

Date of Hearing: March 19, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 214 (Skinner) – As Amended: March 4, 2013

SUBJECT: Voting: state of emergency.

SUMMARY: Requires the Secretary of State (SOS), by December 31, 2014, to establish procedures and publish guidelines for voting in the event of a natural disaster or other state of emergency. Requires the SOS to submit a report to the Legislature on the readiness of the state to hold elections during or following a natural disaster or other state of emergency. Requires the report to be submitted in accordance with current law, and makes this requirement inoperative on December 31, 2018, as specified by current law.

EXISTING LAW:

- 1) Designates the SOS as the chief elections officer of California.
- 2) Permits the Governor, during a state of war or a state of emergency, to suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency.
- 3) Permits the Governor, during a state of war emergency or state of emergency, to make, amend, and rescind orders and regulations that have the force and effect of law. Requires all orders, regulations, amendments, or rescissions be issued in writing and take effect immediately upon their issuance. Requires the orders and regulations to have no further force or effect once the state of war emergency or state of emergency has been terminated.
- 4) Requires elections officials to provide a sufficient number of official ballots in each precinct on election day, as specified. Requires the elections official to provide additional ballots that may be necessary for vote by mail and emergency purposes.
- 5) Permits elections officials to set up satellite voting locations. Requires the elections official, when setting up a satellite location, to issue a general news release not later than 14 days prior to voting at the satellite location. Requires a county with a declared emergency or disaster to issue a public notice not later than 48 hours prior to voting at the satellite location.
- 6) Requires an elections official, upon the declaration of a state of emergency by the Governor and the issuance of an executive order authorizing an emergency worker to cast a ballot outside of his or her home precinct, to issue an emergency worker a provisional ballot, as specified. Defines an emergency worker as a person who is officially engaged in responding to the proclaimed state of emergency and whose vocation has been identified in an executive order relating to the state of emergency.

FISCAL EFFECT: Unknown

COMMENTS:

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

The rights to vote and to have one's vote counted are fundamental tenets of a democracy and are explicitly guaranteed by the Constitution of California. Unpredictable natural disasters, many of which, such as wildfires, storms, floods, and earthquakes, are common in California, reduce voting accessibility. National attention was brought to this issue when "Superstorm" Sandy made landfall in the United States on October 29, 2012, eight days before the general election, displacing tens of thousands and interfering with the ability of those affected by the storm to vote. Natural disasters on a similar scale have impacted California before, though not so close to an election; for example, the 1989 Loma Prieta earthquake displaced more than 12,000 people, and the 1994 Northridge earthquake displaced more than 20,000.

This bill will help to ensure Californians' voting rights are not hindered by natural disasters. The guidelines and practices that will be developed as a result of this bill will lead to the development of contingency plans that the state can fall back on in the case of a natural disaster or other emergency. And the report on the preparedness of the state to administer an election in the event of an emergency will further this purpose and lead to improvements in these plans.

2) Can Never Be Too Prepared: As mentioned above, Hurricane Sandy, which occurred during the 2012 November general election, was an eye opening experience that prompted many states to question and consider whether they were ready and prepared for the next emergency. In times of emergencies, having clear direction on what is permitted and what is not can be helpful. The provisions of this bill, which require the SOS to establish procedures and guidelines for voting in the event of a natural disaster or emergency, could be helpful for jurisdictions that are conducting elections during or after a disaster or emergency, however, they would not carry the force of law and therefore would not be required to be followed.

Furthermore, nothing in current law prohibits the SOS from providing guidance now. In fact, the SOS periodically provides written guidance and information to the county elections officials to help ensure a smooth electoral process. These written advisories are commonly known as CCROVs as they are directed to the County Clerks & Registrars of Voters. All of these written advisories are posted on the SOS's website shortly after they are provided to county elections officials. Due to the fact that the SOS already has the authority and ability to issue guidance, the committee may consider whether adopting regulations would be a better way to ensure compliance and uniformity across the state, so that all voters are being treated the same.

Conversely, because California is comprised of 58 geographically diverse counties there may not be a one-size-fits all approach for crafting regulations. In addition, many county elections officials already have emergency plans in place for their respective jurisdictions. Consequently, having guidelines in place, as opposed to regulations, may be more helpful to ensuring each jurisdiction has the ability to tailor their plans to the unique needs of their respective jurisdiction and electorate.

- 3) Counties as a Resource: As mentioned above, many county elections officials already have disaster plans and procedures in place for their respective jurisdictions should an emergency occur while an election is happening. These contingency plans could be helpful resources for developing the state guidelines and procedures required under the provisions of this bill. To ensure the county elections officials are included in the development of the procedures and guidelines, the committee may wish to adopt the following amendment suggested by committee staff. On page 2, starting on line 3, insert the following after the word "emergency."

"The Secretary of State shall consult with county elections officials when developing the procedures and guidelines."

- 4) Efforts on the Federal Level: To support state efforts aimed at establishing sound administrative election practices in emergency conditions, the members of the National Association of Secretaries of State (NASS), earlier this year, created the NASS Task Force on Emergency Preparedness for Elections. The task force is a national initiative, formed in the wake of Hurricane Sandy, which struck the East Coast just days before the presidential election on November 6, 2012. The effort, which includes chief state election officials from twenty-two states and the District of Columbia, will focus on identifying laws and practices that enhance the ability of state election officials to prepare for, and respond to, emergency situations. The task force also works closely with other stakeholder organizations, including the National Emergency Management Association and the Federal Emergency Management Agency. Secretary of State Debra Bowen is a member of the newly formed task force. According to the NASS website, the task force convened a conference call earlier this month to determine the range of issues that will be researched. Emergency planning and response issues that arose due to Hurricane Sandy included emergency voting/absentee ballot procedures, state-local/municipal information sharing and emergency communications, equipment shortages, emergency authority issues, and continuity of elections. Additionally, the task force is planning to release a white paper early next year.
- 5) Other States: According to the NASS Task Force on Emergency Preparedness for Elections, the following states have emergency response laws in place authorizing election contingency plans in the event of an emergency: Florida, Georgia, Hawaii, Iowa, Louisiana, Maryland, New York, North Carolina, and Virginia. In addition, Delaware, Connecticut, and South Dakota have enacted election-related state of emergency statutes within the last two years. This year, Alabama and Oklahoma have introduced laws authorizing election contingency plans in the event of an emergency.
- 6) Suggested Amendment: To provide transparency to the process and make the procedures and guidelines easily accessible, the committee may wish to adopt the following amendment suggested by committee staff. On page 2, starting on line 3, insert the following:

"The Secretary of State shall post the procedures and guidelines on his or her Internet Web site."

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
League of Women Voters of California

Opposition

None on file.

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