Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Sebastian Ridley-Thomas, Chair
AB 391 (Gallagher) – As Introduced February 18, 2015

SUBJECT: Voter registration: conditional voter registration.

SUMMARY: Requires a person to provide proof of residence to conditionally register to vote, as specified. Specifically, **this bill**:

1) Requires a person who completes a conditional voter registration in accordance with existing law to provide proof of residence in order to register to vote during the 14 days immediately preceding an election or on election day. Provides that proof of residence shall include any of the following:

   a) A valid California driver's license, driver's instruction permit, or identification card;

   b) A valid student identification card with an identifying photograph;

   c) A tribal identification card with an identifying photograph and signature; or,

   d) Photo identification, which may include a driver's license, state identification card, passport, military identification card, tribal identification card, or student identification card, and a current bill identifying the name and address of the registrant. Provides that a current bill identifying the name and address of the registrant may include a utility bill within 30 days of election day, a rent statement dated within 30 days of election day, or a current student fee statement.

2) Requires an elections official, if a conditional voter registration is not deemed effective, to process the affidavit of registration in accordance with existing law and if the registrant meets all other eligibility requirements to register to vote, to deem the registration effective in forthcoming elections.

EXISTING LAW:

1) Requires a person who desires to register to vote to sign an affidavit of registration, under penalty of perjury, attesting that the person lives at the residence listed.

2) 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.

3) 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.

4) Provides that a conditional voter registration is deemed effective only if the county elections official is able to determine before or during the canvass period for the election that the registrant is eligible to register to vote and that the information provided by the registrant

matches information contained in a database maintained by the California Department of Motor Vehicles or the federal Social Security Administration.

5) 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.

6) Specifies that conditional voter registration as described above becomes operative on January 1 of the year following the year in which the Secretary of State (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.

7) Requires a voter who appears at the polling place to vote to announce his or her name and address to a precinct officer. Requires the precinct officer, upon finding the name in the roster of voters, to repeat the voter's name and address. Requires the voter to then write his or her name and residence address on a roster of voters, whereupon the voter is provided a ballot.

8) Permits a voter to vote a provisional ballot if his or her qualification or entitlement to vote cannot be immediately established upon examination of the roster of voters for the precinct or upon examination of the records on file with the county elections official.

9) Authorizes a member of the precinct board to challenge the ability of a person to vote on various grounds, including that the voter is not the person whose name appears on the index, is not a precinct resident, is not a U.S. citizen, has already voted on that day, or is on parole for the conviction of a felony.

10) Requires a voter who submits his or her voter registration form by mail, and who has not previously voted in a federal election, to present one of a number of specified documents to establish identity before receiving a ballot. This requirement only applies the first time an individual votes at a federal election after registering to vote.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

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

> In 2012, California followed the example of several other states by enacting a "same-day registration" process, which will allow persons to register to vote and vote during the last 14 days before and during the day of the election.

> But unlike every other same-day registration state, we neglected to include any requirement for persons to show some evidence that they actually live in the precinct in which they seek to cast a vote. The National Conference of State Legislatures has

emphasized that proof of residency for same-day registration is a key requirement to prevent fraud.

As a result, our system will not be able to prevent persons using phony names from registering and voting multiple times during the last two weeks of the election cycle.

This lack of safeguards places California far outside of the mainstream of other same-day registration states, and will leave our election system dangerously susceptible to fraud. And every illegal vote cast disenfranchises an honest voter.

Unfortunately, as seen in Senator Correa's election, voter fraud is a very real phenomenon in California today. Just ask former Senator Lou Correa, who was Chair of the Senate Elections Committee. After losing a special supervisorial election in Orange County by only 43 votes, Sen. Correa conducted an investigation and found that the results were apparently marred by numerous cases of illegal vote-by-mail ballot buying and harvesting, voters who cast multiple ballots by registering and voting under false names, and at least 42 cases of votes cast by persons who did not live in the district.

AB 391 will help prevent these kinds of abuses by requiring same-day registrants in California to show proof of residency, just like they do in every other same-day registration state. It will allow persons to use the same documents as those allowed in the State of Minnesota, a progressive state that has had same-day registration since 1974. These common-sense protections will prevent the kind of fraud and abuse we recently saw in the Orange County special election, and will ensure that non-residents cannot cast fraudulent votes and thereby disenfranchise honest voters.

2) **VoteCal:** VoteCal is a federally required statewide voter registration database that complies with the requirements of the 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.

According to the SOS's website, Section 303 of HAVA (Public Law 107-22, 107th Congress) sets forth the computerized statewide voter registration list requirements. According to HAVA, each state is required to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level. The computerized list will have the capability to do the following:

- Serve as the single system for storing and managing the official list of registered voters;

- Contain the name and registration information of every legally registered voter in the state;

- Assign a unique identifier to each legally registered voter in the state;

- Provide electronic accessibility to the information contained in the list to any election official in the state;

- Allow all voter registration information to be electronically entered into the computerized list by any local election official in the state; and,

- Serve as the official voter registration list for the conduct of all elections for federal office in the state.

In addition, each state is required to perform list maintenance to the computerized list on a regular basis. As a result, California is required to coordinate the computerized list with the California Department of Corrections and Rehabilitation regarding felony status and the California Department of Public Health regarding death records. The list maintenance is required to be conducted in a manner that ensures that:

- The name of each registered voter appears in the computerized list;

- Only voters who are not registered or who are not eligible to vote are removed from the computerized list; and,

- Duplicate names are eliminated from the computerized list.

Moreover, federal law requires the database to provide technological security to prevent unauthorized access to the computerized list, ensure that voter registration records in the state are accurate and updated regularly through a system of file maintenance and safeguards are in place so eligible voters are not removed in error, verify the voter registration information of applicants, as specified, and match information in the database of the computerized list with the database of the motor vehicle authority that has an agreement with the federal Social Security Administration to verify applicable information.

3) **Conditional Voter Registration**: 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 officials' permanent office during the 14 days immediately preceding an election or on election day. 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.

The author argues that because our conditional voter registration process does not require a person to show proof of residency, our system as a result, will not be able to prevent persons using phony names from registering and voting multiple times during the last two weeks of an election.

However, conditional voter registration will not be operative until January 1 of the year

following the year in which VoteCal is implemented. It is anticipated that VoteCal will become operative in 2016, therefore conditional voter registration will commence in 2017. One of the main reasons for delaying implementation of AB 1436 was to ensure the tools were in place to verify a person's eligibility to register and vote. The delayed implementation of conditional voter registration until VoteCal is deployed will allow county elections officials and the SOS to verify in real time a citizen's voter registration and prevent a person from registering and voting multiple times because every county elections official will access one statewide database that will be updated in real time.

Additionally, VoteCal will not only make voter registration more efficient, it will also help resolve attempts of voter fraud. Under VoteCal a voter will have a single voter file that will follow them when they move, between and within counties. For example, 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. Similar action would take place should there be duplicate voter registration. For instance, an elections official is required to cancel any duplicate voter registration that exists as a result of a conditional registration that is deemed effective.

4) **Higher Penalties for Conditional Voter Registration Fraud:** Under state law, when a person registers to vote, that person attests under penalty of perjury that he or she is a United States (U.S.) citizen, a resident of California, not in prison or on parole for the conviction of a felony, not deemed mentally incompetent, and at least 18 years of age at the time of the next election. Additionally, a person who registers to vote while knowing that he or she is not entitled to registration is guilty of a wobbler – a crime that can be charged as a misdemeanor or a felony. Any person who votes or attempts to vote at an election when he or she is not entitled to vote is guilty of a felony. In addition, current law provides that any person who willfully causes, procures, or allows himself or herself or any other person to be registered as a voter, knowing that he or she is or the other person is not entitled to registration, is punishable by imprisonment for 16 months or two or three years, or in a county jail for not more than one year. Moreover, current law provides that any person who knowingly and willfully signs, or causes or procures the signing of, an affidavit of registration of a nonexistent person, and who mails or delivers, or causes or procures the mailing or delivery of, that affidavit to a county elections official is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in a county jail for not more than one year.

As mentioned above, under conditional voter registration, an individual is authorized to conditionally register to vote after the 15th day prior to an election, and to cast a provisional ballot. All of the same procedures and protections that are in place for a provisional ballot will apply to a conditional voter registration that is deemed effective. However, the penalties for committing fraud in the execution of a conditional voter registration are higher. The penalties for a person who commits fraud in the execution of a conditional voter registration is punishable by imprisonment in the county jail for up to one year, or a fine up to twenty-five thousand dollars ($25,000), or both that fine and imprisonment. Moreover, in addition to the criminal penalties prescribed above, a person who commits fraud in the execution of a conditional voter registration will also be subject to a civil fine of an amount up to $25,000.

5) **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. In addition, California and Hawaii have enacted same-day registration, but have not yet implemented it. Moreover, 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.

The report states that a key requirement in most states that offer same-day registration is to require a prospective voter to show proof of residency at the time of registration, such as a driver's license or identification card. Some states permit documents such as a paycheck or utility bill with an address as acceptable to proving residence. In addition, some states permit an already-registered voter to vouch for the residency of an election day registrant. The author argues that the lack of this safeguard places California far outside of the mainstream of other same-day registration states, and as a result will leave California dangerously susceptible to fraud.

However, according to a 2013 NCSL report, another key component that will also help prevent voter fraud is to segregate same-day registrant ballots. For instance, in Montana, any same-day voter who is unable to meet the identification requirements is required to cast a provisional ballot, which is not counted until eligibility is verified.

Many of the states that authorize same-day registration provide the registrant with a live ballot. That, however, is not how the process will work here in California. As mentioned above, California law permits a same-day registrant, after they are deemed qualified to register to vote, to cast a provisional ballot. Requiring a voter to cast a provisional ballot will ensure the voter's registration is thoroughly reviewed and verified before his or her ballot is counted. Moreover, most of the states that permit same day registration also authorize a person to register and vote at a polling place. That will not be the case here in California. Current law only permits a person to conditionally register and to vote at an election's official's office, as specified.

6) **Voters Who Lack ID**: A November 2006 survey by the Brennan Center for Justice found that 11% of U.S. citizens do not have government-issued photo identification. To the extent that this figure is reflective of the California electorate, it is possible that a significant number of Californians who are eligible to vote do not have a form of identification that would meet the requirements of this bill. This same survey also demonstrated that certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of identification.

7) **Arguments in Support**: In support, the Howard Jarvis Taxpayers Association, writes:

[Howard Jarvis Taxpayers Association] has taken a longstanding interest in protecting the integrity of the ballot [box]. We opposed AB 1436 because of the likelihood of increased fraud from thousands of people registering to vote in the last two weeks of an election. The safeguards in AB 391 should apply to [same day registration] voters because the address of the resident will not be able to be verified before the election. All ten other states that have [same day registration] also mandate this requirement.

In previous "Voter ID" bills rejected by the Legislature, the argument has been made that such a policy disenfranchises voters who may not have or cannot afford to pay for the appropriate identification. However, it is now common for bank credit and debit cards to include a photo ID. Upholding our democracy depends on showing that voters live at valid addresses. Even though under the [same day registration] system voters must be asked for the last four digits of their Social Security card, there is no requirement under current law to prevent someone from voting if the numbers don't match. Therefore, the only way to ensure total compliance is by passing AB 391.

8) **Arguments in Opposition**: In opposition, California State Council of the Service Employees International Union, writes:

Existing law already establishes proper and adequate procedures and requirements for determining whether a conditional voter registration is deemed effective, including review by the elections official to determine the right to vote, prior to the ballot being included in the official count.

AB 391 would threaten to suppress and disenfranchise minority voters, particularly Latino voters under the guise of maintaining election integrity…

As California continues to be a model to other states in conducting elections, this proposal is merely a proposed solution in search of a perceived problem.

9) **Related Legislation**: SB 439 (Allen), which is pending in the Senate Appropriations Committee, permits county elections officials to offer conditional voter registration and provisional voting at satellite offices after the 15th day prior to an election through and including election day.

10) **Previous Legislation**: AB 843 (Logue) of 2013, was similar to this bill. AB 843 was never heard in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Election Integrity Project, Inc.
Howard Jarvis Taxpayers Association

Opposition

Secretary of State Alex Padilla
California State Council of the Service Employees International Union

Analysis Prepared by: Nichole Becker / E. & R. / (916) 319-2094