

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON ELECTIONS

Gail Pellerin, Chair

SB 1174 (Min) – As Amended May 2, 2024

SENATE VOTE: 30-8

SUBJECT: Elections: voter identification.

SUMMARY: Prohibits a local government from enacting or enforcing any local requirement that a person must present identification when voting or submitting a ballot at a polling location. Specifically, **this bill:**

- 1) Prohibits a local government from enacting or enforcing any charter provision, ordinance, or regulation requiring a person to present identification for the purpose of voting or submitting a ballot at any polling place, vote center, or other location where ballots are cast or submitted, unless required by state or federal law.
- 2) Defines “local government” to mean any charter or general law city, charter or general law county, or any city and county.
- 3) Makes various finding and declarations.

EXISTING LAW:

- 1) Permits a city or county to adopt a charter by majority vote of its electors, as specified. (California Constitution, Article XI, §3(a))
- 2) Authorizes any city charter to permit the city to make and enforce all ordinances and regulations related to municipal affairs, as specified, and provides that any city charter adopted pursuant to the California Constitution supersedes all laws inconsistent with the charter with respect to municipal affairs. (California Constitution, Article XI, §5(a))
- 3) Grants plenary authority, subject to limited restrictions, for city charters to provide the manner in which, the method by which, the times at which, and the terms for which municipal officers and employees whose compensation is paid by the city are elected and appointed, and for their removal, as specified. (California Constitution, Article XI, §5(b))
- 4) Permits a person who is a United States (US) citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 18 years of age at the time of the next election, to register to vote and to vote. (California Constitution, Article II, §2)
- 5) Requires a person to provide personal identifying information, and other specified information, when registering to vote and requires an elections officials to validate the information provided. (Elections Code §§ 2188(b), 2196(a)(7); 2 Code of California Regulations §§19073, 20107)

- 6) Requires an applicant to certify to the truth and correctness of the content of their voter registration application under penalty of perjury. (Elections Code § 2188(e))
- 7) Provides that every person is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in a county jail not exceeding one year, who registers to vote knowing that they are ineligible to do so. (Elections Code §18100)
- 8) Requires any person desiring to vote to provide their name and address and, upon the precinct officers finding the name in the roster, requires the voter to sign their name in the space provided, as specified. (Elections Code §14216(a))
- 9) Provides that a voter's identity or eligibility to vote may only be questioned by election workers on narrow grounds, and only with evidence constituting probable cause to justify such a challenge. (Elections Code §14240 et seq.)
- 10) Provides that a challenged voter need only take a sworn oath of affirmation to remedy the challenge. (Elections Code §§14243, 14244, 14245, 14246)
- 11) Provides that all doubts in the interpretation of the law are to be resolved in favor of the challenged voter. (Elections Code §14251)
- 12) Provides that every person is guilty of a felony punishable by imprisonment in county jail for not more than 12 months or in the state prison who knowingly challenges a person's right to vote without probable cause or on fraudulent or spurious grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting. (Elections Code §18543(a))
- 13) Provides that any voter claiming to be properly registered, but whose qualifications cannot be immediately established upon examination of the list of registered voters for the precinct or the records on file with the county elections official, is entitled to cast a provisional ballot. (Elections Code §§2300, 14310(a))
- 14) Provides that every person is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in a county jail not exceeding one year, who does any of the following:
 - a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
 - b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
 - c) Impersonates or attempts to impersonate a voter at an election. (Elections Code §18560)
- 15) Requires a voter who submits their voter registration form by mail and who has not previously voted to present one of a number of specified documents to establish identity before receiving a ballot. Provides that this requirement only applies the first time an individual votes after registering to vote. (42 U.S.C. 15483; 2 Code of California Regulations

§20107)

- 16) Allows a governing body of any city or district, by resolution, to request the board of supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election. (Elections Code §10002)

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Healthy democracies rely on robust access to the polls. An overwhelming body of evidence proves that voter ID laws only subvert voter turnout and create barriers to law abiding voters. To register to vote in California, voters are already required to provide their driver's license number, California identification number, or the last four digits of their social security number. The state also conducts signature verification checks, automatically recounts a portion of ballots, and allows voters to track their ballots. We will not concede to ploys of voter fraud while an overwhelming body of evidence proves our elections are safe, secure, and above board. SB 1174 reinforces that voting rights are a matter of statewide concern, and ensures that cities cannot place the unnecessary burden of voter ID laws on law-abiding citizens.

- 2) **Charter Counties and the California Constitution:** The California Constitution recognizes two types of counties: general law counties and charter counties. General law counties are governed by state law, while charter counties have autonomy to create and enforce local ordinances, provided the ordinances do not conflict with the general law of the state.

Sections 3 and 4 of Article XI of the California Constitution provide the powers of charter counties. Specifically, Section 3 provides that "County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments."

Section 4 of Article XI provides the structure and operation of county charters. Specifically, Section 4(a) requires county charters to provide for a governing body of 5 members, elected by district, or at large, with a requirement that they reside in the district and provides that charter counties are subject to state laws governing redistricting. Section 4(b) requires county charters to provide for the compensation, terms, and removal of members of the governing body. Additionally, Section 4(c) requires county charters to provide for "an elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal." Moreover, Section 4(d) requires county charters to provide for "the performance of functions required by statute," and Section 4(h) specifies that charter counties have all the powers that are provided by the Constitution or by statute for counties.

- 3) **Charter Cities and the California Constitution:** The California Constitution recognizes two types of cities: general law cities and charter cities. General law cities are governed by

state law, while charter cities have a larger amount of autonomy over local affairs. Article XI, Section 3(a) of the California Constitution authorizes the adoption of a city charter and provides such a charter has the force and effect of state law. Article XI, Section 5(a), also known as the "home rule" provision, allows charter cities to "make and enforce all ordinances and regulations in respect to municipal affairs" and makes these laws supreme over "all laws inconsistent therewith." In all other matters, charter cities must follow the general, statewide laws. According to the Senate Committee on Local Government's analysis of this bill, the state Constitution does not define "municipal affairs," as a result the courts generally determine whether a topic is a municipal affair or an issue of statewide concern.

Moreover, while a definition of municipal affairs is not provided, the state Constitution specifies certain categories of municipal affairs in which charter cities have authority to regulate. Specifically, Section 5(a) of Article XI gives charter cities broad authority to "make and enforce all ordinances and regulations in respect to municipal affairs" and provides that "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." Additionally, Section 5(b) of Article XI grants charter cities broad authority to structure and organize their government, to conduct city elections, and grants plenary authority, subject to limited restrictions, to provide "the manner in which, the method by which, the times at which, and the terms for which several municipal officers and employees whose compensation if paid by the city shall be elected and appointed, and for their removal..." The Constitution further provides that properly adopted city charters "shall supersede all laws inconsistent" with the charter.

- 4) **Voter Identification:** In California, an individual registering to vote declares under penalty of perjury that the information provided on the registration form is true and correct. The voter registration form includes questions related to a person's eligibility to vote, date of birth, California driver's license (DL) or identification card number, and the last four numbers of the registrant's social security number (SSN) if it is available.

Under federal law, if a first-time voter does not provide a DL or state identification number or the last four digits of their SSN when they register to vote, they must provide identification prior to being eligible to vote in a federal election. If a first-time voter is voting in person they will be asked to show a form of identification when they go to a polling location. If a first-time voter is voting by mail and did not provide a form of identification with their vote by mail (VBM) ballot, a county elections official is advised to reach out to the voter to request and receive the required proof of identification prior to processing and counting the ballot. If the first-time voter does not provide the necessary identification, the VBM ballot will not be processed. For the November 8, 2022 statewide general election, there were 660 VBM ballots rejected for a lack of identification.

The Secretary of State's (SOS) website provides a list of acceptable forms of identification that includes, but is not limited to, a DL, an identification card, passport, student identification card, a credit/debit card, health club identification card, and an identification card provided by a commercial establishment. Additionally, a copy of a recent utility bill, the sample ballot booklet a voter received from their county elections office, or another document sent to the voter by a government agency are other examples of acceptable forms of identification.

- 5) **Huntington Beach Local Ballot Measure:** On September 28, 2023, the California Attorney General (AG) and the SOS sent a joint letter to the Mayor and Councilmembers of Huntington Beach regarding the city’s proposal to amend its city charter to add section 705, entitled “Special Provisions Relating to Municipal Elections.” The proposed charter amendment, in part, adds provisions to the charter stating that beginning in 2026, for all municipal elections: 1) “Elector” means a person who is a US citizen 18 years of age or older, and a resident of the City on or before the day of an election; 2) The City may verify the eligibility of electors by voter identification, 3) The City may provide at least 20 Americans with Disabilities Act compliant voting locations for in-person voting dispersed evenly throughout the City, in addition to any City facility voting locations; and, 4) The City may monitor ballot drop boxes located within the City for compliance with all applicable laws.

In their letter, the AG and the SOS state that the city’s proposal to require voter identification at the polls in municipal elections conflicts with state law and would only serve to suppress voter participation without providing any discernible local benefit. Specifically, the joint letter stated in part that “the Elections Code [] sets forth a detailed process for resolving questions of voter identity or eligibility at the polls. A voter’s identity or eligibility to vote may only be questioned by election workers on narrow grounds, and only with evidence constituting probable cause to justify such a challenge. A challenged voter need only take a sworn oath of affirmation to remedy the challenge. All doubts are to be resolved in favor of the challenged voter. And any person who illegally casts a ballot is subject to criminal prosecution.”

Additionally, the letter states that “this framework strikes a careful balance: it guards the ballot box against ineligible and/or fraudulent voters, while at the same time simplifying and facilitating the process of voting so as to avoid suppressing turnout and disenfranchising qualified voters...Huntington Beach’s voter ID proposal would destroy this careful balance by placing the onus on the voter to establish their identity and right to vote with some form of identification at the time they cast their ballot.” Additionally, the letter states that “by requiring additional documentation to establish a voter’s identity and eligibility to vote at the time of voting—a higher standard of proof than set out in the Elections Code—Huntington Beach’s proposal conflicts with state law.” In closing the letter urges the Huntington Beach Mayor and Councilmembers to reject their proposed charter amendment and warn the city that if the proposal moves forward and is placed on the ballot they would “stand ready to take appropriate action to ensure that voters’ rights are protected, and state election laws are enforced.”

Despite the warning, on October 17, 2023, the Huntington Beach city council voted 4-3 to place the city charter amendment, known as Measure A, on the March 5, 2024 ballot. Huntington Beach voters passed Measure A with 32,892 votes (53.40%) in support of the city charter amendment and 28,701 votes (46.60%) in opposition.

On April 15, 2024, the AG and SOS filed a lawsuit in the Orange County Superior Court against the city of Huntington Beach alleging that Measure A “...unlawfully conflicts with and is preempted by state law” and asks the court for a permanent injunction barring the city from implementing or enforcing section 705, subdivision (a)(2) of the Huntington Beach city charter. That lawsuit is pending.

6) **Arguments in Support:** In support of this bill, California Common Cause, writes:

Efforts to impose voter identification laws are based on the myth that our elections are subject to rampant fraud but have very real negative impacts on voters. Studies by the Center for Democracy & Civic Engagement found that during the 2020 elections millions of voters nationwide did not have current government-issued photo identification, and that voters who lacked photo identification were more likely to be voters with disabilities and Latino, Black, young, and low-income voters. These communities of voters would be disproportionately harmed by requirements to show photo identification before voting. Data from the Brennan Center of Justice also indicates voter identification laws have contributed to a growing voter turnout gap among different demographics, and in North Carolina, reduced voter turnout.

Locally imposed voter identification rules would also create a confusing voting experience for Californians and increase election administration costs. Local rules would not apply for state and federal elections, which are generally held at the same time as municipal elections, so could mean different experiences for voters election to election, and increased costs from holding a separate municipal election.

California also already has numerous precautions in place to prevent voter fraud, such as signature verification checks, ballot tracking, audits, and recounts. To register to vote, a person must provide their driver's license number, their state identification number, or the last four digits of their Social Security number. If a person does not include this identifying information with their registration application, pursuant to federal law they must provide identification the first time that they vote in a federal election.

While efforts to impose voter identification requirements locally may already be in violation of state law, SB 1174 rightly affirms that voter eligibility is a matter of statewide concern and state policy.

7) **Arguments in Opposition:** In opposition to this bill, the Greater Bakersfield Republican Assembly, writes:

Elections are the bedrock of our nation, state, and local municipalities and communities. Without free and fair election[s], we would be a society in continual upheaval and chaos. Confidence in our election process is the first line of defense against this chaos. The Greater Bakersfield Republican Assembly would even argue that confidence is more important than the candidates or issues on the ballot...

If an election is to be free and fair, voters must have the highest confidence in the entire election system, from voter registration to ballot counting and tabulation. This proposed legislation would diminish confidence and impose the will of the state on local communities' and municipalities' elections processes...

Our purpose in this writing is this, we believe the simple act of providing proof of

eligibility is well within the purview of any community or municipality and is the single greatest tool to enhancing confidence in our elections and as such are asking that you oppose SB 1174.

- 8) **Previous Legislation:** AB 2742 (Allen) of 2018 would have required a voter to provide specified identification in order to have their ballot counted. AB 2742 was not heard in committee.

AB 1356 (Berryhill and Garrick) of 2009 would have required a voter to present photo identification before receiving a ballot at the polling place. AB 1356 failed passage in the Assembly Elections & Redistricting Committee (the predecessor to this committee) on a vote of 2-5.

- 9) **Double Referral:** This bill is double referred to the Assembly Local Government Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union California Action
American Federation of State, County, and Municipal Employees (AFSCME, AFL-CIO)
California Environmental Voters
California Federation of Teachers AFL-CIO
California Secretary of State Shirley N. Weber, Ph.D.
California Hawaii State Conference of the NAACP
City of Rancho Cucamonga
California Common Cause
Culver City Democratic Club
Disability Rights California
Indivisible CA: StateStrong
League of Women Voters of California
Santa Monica Democratic Club

Opposition

Election Integrity Project California, Inc.
Greater Bakersfield Republican Assembly
5 individuals

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