

Date of Hearing: June 19, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 72 (Umberg) – As Amended May 17, 2019

**SENATE VOTE:** 30-8

**SUBJECT:** Conditional voter registration: provisional ballots.

**SUMMARY:** Requires conditional voter registration (CVR, a.k.a., “same day” registration) to be available at all polling places. Specifically, **this bill:**

- 1) Requires a county elections official to offer CVR at all satellite offices of the county elections official and all polling places in the county, in accordance with the following:
  - a) Provides that if the elections office, satellite office, or polling place is equipped with an electronic poll book or other means to determine the voter’s precinct, the elections official shall provide the voter with a ballot for the voter’s precinct if available. Permits the ballot to be cast by any means available at the elections office, satellite office, or polling place.
  - b) Provides that if the elections official is unable to determine the voter’s precinct, or a ballot for the voter’s precinct is unavailable, the elections official shall provide the voter with a ballot and inform the voter that only the votes for the candidates and measures on which the voter would be entitled to vote in the voter’s assigned precinct may be counted, as specified.
  - c) Provides that if the elections official is able to determine the voter’s precinct, but a ballot for the voter’s precinct is unavailable, the elections official may inform the voter of the location of the voter’s polling place. Provides that such a voter is not required to vote at the voter’s polling place and may instead, at the voter’s choosing, cast a ballot pursuant to b) above.
- 2) Provides that this bill does not apply to elections conducted pursuant to the Voter’s Choice Act (VCA).

**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) Provides for CVR, whereby a qualified person may register to vote after the 15th day prior to an election or on election day and cast a provisional ballot, which will be counted if the registration is deemed effective. Requires CVR to be offered at all permanent offices of the county elections official. Permits a county elections official to offer CVR at satellite offices of the elections official, as specified.

- 3) Provides that a CVR shall be deemed effective if the county elections official is able to determine before or during the canvass period for that election that the registrant is eligible to register to vote and that the information provided by the registrant on the registrant affidavit matches information contained in a database maintained by the Department of Motor Vehicles (DMV) or the federal Social Security Administration (SSA). Provides that if the information provided by the registrant cannot be verified against either of these databases, but the registrant is otherwise eligible to vote, the registrant shall be issued a unique identification number, as specified, and the CVR shall be deemed effective.
- 4) Permits a county elections official to use a provisional ballot envelope as an affidavit of registration if the envelope sets forth the facts necessary to establish the voter as an elector and contains all of the information required to be on an affidavit of registration pursuant to existing law.
- 5) Permits counties, pursuant to the VCA, to conduct elections in which every voter is mailed a ballot and vote centers and ballot drop-off locations are available prior to and on election day, in lieu of operating polling places for the election, subject to certain conditions. Counties conducting elections pursuant to the VCA are required to offer CVR at all vote centers.
- 6) Provides, pursuant to Secretary of State (SOS) regulations, that CVR may be offered at a polling place only if the county elections official has designated that specific polling place as a satellite office. Requires each location at which CVR is offered to have the means to provide a voter with the ballot for the proper precinct in which the voter is entitled to vote.
- 7) Provides that the provisional ballot of a voter who is otherwise entitled to vote shall not be rejected because the voter did not cast the ballot in the precinct to which they were assigned by the elections official. Provides that if the ballot contains the same candidates and measures on which the voter would have been entitled to vote in their assigned precinct, the elections official shall count the votes for the entire ballot. Provides that if the ballot contains candidates or measures on which the voter would not have been entitled to vote in their assigned precinct, the elections official shall count only the votes for the candidates and measures on which the voter was entitled to vote.
- 8) Requires elections officials to cancel any duplicate voter registrations that may exist as a result of a CVR. Requires an elections official to notify the district attorney and the SOS immediately if it appears that a registrant may have committed fraud.
- 9) Establishes criteria for the certification and use of ballot on demand printing systems and electronic poll books.
- 10) Defines "ballot on demand system" as a self-contained system that allows users to finish unfinished ballot cards into ballot cards.
- 11) 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 following information for each voter: name; address; precinct; party preference; whether or not the voter has been issued a vote by mail ballot; and, whether or not the vote by mail ballot has been recorded as received by the elections official.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- 1) By requiring specified counties' elections officials to provide CVR and provisional voting, as specified, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on counties, they could claim reimbursement of those costs (General Fund). The annual amount is unknown, but potentially over \$50,000.
- 2) This bill would not result in administration costs to the SOS.

**COMMENTS:**

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

Starting in 2020, Senate Bill 72 will require all counties to permit eligible voters to register and vote on Election Day at every polling site. While California has made huge strides over the last several years to expand access to voter registration, we still have millions of eligible unregistered voters. Studies have continually revealed that these voters tend to be disproportionately younger, poorer, people with disabilities, people with limited English proficiency, and people of color.

Meanwhile, numerous states across the country have offered Same Day Registration at polling sites, some treating them the way we treat voters who may have to vote provisionally. In 2012, the California legislature passed Assembly Bill 1436 (Feuer, Chapter 497, Statutes of 2012), establishing conditional voter registration, our version of Same Day Registration. Counties were required to provide conditional voter registration at all permanent offices of the county elections official and were permitted to provide it at satellite offices. Under conditional voter registration, the ballot cast is provisional and not counted until the registration is verified.

While implementation was delayed for several years, in 2018, for the first time during statewide elections, eligible unregistered voters were theoretically offered the opportunity to register and vote on Election Day in California under conditional voter registration. In reality however, only a small percentage of California voters had access to CVR on Election Day because in most counties it was only available at the county elections office. As a result, relatively few voters in those counties actually took advantage of conditional voter registration, and those who were able to make the trip to their county elections office waited hours in line in order to register and cast a ballot.

Senate Bill 72 will expand access to same day voter registration and voting to all eligible voters in California. The solution is simple: starting in 2020, any county not participating in the Voter's Choice Act (where vote centers offer conditional voter registration at multiple sites in a county) will be required to provide conditional voter registration at all polling places in their county.

- 2) **Conditional Voter Registration and Previous Legislation:** AB 1436 (Feuer), Chapter 497, Statutes of 2012, permits CVR, under which a person is allowed to register to vote and vote at the office of the county elections official at any time, including on election day, if certain requirements are met. Generally, CVR is required to be available only at permanent offices of the county elections official, though counties have the option of making CVR available at satellite offices of the county elections official. In counties that conduct elections pursuant to the VCA, CVR is required to be available at every vote center. CVR went into effect in 2017, and was available in statewide elections for the first time last year.

According to information from the SOS, 57,275 voters cast ballots using CVR at the November 2018 general election. In counties where CVR was more widely available, CVR was much more likely to be used successfully by voters. In 2018, five California counties (Madera, Napa, Nevada, Sacramento, and San Mateo) conducted elections pursuant to the VCA, and thus were required to make CVR available at every vote center. Those five VCA counties accounted for 32% of the valid CVR ballots cast at the November 2018 general election, even though those counties accounted for less than 7% of the state's registered voters at the time. The five VCA counties all were among the six counties that had the highest use of CVR at the November 2018 general election as a percentage of the county's registered voters (Santa Cruz County was the only non-VCA county among the six).

In 2018, only four non-VCA counties provided CVR on election day beyond their permanent offices. According to information previously available on the SOS website, the following non-VCA counties offered CVR at satellite offices for the November 6, 2018 General Election:

El Dorado:	one satellite location
Merced:	two satellite locations
San Bernardino:	five satellite locations
Santa Cruz:	two satellite locations

In 2020, at least 13 counties (Amador, Butte, El Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, and Santa Clara) are expected to conduct elections pursuant to the VCA. Those 13 counties are home to more than half of the state's registered voters. As a result, even in the absence of this bill, CVR is likely to be much more widely available for statewide elections in 2020. For voters living in non-VCA counties, however, this bill would significantly expand access to CVR.

- 3) **Same Day Voter Registration in Other States:** According to the National Conference of State Legislatures:

Sixteen states plus the District of Columbia make same day registration [SDR] available on Election Day; this is sometimes called Election Day registration (EDR). In addition, North Carolina makes same day registration possible for a portion of their early voting period but not on Election Day.

On November 6, 2018, Michigan voters approved a ballot proposal that provided a constitutional right to simultaneously register and vote during the early voting period and on election day. In that same election Maryland voters extended registration to include Election Day (previously same day registration was

available during the early voting period). Additionally, Washington has enacted same day registration, to be implemented in 2019.

In most other states, voters must register by a given deadline prior to Election Day. The deadline varies by state, with most falling between eight and 30 days before the election...

There is strong evidence that same day and Election Day registration increases voter turnout, but the extent of the impact is difficult to conclude. Immediately following the implementation of SDR, states usually see a boost in voter numbers. Same day registration states also tend to outperform other states in terms of turnout percentages. Many states that have implemented SDR have historically produced higher voter numbers, making changes hard to gauge. Multiple studies place the effect between an increase of 3 to 7 percent, with an average of a 5 percent increase. Finally, studies reveal no conclusive evidence of whether SDR shapes partisan outcomes or whether certain populations are more likely to benefit.

- 4) **High-Tech vs. Low-Tech Options:** As detailed above, regulations adopted by the SOS require that each location where an elections official offers CVR has a mechanism for providing each CVR voter with the ballot for the proper precinct in which the voter is entitled to vote. This requirement ensures that voters who take advantage of CVR are able to vote in every contest for which they are eligible to vote. Counties that conduct elections pursuant to the VCA generally satisfy that requirement at vote centers with electronic poll books and ballot on demand printers. Specifically, VCA counties typically use electronic poll books that communicate with county and state voter registration systems in real-time to verify the registration of voters, determine the correct ballot type for each voter, and ensure that a voter has not already cast a ballot in that election. Once a voter's proper ballot type is determined using the electronic poll book, a ballot on demand printer prints the correct ballot for that voter.

Although existing law allows a county elections official to offer CVR at a polling place by designating the polling place as a "satellite office" of the county elections office, the requirement that all CVR locations have a mechanism for providing each CVR voter with the correct ballot likely makes this approach impractical in most situations. A polling place typically has ballots only for the precinct(s) that is (are) designated to vote at that polling place, and elections officials generally do not use ballot on demand printers at polling places due to cost constraints and administrative concerns.

While this bill requires CVR to be available at every polling place, it does not mandate that each CVR location be able to provide the correct ballot for every voter. Instead, this bill anticipates and provides for situations in which a CVR location is unable to provide the correct ballot for a voter. If a CVR location is unable to provide a voter with the correct ballot for the voter's precinct, this bill requires that the voter be informed that only the votes for the candidates and measures on which the voter is entitled to vote will be counted. This policy provides tradeoffs—CVR will be more readily and widely available, making it easier for voters to be able to participate in elections, but it is likely that a larger number of voters will receive ballots that do not contain all the contests on which the voter is eligible to vote, limiting those voters' ability to fully participate in the election. Such a policy is not

unprecedented—as detailed above, existing law already allows a voter’s provisional ballot to be counted even if the ballot contains candidates or measures on which the voter was not entitled to vote. In that situation, the elections official counts only the votes for the candidates and measures on which the voter was entitled to vote.

- 5) **Presidential Primary Elections and CVR:** Under California's presidential primary system, voters who are registered with a political party receive a ballot for that party's presidential primary election. For example, voters who are registered with the Democratic, Republican, American Independent, Green, Libertarian, or Peace and Freedom parties receive the primary election ballot for their respective parties. Voters who decline to disclose a political party preference (also known as no party preference or NPP voters) receive a nonpartisan ballot that does not list the candidates for president. Under current law, however, NPP voters may request the ballot of any political party that has notified the SOS that it will allow those voters to participate in its presidential primary election. These ballots commonly are referred to as "crossover" ballots.

For the 2016 presidential primary election, the American Independent Party, Democratic Party, and Libertarian Party all permitted NPP voters to participate in their presidential primary elections. Voters wishing to change their political party preference in order to vote in a particular party’s presidential primary can do so either in advance of the registration deadline or by availing themselves of CVR at a location where it is offered. Making CVR available at a larger number of locations could also make it easier for voters to change their party preference at a presidential primary election and to vote in the party primary of their choice.

- 6) **Any Fraud?** According to the SOS, at the time that this analysis was prepared, the SOS was not aware of any individuals charged or convicted of fraud related to CVR in California in 2018.
- 7) **Arguments in Support:** One of the co-sponsors of this bill—the League of Women Voters of California—writes in support:

In 2018, for the first time in our statewide elections, eligible California voters had the opportunity to register and vote up through Election Day. The unfortunate reality was that a small percentage could access that option, because in most counties across the state – including populous ones like Los Angeles, San Diego, and Orange – it was only available at a single county elections office site. In fact, 21.3 million (85%) of the state’s 25.2 million eligible voters live in a county that provided only one registration site on Election Day in November 2018. As a result, few voters in those counties were able to take advantage of the opportunity, and those who were able to make the trip to their county elections office waited in lines of up to four hours to register and cast ballots.

SB 72 would align California with nine states, as well as the District of Columbia, that provide Election Day registration options at all polling places: Hawaii, Idaho, Iowa, Maine, Minnesota, New Hampshire, Utah, Vermont, and Wisconsin. Research has shown that Election Day registration benefits both voters and elections officials. It increases voter turnout, eliminates arbitrary deadlines that turn away voters at the moment of highest interest, improves the accuracy of voter

rolls, and assists the registration of geographically mobile, lower-income citizens, young voters, and voters of color.

- 8) **Arguments in Opposition:** In opposition to a prior version of this bill, Election Integrity Project California, Inc. (EIPCa) wrote:

The current job of a poll worker is demanding and exhausting. Expecting thousands of poll workers to add to their responsibilities the proper registration and then proper processing of new voters with consistent correctness, especially under circumstances of high demand and potentially long lines of impatient individuals, is a recipe for disaster... Making the job of poll workers even more complex and expecting acceptable integrity is naïve at best.

In the 2018 election, “Same day” registration (Conditional Voter Registration) was limited by law to Registrars’ Offices and their satellite offices, including Vote Centers. Nevertheless, even in counties where poll worker training was impeccable, EIPCa Observers documented neighborhood precinct poll workers registering voters unlawfully and issuing provisional ballots that by law could not be counted, thus depriving those voters of their franchise. Had they been properly directed to one of the lawful CVR locations, their vote could have counted.

More egregious yet, EIPCa Observers documented neighborhood precinct poll workers “same day” registering voters and issuing them poll ballots. Those ballots could not be recalled or cancelled should the registration be rejected--an unforgivable blow to election integrity and to every person who voted lawfully.

Clearly, the challenges of proper election management are already monumental. Moving Conditional Voter Registration to local polling sites will guarantee substantial numbers of votes will be mishandled.

- 9) **Related Legislation:** AB 693 (Berman), which was scheduled to be heard in the Senate Elections & Constitutional Amendments Committee the day before this committee’s scheduled hearing on this bill, allows the use of nonprovisional ballots for CVR if certain conditions are met.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California (co-sponsor)  
Common Cause – California (co-sponsor) (prior version)  
League of Women Voters of California (co-sponsor)  
Asian Americans Advancing Justice - California  
Black Women Organized for Political Action (BWOPA) (prior version)  
Cal State Student Association (prior version)  
California Calls Action Fund  
California Labor Federation, AFL-CIO  
California League of Conservation Voters  
California Native Vote Project (prior version)  
California United for a Responsible Budget (CURB) (prior version)  
California Voices for Progress  
California Voter Foundation  
CALPIRG, California Public Interest Research Group  
Coleman Advocates for Children & Youth (prior version)  
Consumer Attorneys of California (prior version)  
Courage Campaign  
Disability Rights California  
Ella Baker Center for Human Rights (prior version)  
Equal Justice Society (prior version)  
Initiate Justice  
Jewish Family Service of Los Angeles  
Legal Services for Prisoners with Children  
Los Angeles LGBT Center  
NARAL Pro-Choice California  
National Association of Social Workers, California Chapter  
Riverside Temple Beth El  
Rock the Vote  
Rubicon Programs  
SEIU State Council (prior version)  
Services, Immigrant Rights and Education Network  
Student Senate for California Community Colleges  
University of California Student Association (prior version)  
W. Haywood Burns Institute (prior version)  
Western Center on Law & Poverty, Inc. (prior version)  
Women's Foundation of California (prior version)  
Approximately 200 individuals on a petition (prior version)

**Opposition**

Election Integrity Project California, Inc. (prior version)

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