

Date of Hearing: September 13, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 681 (Gonzalez) – As Amended September 6, 2019

CONCURRENCE IN SENATE AMENDMENTS

SUBJECT: Elections: voter registration: partisan primary elections.

SUMMARY: Requires a county elections official, before the presidential primary election, to send a notification to registered voters informing them of their political party preference and the ballot they are eligible to cast, as specified. Permits a voter to change their political party preference without reregistering to vote, as specified. Specifically, **this bill:**

- 1) Requires a county elections official, between the 130th and 102nd day before a presidential primary election, to send a notice to each registered voter within the county containing all of the following:
 - a) The current political party preference of the voter.
 - b) Information on the type of ballot the voter will be able to cast at the presidential primary election.
 - c) A statement that a voter who has declined to disclose a political party preference (commonly referred to as a “No Party Preference” (NPP) voter) may request the ballot of one of the political parties that authorizes an NPP voter to vote in a presidential primary election, and the name of each political party that authorizes an NPP voter to vote the party’s ballot at the upcoming presidential primary election.
 - d) Instructions on how the voter can change the voter’s political party preference.
 - e) Information on how an NPP voter may request a ballot of a political party that so permits.
- 2) Requires a county elections official, between the 99th and 71st day before the presidential primary election, to send a second notice to an NPP voter who has not requested a ballot of a political party containing all of the following:
 - a) A statement that the voter has declined to disclose a political party preference.
 - b) Information on the type of ballot the voter will be able to cast at the presidential primary election.
 - c) A statement that an NPP voter may request the ballot of one of the political parties that has adopted a rule that authorizes an NPP voter to vote in a presidential primary election, and the name of each political party that has adopted a rule that authorizes an NPP voter to vote the party’s ballot at the upcoming presidential primary election.
 - d) Instructions on how the voter can change the voter’s political party preference.

- e) Information on how an NPP voter may request a ballot of a political party that so permits.
 - f) A toll-free telephone number, which the Secretary of State (SOS) shall establish, that a voter may call to access information regarding which political party has adopted a rule that authorizes an NPP voter to vote the party's ballot at the upcoming presidential primary election.
 - g) A link to, or the address of, the SOS's internet website on which a voter may access information regarding which political party has adopted a rule that authorizes an NPP voter to vote the party's ballot at the upcoming presidential primary election.
 - h) Information on how an NPP voter may request a vote by mail (VBM) ballot for a political party, as specified.
- 3) Permits the aforementioned notices to be sent by various methods, including by mail, by email, or, if the voter has provided written consent to receive text messages from the county elections official, by text message.
 - 4) Revises, clarifies, and recasts existing provisions of law pertaining to how an NPP voter may request the ballot of a political party that has authorized an NPP voter to vote the party's ballot, as specified.
 - 5) Requires, instead of permits, a county elections official to accept the aforementioned request from an NPP voter by telephone, over the Internet, email, or facsimile, as specified.
 - 6) Extends the time that an unvoted nonpartisan ballot may be returned and exchanged for a partisan ballot to any time before the close of the polls on election day, instead of no later than seven days before the date of a partisan primary election.
 - 7) Permits a voter, from the 14th day immediately preceding an election until the close of polls on election day, to change their residence address within the same county or political party preference by submitting to the voter's county elections official a written request containing the new residence address or political party preference, as specified, instead of requiring the voter to execute a new affidavit of registration.
 - 8) Requires the written request for a change of residence address within the same county to include the following:
 - a) The voter's printed name.
 - b) The voter's former residence address.
 - c) The voter's new residence address.
 - d) A certification by the voter of the content of the written request as to its truthfulness and correctness, under penalty of perjury.
 - e) The voter's signature and date of execution.

- 9) Requires the written request to change a voter's political party preference to include the following:
 - a) The voter's printed name.
 - b) The voter's current residence address.
 - c) The voter's new political party preference.
 - d) A certification by the voter of the content of the written request as to its truthfulness and correctness, under penalty of perjury.
 - e) The voter's signature and date of execution.
- 10) Requires the written request for a change of residence address and political party preference to be delivered to the county elections official's office or to any location that offers conditional voter registration.
- 11) Requires the elections official, when a voter submits a request to change their residence address or political party preference, to issue the voter a nonprovisional ballot if either of the following applies:
 - a) The voter appears at the voter's precinct, the voter's name is found on the roster, and the voter either has not been issued a VBM ballot or a voter complies with provisions of existing law pertaining to surrendering a VBM ballot, as specified.
 - b) The voter appears at a location that is equipped with an electronic poll book or other means to determine the voter's precinct, the location can provide the voter with a ballot for the voter's precinct, the entire county has established connectivity between locations, and the location at which the voter appears verifies that the voter has not cast a ballot at another location for the election and notes in the voter's record that the voter cast a ballot.
- 12) Requires the elections official, when a voter submits a request to change their residence address or political party preference, to issue the voter a provisional ballot if either of the following applies:
 - a) The voter appears at the voter's precinct, the voter's name is found on the roster, the voter has been issued a VBM ballot, and the voter is unable to surrender their VBM ballot in accordance with existing law, as specified.
 - b) The voter appears at a location, other than the voter's precinct, that is equipped with an electronic poll book or other means to determine the voter's precinct, but the entire county has not established connectivity between locations such that the location is unable to verify that the voter has not cast a ballot at another location for the election.
- 13) Requires the registration of the voter, upon receipt of a properly executed written request described above, to immediately be updated and requires the written request to be maintained

in the voter's record.

14) Contains an urgency clause, allowing this bill to take effect immediately upon enactment.

EXISTING LAW:

- 1) Permits a person to choose a political party preference when registering to vote. Voters who do not choose a political party preference are commonly referred to as NPP voters.
- 2) Permits an NPP voter to request the ballot of a political party at a partisan primary election if the political party, by party rule duly noticed to the SOS, authorizes an NPP voter to vote in its primary election.
- 3) Requires the SOS, for a partisan primary election, to prepare, print, and provide to elections officials posters or other materials that contain information informing an NPP voter of their right to request a partisan ballot, as specified.
- 4) Requires a member of the precinct board, before providing an NPP voter with a nonpartisan ballot or before the voter enters the voting booth, to provide a uniform notification to the voter informing the voter that they may request a partisan ballot, as specified. Requires a county elections official to train the members of a precinct board regarding this duty.
- 5) Requires that an NPP voter be furnished only a nonpartisan ballot, unless they request a partisan ballot, as specified. Requires the nonpartisan ballot to contain only the names of candidates for nonpartisan offices, voter-nominated offices, and measures to be voted for at the primary election.
- 6) Requires the SOS to include in the state voter information guide and county elections official to include in the nonpartisan county voter information specified information explaining that an NPP voter may not vote in a political party's primary election unless the political party has authorized an NPP voter to vote in its primary election. Requires the SOS and county elections officials to post this information on their internet websites, as specified.
- 7) Requires a county elections official to send an email to the email address of an NPP voter notifying the voter that they may request a political party's ballot at the next ensuing partisan primary election. Requires a county elections official to provide the notice to an NPP voter by text message if the voter has provided written consent to receive text messages from the county elections official.
- 8) Requires a county elections official, with each nonpartisan VBM ballot that is sent to an NPP voter, to include a notice informing the voter that they may request a political party's ballot at the next ensuing partisan primary election.
- 9) Permits an NPP voter to request a partisan ballot by VBM application, by telephone, over the internet, by email or by facsimile transmission, as specified.
- 10) Requires a county elections official to accept affidavits of registration received on or before the 15th day before an election.

- 11) Requires a county elections official to accept a conditional voter registration affidavit received during the 14 days immediately preceding an election and on election day.
- 12) Permits a voter to change their residence address by executing a new affidavit of registration or by a notice or letter of the change of address, as specified.
- 13) Permits a voter to change their political party preference only by executing a new affidavit of registration.

FISCAL EFFECT: According to the Senate Appropriations Committee, by requiring county elections officials to send notifications to each registered voter, 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 local agencies, local agencies could claim reimbursement of those costs (General Fund). The magnitude is unknown, but would minimally be in the millions of dollars.

COMMENTS:

- 1) **Prior Committee Consideration of this Bill:** On April 10, 2019, this committee approved this bill on a 6 -1 vote, and this bill subsequently was approved by the Assembly on a 60 -16 vote. The version of this bill approved by the Assembly required a county elections official, before the presidential primary election, to send notifications to registered voters informing them of their political party preference and the ballot they are eligible to cast, as specified.

This bill was substantially amended in the Senate to add provisions that streamline the process by which a voter may change their residence address within the same county or change their political party preference in the last 14 days before election day. Specifically, the Senate amendments permit a voter to change their residence address within the same county or political party preference by submitting a written request to their county elections official, instead of requiring the voter to execute a new affidavit of registration, as specified. These substantive policy changes have not been heard in an Assembly policy committee. In light of the Senate amendments, this bill was re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

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

Presidential primary elections in California can be confusing and present unanticipated obstacles to voters attempting to vote for their preferred presidential candidate.

This is particularly true for voters who vote by mail and are registered as no party preference (NPP). Currently, NPP voters are allowed to vote in a political party's partisan primary if the party has indicated by party rule, and noticed to the Secretary of State, that they will allow NPP voters. NPP voters who want to vote for presidential primary candidates then have to take an extra step of either reregistering with an updated political party preference, or of requesting a ballot from a participating political party. For polling place voters, this request is made in person at the time the NPP arrives in-person to cast a ballot. But for mail ballot voters, this request is complicated by the requirement to send in a postcard

requesting a certain ballot type well in advance of the election. The number of voters in this situation has been increasing over the past years.

If the voter fails to take the correct steps to vote in a partisan primary, they are presented with a ballot that does not have the presidential primary candidates on it. This may lead to individuals not being able to cast a vote for their preferred candidate, a high number of provisional ballots if those who weren't able to request their preferred mail ballot type in time go to the polls, and a negative voter experience.

The presidential primary process can also be burdensome for voters who may be registered with a party and wish to vote for a candidate of a different party, or need to update their address. These individuals currently would have to completely re-register to vote using conditional voter registration, and end up casting a provisional ballot when they otherwise would have been eligible to simply cast a ballot. This time consuming process leads to long lines at the polls, and additional work by the county election officials during the tally process.

Assembly Bill 681 would help alleviate these problems by increasing voter awareness and streamlining the process for last minute changes to party registration or address, provided certain safeguarding conditions are met. The bill would require county election officials to send registered voters notice before a presidential primary election with relevant information about their party preference and ballot they are eligible to cast to reduce voter confusion and allow sufficient time for voters to update their information. The bill would also [allow] a voter to update their voter registration or address with a written affidavit rather than the conditional voter registration process.

- 3) **Presidential Primary Election Options:** Under California's presidential primary system, a voter who is registered with a political party receives 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 Party receive the primary election ballot for their respective parties. At the same time, voters who declined to disclose a political party preference (also known as NPP voters) receive a nonpartisan ballot that does not list the candidates for president. Under current law, however, an NPP voter 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. This is commonly referred to as a "crossover" ballot.

For example, in the 2016 statewide presidential primary election, the American Independent Party, Democratic Party, and Libertarian Party all indicated that they would allow NPP voters to participate in their presidential primary elections.

- 4) **Poll Worker Guidelines:** Serving as a poll worker is an important and challenging job as there are many rules and regulations that must be followed. Due to the diversity of the state's population, geography, voting systems and more, training methods and materials prepared by the elections officials vary by county. Consequently, the SOS provides poll worker training standards to help elections officials train their poll workers on how to best perform their duties.

According to the SOS's 2018 poll worker training standards, poll workers should have a thorough understanding of the rights and options of voters who are not registered with a qualified political party, but are registered as NPP voters or are registered with nonqualified political parties. During a primary election that includes at least one partisan public office (e.g. United States President) on the ballot, precinct board members should be trained to clearly distinguish between ballots for qualified political parties and nonpartisan ballots. Additionally, the standards state that a precinct board member, at a partisan primary election, before providing an NPP voter with a nonpartisan ballot or before the voter enters the voting booth, as applicable, shall provide a uniform notification to the voter informing the voter that they may request a political party's ballot (a "crossover" ballot) and the name of each political party that has authorized an NPP voter to vote in its ballot for that election. The standards also point out that county elections officials should train poll workers how to properly record which political party's ballot was requested or whether a nonpartisan ballot was requested by each NPP voter.

- 5) **Voter Confusion and Previous Legislation:** The 2016 Presidential primary election significantly underscored the lack of uniform statewide procedures and timelines for how an NPP voter can request and receive a ballot to vote in the Presidential primary election. There were a significant number of media articles and complaints from voters across the state that reported they were not provided information on how to vote as an NPP voter and that poll workers were not knowledgeable about the process to obtain a crossover ballot.

Some counties were proactive in educating NPP voters about their option to obtain a crossover ballot and provided written notification informing NPP voters of their option to choose a crossover ballot. Other counties, however, strictly interpreted the law and only provided an NPP voter with ballot option information upon request.

In an effort to address these issues, the Legislature passed and the Governor signed AB 837 (Low), Chapter 819, Statutes of 2017, which made significant changes to election procedures and processes for partisan primary elections to ensure all NPP voters are properly informed of their ballot options. Specifically, AB 837 established clear requirements for the SOS, county elections officials, and poll workers to notify and educate voters about their right to choose a crossover ballot, as specified. Additionally, AB 837 improved and increased notifications provided to NPP VBM voters and made significant changes to modernize and make election information more accessible to NPP voters.

- 6) **Voter Statistics:** According to the SOS's February 2019 Odd-Numbered Year Report of Registration, approximately 79% of eligible voters are registered. Of that, 43% are registered Democratic, approximately 23% are registered Republican, 28% are registered NPP, and 5% are registered with another party.

Additionally, for the 2018 June primary election, over 67% of voters were VBM ballot voters and for the 2018 November general election, over 65% of voters cast their ballot via a VBM ballot.

- 7) **Conditional Voter Registration and Previous Legislation:** In 2012, the Legislature approved and Governor Brown 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 official's 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. Conditional voter registration went into effect on January 1, 2017, after the SOS certified VoteCal, the state's statewide voter registration database.

In 2015, the Legislature approved and the Governor signed SB 439 (Allen), Chapter 734, Statutes of 2015, which permits county elections officials to offer conditional voter registration and provisional voting at satellite offices during the entire 14 days immediately preceding election day, among other provisions.

- 8) **California Voters Choice Act:** In 2016, the Legislature passed and the Governor signed SB 450, Chapter 832, Statutes of 2016, which enacted the California Voter's Choice Act (CVCA), which permits 14 specified counties, starting last year, to conduct elections in which all voters are mailed ballots, and voters have the opportunity to vote on those ballots or to vote in person at a vote center for a period of 10 days leading up to election day. Remaining counties can start using this method of elections in 2020.

Specifically, the CVCA requires, for regularly scheduled elections, one vote center for every 50,000 registered voters from the 10th day to the 4th day prior to the election, and one vote center for every 10,000 registered voters from the 3rd day prior to the election through election day, with no fewer than two vote centers. Additionally, for special elections, current law requires one vote center for every 60,000 registered voters from the 10th day to the day prior to the election, and one vote center for every 30,000 registered voters on election day, as specified.

The CVCA permits Los Angeles County, beginning January 1, 2020, to conduct elections subject to the same conditions that are generally applicable above, except that the county is not required to mail a ballot to every voter and the county must provide, for regularly scheduled elections, one vote center for every 30,000 registered voters from the 10th day to the 4th day prior to the election, and one vote center for every 7,500 registered voters from the 3rd day prior to the election through election day. Additionally, Los Angeles County is required to provide at least one vote center in each city that has at least 1,000 registered voters, as specified.

Additionally, current law requires vote centers to be open for specified minimum hours of operation and requires that a voter be able to return their VBM ballot, register to vote or update voter registration, receive and vote a provisional ballot, receive a replacement ballot, or vote using accessible voting equipment at a vote center. Additionally, existing law requires a vote center to be accessible to voters with disabilities and provide language assistance consistent with current state and federal law.

Five counties (Madera, Napa, Nevada, Sacramento, and San Mateo) all conducted elections under this system last year; the remaining counties may use this system beginning in 2020. According to the Secretary of State, at least 15 counties (Amador, Butte, Calaveras, El

Dorado, Fresno, Los Angeles, Madera, Mariposa, Napa, Nevada, Orange, Sacramento, San Mateo, Santa Clara, and Tuolumne) are expected to conduct elections pursuant to the CVCA next year.

9) **Arguments in Support:** In support, Secretary of State Alex Padilla writes:

Current law only allows a voter registered with a political party to vote in the political party's primary election unless the voter takes additional actions. Voters can change their political party affiliation, or they can request ballots from political parties who have notified the Secretary of State that non-affiliated voters may cast a ballot in their primary. Registered voters must completely re-register to change a political party or their address if they are within 14 days of an election. Consequently, NPP voters must request a ballot in order to vote for a presidential candidate or change their political party preference. Election officials currently provide instructions for voters about NPP voting on state information guides, by email, and with each nonpartisan vote by mail ballot.

AB 681 would provide additional information about the primary voting process, streamline the process to change a voter's political affiliation, and authorize ballot requests by email or phone. These collective actions will educate voters and reduce the amount of frustration and confusion for voters seeking to cast a ballot for their favored presidential candidate.

10) **Arguments in Opposition:** In opposition to a prior version of this bill, the Election Integrity Project California, Inc. wrote:

AB 681 would put unnecessary burdens on County Clerks and Registrars of Voters at the very time that they are stretched and overwhelmed with the many challenges of providing the voters of their counties with a trustworthy democratic process. The notifications this bill requires are duplicative of what is already required by law, and would be irresponsibly expensive, an affront to taxpayers everywhere.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
California Association of Clerks and Election Officials
California Common Cause
California Voter Foundation (prior version)
League of Women Voters of California
Secretary of State Alex Padilla

Opposition

Election Integrity Project California (prior version)

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