or verifying provisional ballots pursuant to section 19 of P.L.1999, c.232 (C.19:53C-13), to comply with the provisions of subsection c. of this section.

c. The evaluation of each mail-in ballot shall be liberally construed in favor of the voter, and any deficiencies in the voter's mail-in ballot shall not create a presumption that the vote is improper or invalid, and shall not be considered evidence to that effect. No voter shall be disenfranchised when technical defects of the mail-in ballot caused by the voter can be reasonably cured or when chain of custody issues are surmountable. The Secretary of State and each county board of elections shall ensure that all evaluators receive, and are directed to comply with, written guidance stating as follows:

(1) when verifying signatures, evaluators shall keep in mind that everyone writes differently, and no one signs their name exactly the same way twice;

(2) some variation in signatures is to be expected;

(3) many factors can lead to signature variance, including, but not limited to, age, disability, underlying health conditions, writing

implement or surface, level of concentration, and educational background;

(4) according to studies, evaluators are more likely to declare genuine signatures to be non-genuine than they are to accept a non-genuine signature as genuine, and the goal is to prevent these errors in signature verification; and

(5) evaluators shall presume that the documents were signed by the same person and shall accept a signature as valid unless there is a clear discrepancy that cannot be reasonably explained.

d. The Secretary of State shall, not later than **[**14**]** 50 days prior to the election, publish the ballot curing process established under subsection b. of section 17 of P.L.2009, c.79 (C.19:63-17) and the signature matching guidelines required under subsection c. of this section which each evaluator shall be required to follow in determining if mail-in voter signatures match.

e. The Secretary of State shall, at least 30 days prior to the election, conduct a voter education campaign to inform voters about the **[**signature matching and**]** ballot curing provisions established by this act, P.L.2020, c.70, which campaign shall also exhort voters to update their contact information with their respective county board of elections, including their email address and telephone number, to enable the county board to contact the voter in case the need arises for the voter to cure their ballot.

(cf: P.L.2020, c.70, s.5)

4. Section 23 of P.L.2009, c.79 (C.19:63-23) is amended to read as follows:

23. On an ongoing basis as each action is completed, the county clerk shall mark in the Statewide voter registration system, which will be shared with the free-access system, to show that mail-in ballots were delivered or forwarded to the respective registered voters. For each mail-in ballot that has been voted, received and counted, the board of elections shall also, by reference to the certificates removed from the inner envelopes of such ballots, place the word "Voted" in the space provided in the Statewide voter registration system and duplicate voting record for recording the ballot number of the voter's ballot in the election. For each mail-in ballot that has been voted, received and rejected pursuant to section 17 of P.L.2009, c.79 (C.19:63-17), the board of elections shall mark as "Rejected" in the Statewide voter registration system, which will be shared with the free-access system. For each of the rejected mail-in ballots where the voter provided a cure and therefore were accepted, the board of elections shall provide an additional input as "Accepted" in the Statewide voter registration system, which will be shared with the free access system. For each mail-in ballot received, pending their acceptance or rejection, the board of elections shall provide an additional input as "Received" in the Statewide voter registration system, which shall be shared with the free access

system. In the case of the primary election for the general election, the board shall also cause to be noted in the proper space of the Statewide voter registration system or other record of voting form the first three letters of the name of the political party primary in which such ballot was voted. The record contained in the Statewide voter registration system and of voting forms in the original permanent registration binders shall be conformed to the foregoing entries in the duplicate forms.

(cf: P.L.2020, c.70, s.6)

5. This act shall take effect on January 1 next following the date of enactment.

STATEMENT

This bill expands the kind of mail-in ballot technical defects that are permitted to be corrected or cured by the voter to prevent the voter's ballot from being disqualified. This bill also makes various changes concerning the processing of mail-in ballots, curing documents, and the required documentation.

Under current law, a voter may cure a mail-in ballot when the voter's signature is missing or when the signature does not match the one on record. This bill expands the kind of technical defects eligible to be cured to include a missing Certificate of Mail-in Voter, missing inner envelope, missing mail-in ballot, incomplete or incorrect information of the person who provided assistance to the voter, or incorrect outer envelope. Under the bill, the county board of elections would issue to the voter, along with the cure letter and cure form, a replacement for the missing documents as may be necessary for the voter to cure the ballot defect.

The bill allows the voter to receive assistance in completing the ballot curing materials, use the messenger designated by the voter in the voter's application to vote by mail to receive the ballot curing materials, and use a bearer to return the completed ballot curing materials, in accordance with the limits established for mail-in ballots under current law.

The bill requires the cure letter, cure form, and any other necessary ballot curing materials to be provided in the same languages as may be required for ballots under any State or federal law, as applicable to the county. In addition, the bill provides that all cure forms must inform voters that they have the right to receive assistance in completing the cure form and any materials necessary to cure their ballot defect, provided that the person assisting the voter completes an assistor certification portion that will be included in all cure forms, along with language urging the voter to complete the materials fully and return promptly. The bill also requires the outside and front of all return envelopes sent to voters

for the return of the necessary forms and materials to cure their ballot to have printed "Official Election Material" "Return Service Requested." The return envelopes would also be required to include a bearer authorization portion substantively the same as that required for mail-in ballot outer envelopes.

The bill also makes changes to certain ballot processing and curing timeframes and deadlines. The bill requires county boards of elections, within 24 hours of receiving each mail-in ballot, to enter the notation "Received" into the Statewide voter registration system and the free-access system. County boards of elections would also be required to begin mail-in ballot processing 45 days before each election, and to enter on a weekly basis into the Statewide voter registration system and the free-access system the status of each ballot. County boards of elections would also be required to maintain on their respective websites a list of the name and street address of each voter who is entitled to cure their ballot, subject to laws protecting a voter's privacy. The list would be required to be available starting 30 days before each election, be updated every 24 hours, and remain available until 24 hours after the certification of the election results. County boards of elections would also be required to process the mail-in ballots in their possession in a timely manner and notify voters who are qualified to cure their ballot no later than eight days prior to the certification of the results election.

The bill also requires the Secretary of State to publish the ballot curing process and signature matching guidelines not later than 50 days prior to the election, instead of 14 days prior.