

Date of Hearing: April 15, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 786 (Levine) – As Introduced February 25, 2015

**SUBJECT:** National Voter Registration Act of 1993.

**SUMMARY:** Makes changes to current law to ensure compliance with the federal National Voter Registration Act (NVRA) of 1993, as specified. Specifically, **this bill:**

- 1) Requires the Department of Motor Vehicles (DMV) in coordination with the Secretary of State (SOS), to the extent the State's Plan for implementation of the federal NVRA is inconsistent with the NVRA, to take additional steps to fully implement and further comply with Section 20504 of Title 52 of the United States Code.
- 2) Prohibits a county elections official, upon notification by the DMV that a voter registered to vote in the county has moved to a different county, from canceling that voter's prior registration until the voter is registered in the county to which he or she has moved, except at the voter's request.

**EXISTING LAW:**

- 1) Requires each state to offer voter registration services at motor vehicle agency offices, offices that provide public assistance, offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, Armed Forces recruitment offices, and other state and local offices within the state designated as NVRA voter registration agencies.
- 2) Requires the DMV to provide the opportunity to register to vote to individuals who apply for, renew, or change an address for a driver's license or personal identification card issued by the DMV.
- 3) Requires a driver's license or identification application to be used as an application for voter registration, unless the applicant fails to sign the application.
- 4) Requires change of address information received by the DMV to be used for the purpose of updating voter registration records, unless the registrant chooses otherwise.
- 5) Provides a person may not be registered to vote except by affidavit of registration.
- 6) Provides that a properly executed affidavit of registration is deemed to be effective upon receipt of the affidavit by the county elections official if received on or before the 15th day before election day, postmarked on or before the 15th day prior to the election and received by mail by the county elections officials, or submitted to the DMV or accepted by any other public agency designated as a voter registration agency on or before the 15th day prior to the election.

- 7) Permits a county elections official to cancel the prior registration of a voter who has moved to a different county after it attempts to confirm the voter's change of address, as specified. Permits the cancellation if the change-of-address notice comes from the DMV or another designated agency, and if the voter initiates the request or verifies, in writing, that he or she has moved to a different county.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

In 1993, Congress signed into law a measure intended to make it easy for Americans to register to vote when they apply for a driver's license. More than two decades later, California has yet to comply with that law. It is unacceptable for the DMV to ignore federal law. We need to make it easy for Californians to register to vote.

AB 786 will require the DMV to finally begin complying with the 22 year old federal "Motor Voter" law by allowing eligible voters to utilize the driver's license and California ID card application or renewal form as a voter registration form as well.

AB 786 creates an opt-in approach to registering voters at the DMV. The opt-in approach of AB 786 assures that voters are offered the opportunity to sign a statement under penalty of perjury that they are eligible to vote and the opportunity to designate a party affiliation.

This bill also addresses recent reports indicating that voters are being removed from the rolls against their will when they move from one county to another. These voters rely on DMV to process their voter registration change of address. However, DMV and the county elections offices fail to process the change of address in a timely manner. This bill simply provides that in such cases, the voter cannot be removed from one county until they are added onto the other county.

- 2) **National Voter Registration Act:** On May 20, 1993, President Bill Clinton signed into law the NVRA, which had an effective date of January 1, 1995. Also known as the "Motor Voter Act," the enactment of the NVRA was intended to enhance and increase voting opportunities for eligible voters to register to vote and maintain their registration. In addition to other methods of voter registration, the NVRA requires states to provide the opportunity to apply to register to vote for federal elections through various methods. Section 5 of the NVRA requires states to offer voter registration opportunities at motor vehicle agencies. Section 6 of the NVRA requires states to provide voter registration opportunities by mail-in application. Finally, Section 7 of the NVRA requires states to offer voter registration opportunities at all offices that provide public assistance or state-funded programs primarily engaged in providing services to persons with disabilities. Armed Forces recruitment offices must also provide voter registration services. Section 7 of the NVRA also requires a state to designate "other offices" within the state as voter registration agencies. In addition to expanding opportunities to register to vote, the NVRA imposes requirements on states to protect the integrity of the electoral process and ensure that accurate and current voter registration rolls are maintained.

On August 12, 1994, the Governor Pete Wilson signed Executive Order W-98-94 directing state and local agencies to implement the NVRA only to the extent that federal funding was provided.

- 3) **How Does The Current Process Work?** According to the SOS's 2011 NVRA Manual, every person who visits a DMV office to apply for or renew a driver's license or identification card or to change an address receives a voter registration card (VRC). Every person who receives a driver's license or identification renewal form by mail also receives a VRC. The VRC can be used to register to vote or to re-register after a change in name, address, or party preference. When voters update their address with a DMV office, the new address is sent electronically to the SOS's statewide voter registration database, which then shares the information with county elections officials who update voter registration records. When voters move to a new county, the DMV instructs them to complete a new VRC. The DMV accepts completed VRCs and forwards them to the SOS or the county where the voter lives.

The NVRA clearly prohibits an individual who wants to register to vote from being required to provide any information that duplicates information already required on the driver's license form, except for other information that is necessary to determine an individual's eligibility to registration to vote. Similarly, federal law requires a DMV change of address form to serve as a notification of a change of address for voter registration, unless the individual states otherwise. However, according the representatives from the DMV and the SOS, the current process is a two-step process. For instance, a person applying for a driver's license must fill out an additional VRC to register to vote. Furthermore, a person that moves to a new county is required to fill out a separate VRC to change the address at which he or she is registered to vote.

- 4) **Implementing NVRA History:** When the NVRA took effect in 1995, several states failed to take the steps necessary to comply with the law and several also challenged the constitutionality of the federal mandate. States involved in the first round of cases included California, Illinois, Michigan, Mississippi, Pennsylvania, New York, South Carolina, Vermont, and Virginia.

Three separate lawsuits concerning California's implementation of the NVRA were filed in federal court: *Voting Rights Coalition v. Pete Wilson*, *Pete Wilson v. United States of America*, and *United States of America v. Pete Wilson*. All three cases were combined into a single proceeding and were heard before a federal district court in San Jose on March 2, 1995. The court found the NVRA constitutional, despite the lack of federal funding provided to states, and the court ruled that California was obligated to implement the NVRA. The court ordered the state to submit an implementation plan to the court for review to ensure conformity of the requirements of the NVRA.

The plan submitted by the state would have brought California into compliance with the requirements of the NVRA, however, there was one notable exception with respect to the method by which a person may register to vote at the DMV.

As mentioned above, the NVRA explicitly requires a driver's license or identification application to be used as an application for voter registration, unless the applicant fails to

sign the application. Additionally, NVRA provides that the voter registration portion of a driver's license application may not require any information that duplicates information required in the driver's license portion of the form, other than a second signature or other information that is necessary to determine an individual's eligibility to register to vote.

Despite the NVRA's clear requirements, the state's court-approved implementation plan instead called for a two-page application – one page for the driver's license application and one page for the voter registration form.

Prior bill analyses suggest the rationale for this two-page plan was due to cost, as the NVRA did not provide states with any direct funding or any mechanism for reimbursement of the costs associated with its implementation. The cost to create a single, computer generated form to serve as both a driver's license and voter registration application would have been significant.

- 5) **Is This Bill Necessary?** According to the SOS's 2011 NVRA Manual, the NVRA did not require the adoption of state law to give it effect, thus California did not adopt implementing statutes or regulations under the NVRA. Furthermore, once the federal court reviewed and approved the plan for conformity with the requirements of the NVRA, it was confirmed that the issue of Motor Voter had been decided by the federal court and thus was moot.

However, as mentioned above, while California's NVRA Implementation Plan was approved by a federal court, a strict reading of the NVRA would suggest that the state does not fully comply with the NVRA. This bill has the potential to highlight this matter and finally bring California into full compliance with Motor Voter.

In fact, earlier this year a letter was sent to the SOS from ACLU Foundation of San Diego and Imperial Counties, Dēmos, Morrison & Forester LLP, and Project Vote stating that California is engaging in continuous and ongoing violations of Section 5 of the NVRA. The letter also stated that it constituted a formal notice of their intent to initiate litigation at the end of the statutory 90-day waiting period should California fail to remedy the violations of Section 5 of the NVRA, as specified.

- 6) **Change of Address:** The NVRA permits a county elections official to cancel the prior registration of a voter who has moved to a different county after it attempts to confirm the voter's change of address, as specified. In addition, existing law permits cancellation if the change-of-address notice comes from the DMV or another designated agency or if the voter initiates the request. Moreover, state law permits a county elections official to cancel the prior voter registration of a voter who verifies in writing that he or she has moved to a different county.

According to the SOS's NVRA Handbook, the DMV collects and transmits electronic change-of-address data to elections officials on a daily basis, which allows for automatic change-of-address updates for many voters. The elections official, however, may not automatically update the addresses of voters who move from one county to another because current law requires voters who move to a new county to re-register to vote by completing and signing a new VRC. This bill prohibits a county elections official, upon notification by the DMV that a voter registered to vote in the county has moved to a different county, from canceling that voter's prior registration until the voter is registered in the county to which he

or she has moved, except at the voter's request. According to the author's background information, in many cases, when a voter moves from one county to another, the DMV and the counties do not share information or coordinate. Consequently, the voter may be removed from the rolls of the county that the voter left, but is not yet added to the rolls of the county to which the voter is moving. This means that the voter is not registered to vote anywhere in California even though the voter intends to vote and believed that by making the change of address at the DMV, this change would automatically update the voter registration as well.

In practice, this bill allows an individual to be registered in two counties until the new county where the voter has re-registered contacts the previous county of registration. However, according to the SOS's office, VoteCal, the federally required statewide voter database, should resolve this process because under VoteCal a voter will have a single voter file that will follow them when they move, between and within counties. When a voter moves from one county to another, the voter record will be maintained at the original address (in the originating county) until the record is updated. If there is a match between a change of address transaction and an existing voter record, VoteCal will automatically update the existing voter registration record with the new data. VoteCal is currently scheduled to be fully operational in June 2016.

- 7) **Related Legislation:** AB 1461 (Gonzalez), which is pending in the Assembly Transportation Committee, would require the SOS to use records from the DMV to automatically register to vote those individuals who are eligible, as specified.
- 8) **Previous Legislation:** AB 1122 (Levine) of 2013, which was substantially similar to this bill, was held on the Assembly Appropriations Committee's suspense file.

SB 35 (Padilla), Chapter 505, Statutes of 2012, added the California Health Benefit Exchange to the list of public assistance agencies required by the NVRA to provide voter registration opportunities and codified various other provisions of the NVRA.

- 9) **Double-Referral:** This bill has been doubled referred to the Assembly Transportation Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

None on file.

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