

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

SB 439 (Allen) – As Amended June 11, 2015

SENATE VOTE: 23-12

SUBJECT: Election procedures.

SUMMARY: Permits elections officials to offer conditional voter registration at satellite offices prior to election day, as specified. Establishes processes and procedures for the review and approval of ballot on demand systems and electronic poll books, as defined, for use in California elections. Specifically, **this bill:**

- 1) Permits a county elections official to offer conditional voter registration and provisional voting at satellite offices on days prior to election day, in addition to election day.
- 2) Defines a "ballot on demand system" to mean a self-contained system that allows users to do any of the following on an as-needed basis:
 - a) Manufacture or finish ballot sheets or unfinished ballot cards;
 - b) Manufacture or finish card stock; or,
 - c) Finish unfinished ballot cards into ballot cards.
- 3) Requires the Secretary of State (SOS) to adopt regulations governing the manufacture, finishing, quality standards, distribution, and inventory control of ballot on demand systems. Requires the SOS to approve each ballot on demand system before deploying the system for use in California elections.
- 4) Requires a ballot on demand system vendor, not later than five working days before the SOS begins his or her initial inspection, to disclose to the SOS in writing any known flaw or defect in its ballot on demand system that could adversely affect the future casting or tallying of ballots. Requires a ballot on demand system vendor, once the system is approved by the SOS, to notify the SOS and the affected local elections officials in writing within two business days after it discovers any flaw or defect in its ballot on demand system that could adversely affect the future casting or tallying of votes.
- 5) Prohibits a jurisdiction from purchasing, leasing, or contracting for a ballot on demand system unless the ballot on demand system has been certified by the SOS. Prohibits a vendor, company, or person from selling, leasing, or contracting with a jurisdiction for the use of a ballot on demand system unless the ballot on demand system has been certified by the SOS. Provides that a jurisdiction is not precluded from conducting research and development of a ballot on demand system. Prohibits a ballot on demand system that is used for research and development purposes from being used in an election unless the system has been certified by the SOS.

- 6) Requires the SOS to promulgate regulations for the purpose of certifying ballot on demand systems.
- 7) Defines an "electronic poll book" to mean an electronic list of registered voters that may be transported to the polling location. Requires an electronic poll book to contain the same information that is required on the paper roster pursuant to existing law.
- 8) Prohibits an electronic poll book from being used unless it has been certified by the SOS.
- 9) Requires the SOS to adopt and publish electronic poll book standards and regulations governing the certification and use of electronic poll books. Prohibits the SOS from certifying an electronic poll book unless it fulfills the requirements of this bill and the SOS's standards and regulations.

EXISTING LAW:

- 1) Provides that a properly executed affidavit of voter registration shall be deemed effective upon receipt by the elections official if postmarked or received on or before the 15th day prior to an election to be held in the registrant's precinct.
- 2) Authorizes a person who is otherwise qualified to register to vote to complete a conditional voter registration and cast a provisional ballot during the 14 days immediately preceding an election or on election day, as specified.
- 3) Requires county elections officials to offer conditional voter registration and provisional voting at its permanent offices, and permits them to offer this type of registration and voting at satellite offices on election day.
- 4) Specifies that conditional voter registration becomes operative on January 1 of the year following the year in which the SOS certifies that the state has a statewide voter registration database that complies with the requirements of the federal Help America Vote Act of 2002 (HAVA). It is anticipated that this statewide voter database will become operative in 2016, therefore conditional voter registration will commence in 2017.
- 5) Requires the SOS to adopt regulations governing the manufacture, finishing, quality standards, distribution, and inventory control of ballot cards and requires the biennial inspection of the manufacturing, finishing, and storage facilities involving ballot cards.
- 6) Requires the SOS to approve each ballot card manufacturer or finisher before a manufacturer or finisher provides ballot cards for use in California elections.
- 7) Requires a ballot card manufacturer or finisher, not later than five working days before the SOS begins his or her initial inspection, to disclose to the SOS in writing any known flaw or defect in its ballot card manufacturing or finishing process or manufactured or finished ballot cards that could adversely affect the future casting or tallying of ballots. Requires a ballot card manufacturer or finisher, once approved by the SOS, to notify the SOS and the affected local elections officials in writing within two business days after it discovers any flaw or defect in its ballot card manufacturing or finishing process or manufactured or finished ballot cards that could adversely affect the future casting or tallying of votes.

- 8) Requires each precinct board to keep a roster of voters who have voted at the precinct, as specified.
- 9) Requires an elections official to furnish to the precinct officers, among other things, printed copies of the index to the affidavits of registration for that precinct.

FISCAL EFFECT: Unknown

COMMENTS:

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

SB 439 would allow a county elections official to offer voter registration and voting at satellite offices during the entire 14 days immediately preceding Election Day and establish criteria for the use of ballot on-demand (BOD) printing systems and electronic poll books to facilitate this process as well as other early voting efforts.

Legislation providing for Election Day voter registration in California was approved in 2012 but will not be implemented until 2017. Under this pending system county elections officials must offer voter registration and concurrent voting by provisional ballot to any qualified elector at the official's office during the 14 days following the normal close of registration through Election Day. They may also offer this convenience to electors at satellite office locations but can only do so on Election Day itself.

BOD printing systems are used in elections official's offices and other locations in order to provide any voter with his or her proper ballot regardless of the precinct to which the voter is assigned. While some counties are currently using BOD printing systems that have been approved by prior Secretaries of State, current statutes require the approval process to be conducted on a county by county (and location by location) basis which is very cumbersome and serves as a disincentive for counties to participate. For instance, if a single county wants to use a BOD system, that county would have to seek separate approval for each location where they anticipate usage.

Electronic poll books will ultimately permit early voting sites and traditional polling places to be linked to state and/or county voter databases which could be accessed for voting integrity purposes and eventually reduce the need for expensive and time consuming provisional balloting.

As a way of accommodating what should be an enormous number of last-minute registrants, SB 439 will allow county elections officials to offer voter registration and voting at satellite offices during the entire 14 days immediately preceding Election Day in addition to their main offices. In order to facilitate this process more securely, cost-effectively and make the experience quicker and more convenient for voters, SB 439 will also establish clear statutory authority and criteria for the use of BOD printing systems and electronic poll books.

- 2) **VoteCal:** VoteCal is a federally required statewide voter registration database that complies with the requirements of HAVA. It will provide a single, uniform, centralized voter registration database. According to the SOS's office, VoteCal's implementation will begin

with five pilot counties in July 2015, and the remaining counties will deploy in groups with full deployment expected in June 2016. VoteCal's many functions will provide improved service to the voters of California by connecting the SOS and all 58 county elections offices together to improve the voter registration process, provide a publicly available website which will allow voters to register online, and provide a single, official statewide database of voter registration information.

- 3) **Pending Same-Day Registration in California:** In 2012, the Legislature approved and Governor signed AB 1436 (Feuer), Chapter 497, Statutes of 2012, which established conditional voter registration, also known as "same-day" registration, in California. Specifically, current law authorizes a person who is otherwise qualified to register to vote to complete a conditional voter registration and cast a provisional ballot at the elections official's permanent office during the 14 days immediately preceding an election or on election day. In addition, current law permits conditional voter registration at elections official's satellite office on election day only. After receiving a conditional voter registration, current law requires an elections official to determine the registrant's eligibility to register to vote and validate the information, as specified. If the conditional voter registration is deemed effective, the registrant's provisional ballot is included in the official canvass.

According to the author, while current law requires county elections officials to offer voter registration and concurrent voting by provisional ballot at the official's permanent office during the 14 days following the normal close of registration through election day, it limits this convenience to electors at satellite office locations to only election day. This bill instead authorizes a county elections official to offer conditional voter registration and provisional voting at satellites offices on other days instead of only on election day.

- 4) **Election Day Voter Registration in Other States:** According to a 2015 report by the National Conference of State Legislatures (NCSL), 10 states and the District of Columbia offer same-day registration, which allows any qualified resident of the state to go to the polls or an election official's office on election day, to register to vote that day, and cast a ballot. Hawaii, similar to California, has enacted same-day registration, but has not yet implemented it. According to the report, Illinois piloted same-day registration at limited locations during the 2014 general election and made it permanent earlier this year, with a statewide implementation date in June of this year.
- 5) **Ballot on Demand Systems:** A ballot on demand system is a device that can print ballots on demand for use in elections. In practice, ballot on demand systems are used in elections official's offices and other locations in order to provide any voter with his or her proper ballot regardless of the precinct to which the voter is assigned. Proponents argue that ballot on demand systems help reduce election administrative costs by limiting the need to pre-print and transport ballots to polling places.

Current law requires a ballot on demand system to be approved using the same approval process that is in place for commercial ballot printing operations. Consequently, a ballot on demand system's approval process must be conducted on a county by county (and location by location) basis. For instance, if a single county wants to use a ballot on demand system, that county would have to seek separate approval for each location where they anticipate usage. According to the author, this is very cumbersome and may serve as a disincentive for counties to participate. According to the SOS's website, 18 ballot on demand systems have

been approved for use in 13 counties. The counties of Butte, Sacramento, and Santa Barbara each have two ballot on demand systems approved for use at different locations in their respective counties and San Bernardino has been approved to use three systems at three different locations within the county.

This bill makes significant changes to the current ballot on demand approval process. First, this bill redefines what it means to be a ballot on demand system. Specifically, this bill defines a ballot on demand system to mean a self-contained system that allows users to do the following on an as-needed basis: manufacture or finish ballot sheets or unfinished ballot cards; manufacture or finish card stock; or, finish unfinished ballot cards into ballot cards. In addition, instead of requiring ballot on demand systems to be approved similar to ballot printing operations, this bill creates a new certification and approval process for ballot on demand systems. Specifically, this bill requires the SOS to adopt regulations governing and certifying a ballot on demand system for use in California elections, as specified. Moreover, this bill requires the SOS to approve each ballot on demand system before the system is deployed for use in an election. Finally, this bill prohibits a jurisdiction from purchasing and a vendor from selling a ballot on demand system unless the system has been certified by the SOS, as specified.

- 10) **Electronic Poll Books:** An electronic poll book is an electronic version of the traditional paper poll book which contains a list of the registered voters in each precinct or district. An electronic poll book typically looks like a tablet or laptop computer and is used to more quickly and accurately check in a voter at his or her precinct or voting sites. Many electronic poll books have a variety of other functionalities. For example, many electronic poll books have the capability to allow a poll worker to look up voters from the entire county or state, connect to a county or state voter registration database, notify a poll worker if a voter has already voted, allow a voter to sign in electronically, produce turnout numbers and lists of those who have voted, and receive immediate updates on who has voted in other voting jurisdictions.

In California, however, electronic poll books are in their infancy and simply serve as an electronic list of registered voters in the precinct or district. There are approximately three counties (Nevada, Solano, and Humboldt) that currently use electronic poll books on an experimental basis. According to proponents, despite their current limited capacity, electronic poll books are beneficial to poll workers and voters. They provide poll workers with the ability to locate a voter's information more quickly and accurately compared to the traditional paper list. In addition, electronic poll books allow poll workers to more easily redirect a voter who is at an incorrect polling place to the correct location.

This bill breaks new ground and creates a new election-related policy that permits a county elections official to use new technology to assist in checking voters in at polling places and other voting sites and sets up processes and procedures for the review and approval of electronic poll books for use in California elections. Specifically, this bill defines an electronic poll book to mean an electronic list of registered voters that may be transported to the polling location and requires it to contain the same information that is required on the paper roster pursuant to existing law. In addition, this bill requires the SOS to adopt and publish electronic poll book standards and regulations governing the certification and use of electronic poll books and prohibits an electronic poll book from being used unless it has been certified by the SOS. In doing so, this bill will ensure this technology is secure and promotes

the integrity of the election.

- 6) **Presidential Commission on Election Administration:** The Presidential Commission on Election Administration was established by Executive Order on March 28, 2013. Its mission is to identify best practices in election administration and to make recommendations to improve the voting experience. In 2014, after a six-month extensive examination of how elections are conducted throughout the United States, the Commission submitted a report and recommendations to the President of the United States. The report focused not only on the problems of election administration for all voters, but also on the effect of administrative failures on specific populations such as voters with disabilities, those with limited English proficiency, and military and overseas voters. The Commission made various recommendations and suggested best practices. The four main recommendations focus on voter registration, access to the polls, polling place management, and voting technology. Included in the polling place management recommendation, the Commission recommended that jurisdictions transition to using electronic poll books. Specifically, the report stated that the electronic poll book "provides greater flexibility to those who are checking in people to vote, compared to the traditional paper list. In some cases, the [electronic poll book] has real-time access to the county or state voter list, which allows poll workers even greater flexibility in dealing with voter registration problems that emerge on Election Day." In addition, the report contended that electronic poll books can "help reduce poll worker errors frequently associated with paper-based voter check-in process" as poll workers "sometimes fail to check-in voters, distribute the wrong ballots, or send voters to the wrong polling place." Moreover, the report states that electronic poll books can be "instrumental in gathering data on wait times and traffic, as they keep track of when voters arrive and check-in" and "save money otherwise spent each election on the generation of thousands of pages of voter rolls."
- 7) **Other States:** According to a 2015 NCSL report, as states explore new technology to facilitate the voting process, the use of electronic poll books is becoming increasingly prevalent. According to the report, there are jurisdictions in 32 states that currently use electronic poll books. The report states that in some states, the use of electronic poll books is specifically in statute. However in other states, while electronic poll books are mentioned in statute, their use is not specifically authorized. Moreover, various states' statutes do not mention electronic poll books, but have state-level election organizations that issue regulations for their use. Finally, according to the report a few states have some jurisdictions that use electronic poll books, but have no statewide guidance on their use.

As mentioned above, electronic poll books have the potential to offer many functionalities that help reduce cost and increase efficiencies in the conduct of elections. While California law does not specifically address electronic poll books, in practice, electronic poll books are being used by poll workers as a tool to more quickly and more accurately check in voters at polling places. This bill establishes clear statutory authority to allow county elections officials to use electronic poll books in elections and requires the SOS to adopt and publish electronic poll book standards and regulations governing the certification and use of electronic poll books. This new policy change will ensure electronic poll books are certified before use, thereby ensuring they meet certain security measures and contain safeguards to protect against fraud and manipulation.

8) **Arguments in Support:** In support, California Common Cause writes:

Only 18 percent of eligible Californians cast ballots in the June 2014 primary election – the lowest voter turnout rate in nearly one century. There are many reasons why Californians do not vote, including lack of voter engagement and cynicism; however, according to a March 2015 PPIC survey, the top reason registered voters gave for not voting was being too busy or lacking the time to vote. SB 439 will help combat the trend of ever-decreasing voter turnout by providing citizens with more accessible and convenient options for registering to vote and actually voting.

9) **Related Legislation:** AB 391 (Gallagher), requires a person to provide proof of residence to conditionally register to vote, as specified. AB 391 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials
California Common Cause
California State Council of the Service Employees International Union
CALPIRG
Consumer Watchdog
Secretary of State Alex Padilla

Opposition

None on file.

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