

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1157 (Jones) – As Introduced: February 22, 2013

SUBJECT: Elections: voting procedures.

SUMMARY: Makes significant changes to voting procedures. Specifically, this bill:

- 1) Requires a vote by mail (VBM) identification envelope to include the last four digits of the voter's California driver's license number or California identification card number or, if the voter has neither, the last four digits of the voter's social security number (SSN). Requires the signature and numeric identifying information to be verified as consistent with the voter's state or federal records before counting the ballot. Requires the VBM identification envelope to include a security flap or sleeve to conceal the voter's signature and identifying information during the mailing.
- 2) Provides that a VBM ballot of a member of the Armed Forces of the United States who is an "absent uniformed services voter," as defined by federal law, is timely cast if postmarked or signed and dated on or before election day and received by the voter's elections official not later than 21 days after election day.
- 3) Requires a voter, prior to receiving a ballot, to present to a member of the precinct board proof of identification that satisfies all of the following requirements:
  - a) The document shows the name of the individual to whom the document was issued, and the name conforms to the name in the individual's voter registration record;
  - b) The document shows a photograph of the individual presenting the identification;
  - c) The document includes an expiration date, and the document is not expired at the time of voting or expired less than two years prior to the general election;
  - d) The document was issued by the United States or the State of California or is a valid tribal member identification card issued by an Indian tribe recognized by the United States government.
- 4) Provides that if a voter is unable to, or refuses to, provide proof of identification as required by the provisions of this bill, he or she may execute a declaration, certified to be correct under penalty of perjury, declaring that he or she is registered to vote. Requires a voter, upon execution of the declaration, to be issued a provisional ballot as required by existing law and an envelope to be completed in the same manner as a VBM envelope.
- 5) Requires the fee for an original or replacement state identification card to be waived for a person who requires the identification card for the purposes of satisfying the requirements above.

EXISTING LAW:

- 1) Requires a voter who appears at the polling place to vote to announce his or her name and address to a precinct officer. Requires the precinct officer, upon finding the name in the roster of voters, to repeat the voter's name and address. Requires the voter to then write his or her name and residence address on a roster of voters, whereupon the voter is provided a ballot.
- 2) Permits a voter to vote a provisional ballot if his or her qualification or entitlement to vote cannot be immediately established upon examination of the roster of voters for the precinct or upon examination of the records on file with the county elections official.
- 3) Authorizes a member of the precinct board to challenge the ability of a person to vote on various grounds, including that the voter is not the person whose name appears on the index, is not a precinct resident, is not a U.S. citizen, has already voted on that day, or is on parole for the conviction of a felony.
- 4) Provides that any person who votes more than once, attempts to vote more than once, or impersonates or attempts to impersonate a voter at an election is guilty of a crime punishable by imprisonment for 16 months or two or three years, or in county jail not exceeding one year.
- 5) Requires a voter who submits his or her 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. This requirement only applies the first time an individual votes after registering to vote.
- 6) Requires all VBM ballots to be received by the elections official from whom they were obtained or by the precinct board no later than the close of the polls on election day in order to be counted.
- 7) Permits a military or overseas voter to register to vote and apply for a VBM ballot by facsimile transmission. Requires an elections official to send a VBM ballot by means of transmission (mail, facsimile, or electronic transmission) requested by a qualified military or overseas voter.

FISCAL EFFECT: Unknown. State-mandated local program; contains a crimes and infractions disclaimer; contains reimbursement direction.

COMMENTS:

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

AB 1157 is designed to ensure the security and protection of our sacred right to vote and will provide for uniform identification at the polling place to protect the ballot box from those who would attempt to cast a fraudulent vote. It will also preserve the integrity of the ballot box by changing the outdated current system, which worked well in earlier times when poll workers knew most of their neighbors, but does not work well in today's

elections with larger voting precincts in a modern, mobile society. It should be a top priority of elected leaders to restore public confidence in integrity of our voting system.

- 2) Voter Fraud Prevention: In the background information provided by the author's office, the author argues that the current election system has no safeguards to ensure that non-eligible, persons do not vote. However, the author has not provided any evidence that voter fraud of the type that would be prevented by identification requirements at the polls and on VBM ballots is a problem in need of a solution.

California law already requires the elections officials to compare the signature on a VBM ballot envelope with the signature on that voter's affidavit of registration before the VBM ballot may be counted. If those signatures do not match, the ballot will not be counted. A person who casts a fraudulent VBM ballot at an election can be charged with a number of different felonies, any one of which is punishable by up to three years imprisonment. Given that a signature comparison is already done on every VBM ballot before the ballot is counted to protect against fraud, and given that casting a fraudulent VBM ballot is a felony, it is unlikely that VBM ballot fraud is widespread.

In addition, a voter who wishes to vote at the polls on election day must have and confirm his or her name and address on the roster of voters. If a voter's name is not on the roster, that person is allowed to vote a provisional ballot, which is later reviewed by the elections official to determine the person's right to vote, before being included in the official canvass. As such, the roster of voters plays a big role on election day to minimize the occurrence of fraud. Current law requires county elections officials to take several steps to ensure that the voter rolls are accurate, such as continuous review and maintenance of the rolls to remove obsolete, duplicative, and non-eligible names.

Other efforts required by law to reduce potential fraud include a voter fraud hotline maintained by the Secretary of State (SOS), the ability of a member of the precinct board to challenge any person attempting to vote at the polls if the voter's qualifications to vote are in question, and vigorous prosecutions by local law enforcement agencies working together with the SOS's office.

Furthermore, according to information provided by the SOS's Election Fraud Investigation Unit, from 1994 to 2010, there have been 23 convictions for double voting, 6 convictions for fraudulent voting, and 4 convictions for non-citizen voting. However, it is unclear whether these acts occurred while attempting to vote at the polls or if the violations occurred by a VBM voter. However, given the small amount of convictions in the past decade, it is reasonable to believe that the current efforts to thwart voter fraud are working.

- 3) Voters Who Lack ID: A November 2006 survey by the Brennan Center for Justice found that 11% of United States citizens do not have government-issued photo identification. To the extent that this figure is reflective of the California electorate, it is possible that a significant number of Californians who are eligible and registered to vote do not have a form of identification that would meet the requirements of this bill. This same survey also demonstrated that certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of identification.

Although this bill waives the fee for an individual to obtain an identification card if the request for the identification card is for voting purposes, it does not provide any assistance to those individuals to meet the sometimes difficult requirements of obtaining an identification card. For example, in order to be issued a California identification card, an individual must go to a Department of Motor Vehicle's office during business hours and provide, among other things, verification of birth date by submitting documents such as a certified copy from the state or local vital statistics office of the individual's birth certificate. Such documentation may be difficult to obtain and typically requires an additional fee.

- 4) Will This Bill Disenfranchise Voters Due to Inadvertent Errors? While it seems unlikely that this bill will provide any meaningful protection against fraud, it also seems likely that one consequence of this bill will be the invalidation of a number of legally cast ballots. For instance, if a voter transposed two of the digits from his or her driver's license number, identification card number, or SSN on their VBM envelope, his or her ballot would be rejected under the provisions of this bill even if the signature on the ballot was a match to the signature on that voter's registration card. Similarly, to the extent that a person neglected to provide the last four digits of his or her driver's license number, identification card number, or SSN, or failed to provide that information due to fear of identity theft, this bill would require that the ballot be invalidated even if there was no question that the ballot was cast by the voter to whom it was issued.
- 5) Carter-Baker Commission: The background information provided by the author's office cites a passage from the Carter-Baker Commission (Commission) report, arguing that voters should be required to show identification before receiving a ballot as a measure to combat fraud.

Although the Commission found that "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting," the commission nonetheless proposed requiring voters to show identification before receiving a ballot. However, the specific voter identification proposal contained in the Commission report differs significantly from the approach proposed by this bill. In fact, the co-chairs of the Commission (former President Jimmy Carter and former Secretary of State James A. Baker III) specifically opposed the state-by-state approach advanced by this bill in an op-ed printed in the New York Times just days after the release of the Commission report. Instead, the Commission proposed requiring voters to present the Real ID card – a standardized driver's license mandated by federal law – but only if the states also "assume the responsibility to seek out citizens to . . . register voters." This bill fails to implement a reform that the Commission believed was necessary to keep an identification requirement from being implemented in a discriminatory manner.

- 6) Arguments in Opposition: The Mexican American Legal Defense and Educational Fund writes in opposition:

Rather than facilitating voter participation, AB 1157 will unnecessarily restrict it. The legislation requires polling place voters to present identification and restricts such voters to only government-issued photo identification. Many voters who are elderly, low-income or survivors of domestic violence do not have or cannot afford a driver's license or a United States passport, or the underlying documents necessary to obtain such identification. Although AB 1157 provides for a fee waiver for individuals seeking a

DMV-issued identification card, the fee waiver does not cover the costs associated with the often lengthy time it takes to carry out transactions at the DMV, such as lost wages, nor does it cover the cost of obtaining the underlying documents necessary to obtain an identification card. In addition, requiring proof of identity will discourage eligible citizens from exercising their right to vote and create delays at polling places.

Additionally, AB 1157 would create new barriers for voters who are casting vote-by-mail ballots. Vote-by-mail voters are already required to write down several pieces of information on their vote-by-mail envelope, and common problems include voters neglecting to sign or date their vote-by-mail envelope or to complete other required information on the vote-by-mail ballot. These problems are multiplied for voters who face significant barriers to voting such as new voters and limited English proficient voters. California should strive to make the vote-by-mail process easier and more accessible for voters rather than making it more difficult.

- 7) State Mandates: The 2011-2012 and 2012-2013 state budgets included the suspension of various state mandates as a mechanism for cost savings. Included on the list of suspensions were all six existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2013-2014 fiscal year. The Committee may wish to consider whether it is desirable to create new election mandates when current elections-related mandates are suspended.
- 8) Previous Legislation: AB 1716 (Garrick) of 2012, and AB 945 (Donnelly) of 2011, were substantially similar to this bill, and both failed passage in this committee.

AB 663 (Morrell) of 2011, would have required a voter to present proof of identification before being permitted to sign the roster of voters and receive a ballot. AB 663 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

American Association of University Women  
American Civil Liberties Union of California  
Asian Americans for Civil Rights & Equality  
California Common Cause  
California State Council of the Service Employees International Union  
League of Women Voters of California  
Mexican American Legal Defense and Education Fund

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