

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1033 (Donnelly) – As Amended: April 1, 2013

SUBJECT: Corruption of voters.

SUMMARY: Prohibits a person from giving anything of value to a voter to induce the voter to vote or to reward the voter for voting. Specifically, this bill:

- 1) Makes it a felony, punishable by imprisonment for 16 months, two years, or three years, for a person or controlled committee, directly or through any other person or controlled committee, to pay, lend, or contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration to or for any voter, or to or for any other person, to do either of the following:
 - a) Induce any voter to vote at an election; or,
 - b) Reward any voter for having voted at an election.
- 2) Provides that the provisions of this bill shall not be interpreted to prohibit a person from offering or accepting transportation to or from a polling place or another location where a ballot may be cast.

EXISTING LAW:

- 1) Makes it a felony for a person, directly or through another person, to give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:
 - a) Refrain from voting; or,
 - b) Vote or refrain from voting for any particular person.
- 2) Makes it a felony for a person, directly or through any other person, to receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:
 - a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure;
 - b) Remained away from the polls;
 - c) Refrained or agreed to refrain from voting; or,

- d) Induced any other person to remain away from polls, refrain from voting, or vote or refrain from voting for any particular person or measure.
- 3) Makes it a felony for a person or a controlled committee, directly or through any other person or controlled committee, to pay, lend, or contribute, or offer or promise to pay, lend or contribute, any money or other valuable consideration to or for any voter or to or for any other person to:
- a) Induce any voter to:
 - i) Refrain from voting at any election;
 - ii) Vote or refrain from voting at an election for any particular person or measure; or,
 - iii) Remain away from the polls at an election.
 - b) Reward any voter for having:
 - i) Refrained from voting;
 - ii) Voted for or refrained from voting for any particular person or measure; or,
 - iii) Remained away from the polls at an election.
- 4) Provides that a violation of any of the above felonies shall be punishable by imprisonment for 16 months or two or three years.
- 5) Makes it a federal crime, punishable by no more than two years in prison, by a fine, or by both a fine and imprisonment, to make or offer to make an expenditure to any person in exchange for that person voting at a federal election or for registering to vote.
- 6) Makes it a federal crime, punishable by a fine of not more than \$10,000 or imprisonment not more than five years, or both, for a person to pay, offer to pay, or accept payment for registering to vote or for voting in federal elections.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

COMMENTS:

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

In conforming state law to federal law, through prohibiting ... paying an individual to alter his/her voting behavior in any election, this bill preserves the integrity of California's electoral process and holds [people] responsible for acting in good faith and in good conscience. This bill also ensures that voters participate in our democratic system, without manipulation or perverse incentive.

- 2) Federal Law: State law prohibits a person from giving anything of value to a voter for having refrained from voting. However, state law does not currently prohibit a person from giving a voter something of value for having voted, or to induce a voter to vote, provided that such payment is not dependent on voting for or against a particular person or candidate.

At least two provisions of federal law, on the other hand, prohibit a person from making a payment or expenditure to a person for voting in a federal election. 18 U.S.C. 597 provides that any person who "makes or offers to make an expenditure to any person . . . to vote" shall be fined, imprisoned for up to two years, or fined and imprisoned. Additionally, 42 U.S.C. 1973i provides that any person who "pays or offers to pay or accepts payment . . . for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

However, these provisions apply only to elections in which a candidate for federal office is on the ballot. As a result, these provisions apply to most statewide elections, since regularly scheduled statewide elections include congressional races. Similarly, the federal law prohibitions would apply to any special election held to fill a vacancy in the United States Senate or the United States House of Representatives.

For any election that does not have a federal race on the ballot, however, these federal prohibitions do not apply. As such, these provisions would not apply to any special election at which voters are only considering ballot measures or candidates for state and local office, nor would they apply to regularly scheduled local elections that are not held at the same time as federal elections.

- 3) Should Inducements Be Prohibited? As a means of increasing voter turnout, a campaign or a small business owner will occasionally offer a small inducement to voters who cast a ballot. Candidates occasionally have offered food or small gifts to voters who can prove that they voted in an election, while restaurant owners and other small business owners occasionally have offered discounts or free items to voters who can prove that they voted. Under existing state law, this inducement can be made only if it is without regard for the way that the person voted on the candidates and measures that are on the ballot and if no federal candidate appears on the ballot. Recent special elections have resulted in low voter turnout. For example, the March 12, 2013 special primary election for the 32nd Senate District had just a 9.15 percent voter turnout. Given the fact that these voter inducements can only be offered at non-federal elections, when voter turnout generally is low, is it desirable to restrict creative attempts to boost voter participation?
- 4) Previous Legislation: AB 1133 (Niello) of 2009, would have made it a felony for a person to offer, give, or receive anything of value in exchange for voting or registering to vote, or as an inducement for voting or registering to vote. AB 1133 was approved by this committee, but failed passage in the Assembly Public Safety Committee.

This bill is similar to AB 2227 (Furutani) of 2008. AB 2227 was approved in the Assembly, but died in the Senate when it was referred to the Senate Elections, Reapportionment and Constitutional Amendments Committee and never heard in that committee.

AB 929 (Brewer) of 1999, would have prohibited a person from giving anything of value to a voter to induce the voter to vote or to reward the voter for voting, and would have prohibited

a person from receiving anything of value in exchange for having voted. AB 929 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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