

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 1391 (Bonta) – As Introduced February 22, 2019

SUBJECT: Elections: voter language preference.

SUMMARY: Requires vote by mail (VBM) ballot applications to provide a means for the applicant to specify the preferred language in which the applicant would like to receive future election materials. Requires voter notifications to include a statement of the voter's language preference, and instructions for how the voter may receive election materials in the voter's preferred language pursuant to Section 203 of the federal Voting Rights Act of 1965 (VRA). Specifically, **this bill:**

- 1) Requires the voter notification that the county elections official sends to voters upon receipt of a properly executed affidavit of registration to state the language preference for which the voter has registered. Requires the county elections official to send information on or with each notification card that provides the following:
 - a) A list of the languages in which a voter can receive voting materials in the voter's county; and,
 - b) Instructions on how the voter can change the voter's language preference.
- 2) Requires an application for a VBM ballot, or for a voter to become a permanent VBM voter, to provide the following:
 - a) An opportunity for the voter to indicate their preferred language for receiving voting materials for future elections;
 - b) A language preference question, as specified;
 - c) A response option listed in the language of the application and the language of the option.
- 3) Requires information, instructions, and language preference questions that are required by this bill to appear in all languages required in the county pursuant to Section 203 of the VRA, or in all languages that are required in the state pursuant to Section 203 of the VRA if the form is prepared for statewide use, as specified.

EXISTING FEDERAL LAW:

- 1) Requires a state or a political subdivision of a state to provide voting materials in the language of a minority group when that group within the jurisdiction has an illiteracy rate that is higher than the national illiteracy rate, and the number of the United States citizens of voting age in that single language group within the jurisdiction meets at least one of the following:
 - a) Numbers more than 10,000;

- b) Makes up more than five percent of all voting age citizens; or,
 - c) On an Indian reservation, exceeds five percent of all reservation residents.
- 2) Defines language minorities or language minority groups, for the purposes of the above provisions, to mean persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

EXISTING STATE LAW:

- 1) Requires a county elections official, upon receipt of a properly executed affidavit of registration or address correction notice or letter for a voter, to send the voter a voter notification, as specified.
- 2) Provides a process for a voter to request and receive an application for a VBM ballot with instructions for returning the application and the format the application is required to take.
- 3) Requires the Secretary of State (SOS) to prepare and distribute a uniform electronic application format for VBM ballots that provide the voter with information and instructions for how the voter may apply for a VBM ballot.
- 4) Permits the local elections official to offer a voter the ability to electronically apply for a VBM ballot through the local elections official's secure internet website.
- 5) Requires the local elections official to include an application for a VBM ballot in the county voter information guide.
- 6) Provides a process for any voter to apply for permanent VBM status.
- 7) Requires the translation of ballots and ballot materials into languages other than English under certain circumstances.

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

COMMENTS:

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

California's Asian American and Latino populations remain dramatically underrepresented in California's electorate. In the state's November 2018 election, just 33% of eligible Asian Americans voted, 36% of eligible Latinos voted, and 61% of non-Asian Americans and non-Latinos voted, according to the California Civic Engagement Project. California's participation disparities have actually *worsened* since 2014.

Language barriers are only one aspect of the problem. California is home to 1.2 million limited-English proficient Asian American voters and 1.5 million limited-English proficient Latino voters. Data shows that millions of these limited-

English proficient voters have access to translated voting materials but do not request them. Despite having 2.7 million limited-English proficient voters in these two communities, only 630,000 voter registrations in California's statewide voter registration database identify a language preference for something other than English. In short, over three-quarters of California's limited-English proficient voter population is not using existing language assistance to which it is entitled.

This problem is caused in part by the fact that the principal means by which voters indicate that they have a language preference for a language other than English, and thus request voting materials in that language, is by completing the language preference section on their voter registration form. However, this is an opportunity many voters miss due to the numerous fields and small font on the voter registration form and the optional nature of the language preference section. Once registered, there are few, if any, other moments when a voter can indicate their language preference to their elections office.

AB 1391 provides limited-English proficient voters more opportunities to identify a language preference other than English and thus request translated voting materials. Raising the visibility of language assistance ensures that California's diverse Asian American and Latino populations are able to participate more fully in our democracy.

- 2) **Voting Rights Act of 1965:** Various provisions of state and federal law require elections officials to provide assistance to voters in languages other than English in areas of the state where specified numbers or percentages of the voting-age population have limited English skills. Among other forms of assistance, elections officials may be required to provide election materials in languages other than English.

Based on the applicable provisions of the VRA, voting materials in California must be provided in Spanish as well as English for each federal election. Additionally, 27 counties are required to translate ballots into languages other than English.

- 3) **Why is this Bill Necessary?** Under existing state and federal law, elections officials are required to provide language assistance to voters who have limited English proficiency in the form of translated materials and assistance at the polls. In response to this requirement, elections officials invest valuable resources and time in developing translations.

The author and proponents of the bill point out that translated voting materials are not reaching their intended recipients because voters frequently are not aware that they can request them. Although voter registration forms contain a question about language preference for receiving election materials, it is not required to make a selection in order to complete the application.

Currently, if a voter neglected to complete the language preference portion of the voter registration form indicating a language other than English, they must re-register to vote in order to be able to choose to receive election materials in another language. To a person with limited English proficiency who may not know they have this option available to them, this could present some confusion or even fear that this might be considered attempting to

register more than once and lead to accusations of fraud or that this is not a valid reason for updating their voter registration.

- 4) **What Types of Information Must be Translated?** The language minority provisions of the VRA require a state or political subdivision to provide language assistance when a language minority group within a jurisdiction meets specific population triggers.

Information that is provided in English must also be translated into other languages so that voters will have an equal opportunity to register, learn the details of elections, and cast their ballots. Section 203 of the VRA mandates that registration or voting notices, candidate qualifying, polling place notices, sample ballots, instructional forms, voter information pamphlets, VBM and regular ballots, assistance, or other materials or information relating to the electoral process shall be provided to voters in the language of the applicable group as well as in English.

- 5) **Argument in Support:** One of the co-sponsors of this bill, Asian Americans Advancing Justice – California, writes in support:

Although Section 203 of the federal Voting Right Act guarantees fully translated voting materials for California’s largest language minority communities, the vast majority of California’s [limited English proficient] population does not take advantage of these resources. Only 3.2% of California voter registration files identify a language preference for a non-English language. A primary reason for this low utilization is that California lacks robust requirements around publicizing the availability of these translated voting materials.

AB 1391 makes simple changes to existing voter notifications and forms to increase voter awareness of the availability of translated Section 203 materials. AB 1391 would adjust the voter notification card following a successful voter registration to inform the voter of their language preference on file and give instructions on how to change it. And as California voters increasingly elect to vote by mail, AB 1391 would also ensure that all online and paper vote by mail applications include the opportunity to indicate a language preference other than English.

- 6) **Technical Amendment:** Committee staff recommends the following technical amendment to this bill:

On page 9, at the end of line 3, insert “Each response option shall be listed in the language of the application and the language of the option.”

- 7) **Previous Legislation:** AB 918 (Bonta & Gomez), Chapter 845, Statutes of 2017, expands the availability of facsimile ballots in languages other than English in situations where such translations are required to be made available pursuant to existing law. Among other provisions, AB 918 permits a VBM voter who lives in a precinct for which a translated facsimile ballot was prepared to request a copy of that facsimile ballot be sent to the voter; requires signage and postings at polling places to inform voters of the resources available in other languages; requires county elections officials to provide information on the internet about the languages of facsimile ballots that will be available to voters at polling places; and

requires poll workers, in relevant situations, to be trained on the purpose and proper handling of facsimile ballots.

AB 1443 (Chau), Chapter 347, Statutes of 2015, requires the SOS to establish a Language Accessibility Advisory Committee comprised of language experts and elections officials that is tasked with advising the SOS on best practices, reviewing translated materials, and providing important perspectives from California's language minority communities.

REGISTERED SUPPORT / OPPOSITION:

Support

Asian Americans Advancing Justice - California (co-sponsor)
Mi Familia Vota (co-sponsor)
American Civil Liberties Union of California
Asian Pacific Environmental Network
California Calls
California Common Cause
California Immigrant Policy Center
Jakara Movement
Lawyers' Committee for Civil Rights
League of Women Voters
People Organizing to Demand Environmental and Economic Rights (PODER)

Opposition

None on file.

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