

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON ELECTIONS
Isaac G. Bryan, Chair
AB 1206 (Pellerin) – As Introduced February 16, 2023

SUBJECT: Voter registration database: Electronic Registration Information Center.

SUMMARY: Requires the Secretary of State (SOS) to apply for membership with the Electronic Registration Information Center (ERIC). Specifically, **this bill:**

- 1) Requires the SOS to apply for membership with ERIC. Requires the SOS, if the membership application is approved, to execute a membership agreement with ERIC on behalf of the state.
- 2) Requires the SOS to ensure that any confidential information or data provided by another state to the SOS remains confidential while in the SOS's possession.
- 3) Authorizes the SOS, notwithstanding specified provisions of existing law or any other law, to provide confidential information or data to persons or organizations pursuant to an agreement entered into under this bill.
- 4) Authorizes the SOS to adopt regulations necessary to implement the provisions of this bill, including, but not limited to, regulations establishing procedures necessary to protect the confidential information identified above.

EXISTING LAW:

- 1) Permits a person who is a United States (US) citizen, a resident of California, not in prison for the conviction of a felony, and at least 18 years of age at the time of the next election to register to vote in any local, state, or federal election. (California Constitution, Article II, §§2, 4)
- 2) Requires each state, pursuant to the federal Help America Vote Act of 2002 (HAVA), to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state. (52 U.S.C. §21083)
- 3) Requires certain information on affidavits of voter registration, such as the name, home address, telephone number, email address, and party preference, to be provided to, among others, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the SOS. (Elections Code §2194(a))
- 4) Requires an affiant's driver's license number, identification card number, social security number, and the signature contained on an affidavit of registration or voter registration card to be confidential and not be disclosed, as specified. (Elections Code §2194(b))

- 5) Provides the home address, telephone number, e-mail address, precinct number, or other number specified by the SOS for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters, are confidential and shall not be disclosed to any person, except as specified pursuant to existing law. (Government Code §7924.000)
- 6) Prohibits a person who requests voter information pursuant to existing law or who obtains signatures or other information collected for an initiative, referendum, political party qualification, or recall petition from sending that information outside of the US or making it available in any way electronically to persons outside the US, including, but not limited to, access over the Internet. Provides for purposes of this section, "United States" includes each of the several states of the US, the District of Columbia, and the territories and possessions of the US. (Elections Code §2188.5)

FISCAL EFFECT: Unknown

COMMENTS:

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

In an election, accurate voter rolls are crucial for democracy. In California, there are likely millions of voter registration records that are out of date due to a recent move. Joining the Electronic Registration Information Center ensures that elections officials have access to the best data to keep their voter rolls current, and it would provide them with additional tools they could utilize to reach out to unregistered eligible voters. The increased accessibility of California's voter registration system has been a great success; in November of 2022, 81.63% of eligible Californians were registered to vote. However, there are almost 5 million eligible and unregistered voters in California, outnumbering the populations of 26 states. Becoming an ERIC member state is a natural next step in California's mission to improve the accessibility and ease of voting.

- 2) **Election Registration Information Center:** The ERIC program is a non-profit membership organization with the sole mission of assisting states to improve the accuracy of America's voter rolls and increasing access to voter registration for all eligible citizens. With the assistance of the PEW Charitable Trust, ERIC was formed in 2012 and is owned, governed, and funded by the states that choose to join. As of November 2022, 32 states and Washington D.C. are a part of ERIC (Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin). Each member state has a voting member on ERIC's board of directors.

According to information provided on the ERIC website, the ERIC data center allows states to securely and safely compare voter data, thereby improving the accuracy of the voter rolls. States that choose to participate in ERIC are able to compare information on eligible voters from official data sources submitted by the states. Each member state submits at a minimum its voter registration and Department of Motor Vehicles (DMV) data. The data includes

names, addresses, dates of birth, driver's license (DL) or state identification numbers, and the last four digits of the social security numbers (SSN). Other information, such as phone numbers, email addresses, and record status, are also submitted as available. Materials further state that ERIC has safeguards in place that anonymizes sensitive identifying data by converting it into indecipherable characters that is unreadable and unusable to potential hackers, through techniques such as "one-way hashing."

These records go through a data-matching exchange that cross checks the information against lists from other member states as well as other data sources such as the National Change of Address data from the US Postal Service (USPS) and other existing government databases, such as death records from the Social Security Administration. ERIC then reports back to the states where there is a highly confident match indicating a voter moved or died, or the existence of a duplicate record. Once states receive the reports, they can then begin the process under federal and state law to update voter registration records. Participating states also receive information on unregistered individuals who are potentially eligible to vote. ERIC bylaws require member states to use information regarding eligible or possibly eligible individuals who are not registered to vote to initiate contact with those individuals and inform them how to register to vote. Member states pay annual dues which vary depending on the population size of the state. Large states usually pay more than small states.

- 3) **Access to Confidential Voter Registration Information:** Current law requires certain information from affidavits of voter registration, such as the name, home address, telephone number, email address, and party preference, to be provided to, among others, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the SOS. Existing law explicitly requires an affiant's DL number, identification card number, SSN, and the signature contained on an affidavit of registration or voter registration card to be confidential and not be disclosed, as specified.

This bill changes California's longstanding policy to keep certain personal identifying voter information confidential. As mentioned above, this bill requires the SOS to apply for membership to the ERIC program and authorizes the SOS to provide confidential information or data to persons or organizations if an agreement is entered into to participate in ERIC.

The ERIC bylaws require the SOS to provide the following data fields, if available, for both the voter registration lists and DMV lists: all name fields, all address fields, DL or state identification number, last four digits of the SSN, date of birth, activity dates as defined by the ERIC Board of Directors, current record status, affirmative documentation of citizenship, the title/type of affirmative documentation of citizenship presented, phone number, and email address or other electronic contact method.

In order to participate in the program, the SOS would be required to share personal identifying information such as a voter's DL number, SSN, and date of birth, two of which are currently prohibited by law from being disclosed. Under the processes and procedures applicable to ERIC, however, this sensitive information would be anonymized before being transmitted.

This bill does not contain any requirements for the SOS to inform a voter that their personal voter registration information is being shared, nor does the bill require a voter to consent to their information being shared.

- 4) **Protected Confidential Voter Registration Information:** According to documents from the ERIC website, ERIC's bylaws and membership agreement include numerous provisions addressing the protection of the data states submit to ERIC and the data reports ERIC creates for the states. ERIC also follows an extensive set of security policies and procedures approved by the Board of Directors in its Information Security Management Plan. Specifically, to protect sensitive information, such as last four digits of the SSN and DL number, ERIC provides an anonymization application to each participating jurisdiction. The anonymization, also known as cryptographic one-way hashing, converts sensitive identifying data into a string of random characters, making the data significantly more difficult for a potential hacker to use. Moreover, the documents state that a cryptographic hash is not meant to be decrypted so ERIC does not receive this information in clear text and does not restore it to the original values. Documents state that to further strengthen the security measures around the data, all records are sent through the anonymization process twice – once at the state level, before data is ever sent to ERIC, and once by ERIC as it receives data.

At the ERIC data center, the provided data is processed through a sophisticated matching engine. The engine compares common identifying data elements and additional tools that compares multiple data sources at the same time. For instance, the mailing address on a DMV record might provide the missing link that confirms a match between two voter records that otherwise wouldn't have enough information on their own to confirm a match. ERIC produces reports for each member by analyzing the results of the matching to identify voter records from that member that may be outdated or inaccurate or people who are not currently registered to vote. Once the reports are generated they are available for secure download. Members cannot access the reports of other members. According to ERIC's membership agreement, participating states are required to upload voter data every 60 days.

- 5) **Statewide Voter Registration Database:** On October 29, 2002, President George W. Bush signed HAVA. Enacted partially in response to the 2000 Presidential election, HAVA was designed to improve the administration of federal elections. Among other provisions, HAVA requires every state to implement a computerized statewide voter registration list maintained at the state level. This statewide voter registration list serves as the official list of eligible voters for any federal election held within the state.

In September of 2016, the SOS certified VoteCal and declared it to be the system of record for voter registration in California. VoteCal connects the SOS and all 58 counties offices to provide a single, official statewide database of voter registration information, and provide a publically available website which allows a voter to register online, check their voter registration status, find their polling place, opt-out of being mailed a state voter information guide, and check if their vote by mail or provisional ballot was counted by their county elections official and, if not, the reason why it was not counted.

- 6) **Voter File Maintenance:** A variety of methods are used to ensure voter registration rolls are accurate and up-to-date with the goal of maintaining an accurate list to prevent ineligible

people from voting, prevent anyone from voting twice, and to reduce inaccuracies and speed up the voter check-in process at polling places. States vary on how this is accomplished, but most generally have processes in place for removing duplicate records, deceased voters, felons, and people who have moved. These checks can be conducted with data from federal agencies, state agencies, and other states. In California, federal agencies used to verify voter information include the Social Security Administration, the USPS, and National Change of Address files. On the state level, voter registration data is cross-checked with information from Department of Vital Statistics, DMV, the Department of Corrections and Rehabilitation, and the Department of Health Services. On the local level, current law requires county elections officials to conduct a pre-election residency confirmation procedure by the 90th day before each statewide primary election, as specified.

ERIC produces four list maintenance reports to help states improve the accuracy of their voter rolls. The reports identify voters who have moved within the state, voters who have moved from one ERIC state to another, voters who have died, and voters with duplicate registrations in the state. Member states are required to request at least one of those reports at a minimum of once a year, though ERIC strongly encourages states to establish a regular schedule for requesting those reports.

In addition to comparing member state data, ERIC also compares change-of-address records from the USPS and death records from the Social Security Death Master File, also referred to as the Social Security Death Index. The Death Master File is not a dataset that California currently uses when verifying voter information to identify voters who have died.

- 7) **States Withdrawing from ERIC:** According to recent news articles, states have decided to withdraw from ERIC or are considering withdrawing. Last year, Louisiana was the first state to pull out of ERIC citing security concerns, and in January of this year Alabama also withdrew from ERIC. Earlier this month, news articles reported that three more states, Florida, Missouri, and West Virginia, have begun the process to withdraw from ERIC, and that Texas is also considering legislation to leave ERIC. According to a March 17th news article, Ohio is the latest state to announce its exit.
- 8) **Colorado and ERIC Mailing:** According to a October 2022 news article, approximately 30,000 Colorado residents who are non-citizens and therefore ineligible to register to vote were mailed notices from the state informing them on how they could register to vote. According to the article, the problem occurred when the state compared a list of potential unregistered voters from ERIC with local DMV records. The DMV data included people who hold non-citizen driver's licenses — which were created to allow people without legal residency to drive legally — however, a formatting error caused the system not to flag those individuals as ineligible. Consequently, postcards encouraging voter registration were sent to those voters. According to the article, in an effort to address this error the Colorado's SOS took additional steps to make sure none of the non-citizens registered to vote.
- 9) **Data from the Secretary of State:** According the SOS's February 10, 2023 report of registration, California has approximately 26,718,486 million eligible voters and 21,980,768 million registered voters (82.27%).

10) **Presidential Commission:** In 2013, the Presidential Commission on Election Administration (Commission) was established by Executive Order with the mission to identify best practices in election administration and to make recommendations to improve the voting experience. The Commission submitted a report in January 2014 entitled, "The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration." One of the main recommendations of the Commission focused on voter registration, specifically voter roll accuracy. The report states that voter lists are essential to the management of elections and accurate lists can affect the ability of people to vote, of elections offices to detect problems, and of courts and others monitoring elections to detect election fraud or irregularities. In an effort to increase the accuracy of voter rolls, the Commission report makes the following recommendations with respect to voter registration: 1) States should adopt online registration, 2) Interstate exchanges of voter registration information should be expanded, and, 3) States should seamlessly integrate voter data acquired through the DMV with their statewide voter registration lists.

11) **Arguments in Opposition:** In opposition to this bill, the Election Integrity Project California, Inc., writes:

ERIC was created in 2012, making it 11 years old. Worse, the technology it currently utilizes dates back to the 1980s. It is not the cutting-edge technology necessary to keep up with the nation's need for voter roll information, and has proven to have considerable flaws.

- ERIC has been proven inefficient in its stated objective of assisting states in identifying registrants who have moved to other states.
- The dictates of the ERIC contract and Bylaws actually make voter roll maintenance more difficult...ERIC does not require that the states act upon any received information to maintain their voter rolls...
- The information member states are required to upload to ERIC every 60 days divulges all of the most sensitive information of all those state residents, not only from the state's voter rolls but also from DMV and social services databases: names, addresses, DOB, license #, last 4 numbers of social security #, voter activity, phone, email, title, those approaching voting age, and more...This constitutes an enormous risk to the identities of all California residents, and data once released is out there forever...
- Membership in ERIC is expensive...
- States committed to maintaining accurate voter rolls, transparency and visibility have withdrawn or are in the process of leaving ERIC...

12) **Previous Legislation:** SB 1316 (Moorlach) of 2020 would have required the SOS to apply for membership of ERIC to share voter information or data with states or groups of states in order to improve the accuracy of the statewide voter registration database. SB 1316 was not heard in any policy committee.

AB 2375 (Obernalte) of 2018 would have permitted the SOS to apply for membership with the ERIC to share voter registration information or data with other states or groups of states, and to use the information to update California's voter registration lists, as specified. AB 2375 passed out of this committee on a 7-0 vote and passed out of the Committee on Privacy and Consumer Protection on a 6-1 vote. AB 2433 was held on the Assembly Appropriations Committee's suspense file.

AB 2433 (T. Allen) of 2016, which had provisions that were substantially to AB 2375 of 2018, passed out of this committee on a 7-0 vote and passed out of the Committee on Privacy and Consumer Protection on a 8-1 vote. AB 2433 was held on the Assembly Appropriations Committee's suspense file.

13) **Double Referral:** This bill is double-referred to the Assembly Privacy and Consumer Protection Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Election Integrity Project California, Inc.
One individual

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