

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1170 (Donnelly) – As Amended: March 21, 2013

SUBJECT: Voters: registration cancellation.

SUMMARY: Requires a county elections official to cancel the voter registration of a voter who fails to respond to an alternative residency confirmation address verification mailing in response to change of address data received, and who does not offer to vote or vote in any election between the date of the mailing and two federal general elections after the date of that mailing. Specifically, this bill:

- 1) Modifies the alternate residency confirmation postcard notice and provides that if a voter does not appear or offer to vote at any election in the period between the date of the alternate residency confirmation postcard notice and the second federal general election after the date of the notice, the voter's registration will be canceled and the voter will have to reregister in order to vote.
- 2) Repeals the elections official's discretionary authority to place a voter on the inactive file and instead requires a county elections official to place a voter's name on the inactive file, if the change-of-address information received indicates the voter has moved to a new address in another county, if the mailings have been returned as undeliverable, or if the voter fails to confirm his or her address as required by the alternate residency confirmation postcard.
- 3) Repeals a provision of law that prohibits an elections official, when contracting with a consumer credit reporting agency or its licensee to obtain chance-of-address data, from placing the voter's name on the inactive file or cancelling the voter's registration, if the voter does not respond to the forwardable notice mailed, as specified, and does not otherwise verify in a signed writing that he or she has moved to a new residence address. Requires, instead, that an elections official cancel the voter registration of a voter if the voter does not respond to the forwardable notice sent, as specified, does not otherwise verify in a signed writing that he or she has moved to a new residency address, and does not offer to vote or vote at any election between the date of the forwardable notice and two federal general elections after the date of the forwardable notice.

EXISTING LAW:

- 1) Requires each county elections official to conduct a pre-election residency confirmation of registered voters pursuant to one of the following procedures prior to each primary election:
 - a) By mailing a non-forwardable postcard to each registered voter in the county who has not voted at an election in the six months preceding the start of the confirmation procedure;
 - b) By contracting with the USPS to obtain use of the postal service change-of-address data such as the National Change of Address System (NCOA);

- c) By contracting with a consumer credit reporting agency or its licensees to obtain use of change-of-address data; or,
 - d) By including the return address of the elections official's office along with the language "Address Correction Requested" on the outside portion of the sample ballot or sample ballot envelope mailed to voters at an election conducted within the last six months before the start of the confirmation process. If an elections official uses this procedure for the pre-election residency confirmation, it must confirm the addresses of voters who were not eligible to vote at an election during the six months preceding the start of the confirmation process, or who were not mailed a sample ballot with an address correction requested, by either mailing residency confirmation postcards to those voters or by contracting with the USPS to obtain change-of-address data.
- 2) Provides that the following actions shall be taken with respect to information that the county elections official receives as a result of the pre-election residency confirmation process:
- a) If the elections official does not receive any information that would indicate that the voter has moved, the official takes no action with respect to that voter's registration.
 - b) If NCOA data indicates that the voter has moved and left no forwarding address, the voter's registration is placed on the inactive list.
 - c) If consumer credit agency data indicates the voter has moved, the elections official must send a forwardable notice, which may be in the form of a postcard, to the registered voter to allow the voter to verify or correct his or her address information:
 - i) If the voter responds to the forwardable notice mailed as specified above, and indicates that he or she has moved to a new address within the same county, the elections official shall update that voter's registration with the new residence address if the voter's signature on the returned notice matches the signature on file for that voter.
 - ii) If the voter responds to the forwardable notice mailed as specified above, and indicates that he or she has moved to a new address in another county, the elections official shall cancel that voter's registration if the voter's signature on the returned notice matches the signature on file for that voter.
 - iii) If the voter does not respond to the forwardable notice mailed as specified above, and does not otherwise verify in a signed writing that he or she has moved to a new residence address, the elections official shall take no action with respect to that voter's registration.
 - d) If a postcard or sample ballot is returned as undeliverable and without a forwarding address, the registration of that person is placed on the inactive list, and the elections official must send the voter a forwardable postcard asking the voter to confirm his or her residence address.

- i) If the voter does not reply to this forwardable postcard, and the voter does not vote between the time of that mailing and the second federal general election conducted after that mailing, the voter's registration may be canceled.
 - ii) If the voter replies to the forwardable postcard, and indicates that he or she is still residing at the same address, the voter's registration is moved back to the active voter list.
 - iii) If the voter replies to the forwardable postcard, and indicates that he or she has moved, and is now residing at an address elsewhere in the same county, the voter's registration is updated to that new address and the registration is moved back to the active voter list.
 - iv) If the voter replies to the forwardable postcard, and indicates that he or she has moved, and is now residing at an address in a different county, the voter's registration is canceled.
- e) If the postcard or sample ballot is returned with a forwarding address for the voter, or if the NCOA information provides a forwarding address for the voter, the elections official takes the following actions:
- i) If the forwarding address is in the same county as the address at which the voter is currently registered to vote, the voter's registration address is updated by the elections official to reflect the new address provided by the post office, and the voter is mailed a postcard indicating that the voter's registration will be changed unless he or she notifies the elections official within 15 days that the change-of-address was not a change of the voter's permanent residence.
 - ii) If the forwarding address is not in the same county as the address at which the voter is currently registered to vote, the registration of that person is placed into the inactive list, and the elections official must send the voter a notice asking the voter to advise the elections official whether the change-of-address is a permanent change of residence or not, or to advise the elections official if the change is incorrect.
 - (1) If the voter does not reply to this notice, and the voter does not vote between the time of that notice and the second federal general election conducted after that notice, the voter's registration may be canceled.
 - (2) If the voter replies to the notice, and indicates that he or she is still residing at the same address, the voter's registration is moved back to the active voter list.
 - (3) If the voter replies to the notice, and confirms that he or she has moved, but to an address that is elsewhere in the same county, the voter's registration is updated to that new address and the registration is moved back to the active voter list.
 - (4) If the voter replies to the notice, and confirms that he or she has moved to a different county, the voter's registration is canceled.

- 3) Provides that voters who are on the inactive list of voters shall not receive election materials and are not included in calculations to determine the number of signatures required for qualification of candidates and measures, precinct size, or other election administration related processes.
- 4) Provides that any voter who has been placed on the inactive list of voters and who offers to vote or who notifies the elections official of a continued residency shall be removed from the inactive list and placed on the active voter list.
- 5) Permits an elections official to send an alternate residency confirmation postcard, if a voter has not voted in an election within the preceding four years, and his or her residence address, name, or party affiliation has not been updated during that time. Permits the use of this postcard to be sent subsequent to the NCOA or sample ballot returns, but prohibits it from being used in the residency confirmation process. Requires the postcard be forwardable, including a postage paid and preaddressed return form to allow the voter to verify or correct the address information. Requires an elections official using the alternate residency confirmation procedure to notify all voters of the procedure in the sample ballot pamphlet or in a separate mailing. Requires the notice to be substantially in this form below:

"If the person named on the postcard is not at this address, PLEASE help keep the voter rolls current and save taxpayer dollars by returning this postcard to your mail carrier."

"IMPORTANT NOTICE"

"According to our records you have not voted in any election during the past four years, which may indicate that you no longer reside in _____ County. If you continue to reside this county you must confirm your residency address in order to remain on the active voter list and receive election materials in the mail."

"If the confirmation has not been received within 15 days, you may be required to provide proof of your residency address in order to vote at future elections. If you no longer live in _____ County, you must reregister at your new residency address in order to vote in the next election. California residents may obtain a mail registration form by calling the county elections official or the Secretary of State's Office."

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

COMMENTS:

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

In 2005 the bipartisan Commission on Federal Election Reform, co-chaired by former President Jimmy Carter and Secretary of State James Baker, issued a number of suggestions to strengthen the country's electoral system, including universal accurate voter registration lists. The Commission specifically noted that a complete, accurate, and current voter roll is essential to ensure that every eligible citizen who wants to vote can do so, that individuals who are ineligible cannot vote, and that citizens cannot vote more than once in the same election. The Commission further noted that incomplete or

inaccurate registration lists lie at the root of most problems encountered in U.S. elections, and that lists containing ineligible, duplicate, fictional, or deceased voters, are “an invitation to fraud.”

Significantly, the Commission cited California as one state with extensive “deadwood” on its voter registration lists, noting that one in every three California voters was on the inactive list in 2004, and that this state had clearly failed to update its lists by removing the names of voters who had died or moved away.

Unfortunately, this situation has not improved since 2004, and in many cases current law actually prevents the removal of the names of voters who disappeared many years ago. As a result, the names of tens of thousands of persons who died or moved away remain on the rolls and can easily be used by third persons to cast fraudulent votes, thereby disenfranchising Californians by cancelling-out their votes. A NBC News investigation found that the names of more than 25,000 deceased voters are still on the rolls and that some of these deceased voters continued to vote, even years after their death. It cited one example of a former Hayward police officer who died in 2001, but who has still managed to vote eight times since 2005.

AB 1170 will prevent these abuses and safeguard the integrity of our voting system by requiring elections officials to remove the names of voters who go missing, who fail to respond to a forwardable residency confirmation postcard sent by elections officials, and who then also fail to vote in both of the next two federal general elections. AB 1170 will thus implement the recommendations of the Carter-Baker Commission, as well as the mandate of the federal Motor Voter Act that California make reasonable efforts to remove the names of ineligible voters who have died or moved away.

Accordingly, AB 1170 will help ensure that California’s voter registration lists are complete, accurate, and current in order to safeguard full and fair citizen participation in our democracy, so that every eligible citizen can vote, that ineligible persons cannot vote, and that no one can vote more than once in the same election.

- 2) Existing Voter File Maintenance Procedures: Under existing law, each county elections official is required to conduct a pre-election residency confirmation procedure, as specified, prior to each statewide primary election. Generally, county elections officials comply with this requirement by mailing nonforwardable residency confirmation postcards to registered voters, or by contracting with the USPS to obtain change-of-address information. State law also allows the residency confirmation through the mailing of sample ballots, under specified circumstances. If information received by the elections official through the pre-election residency confirmation procedure suggests that a voter has moved, the registration of that voter may be canceled or updated, or the voter's registration may be placed on the inactive list of voters, depending on the type of information received by the official. If an elections official does not receive any information to suggest that a voter has moved as a result of the pre-election residency confirmation procedure, the registration of the voter is not affected.

In addition, to these pre-election residency confirmation procedures, voter registration lists are regularly updated with information from death records from the Department of Health Services and from county registrars of births and deaths, lists of individuals convicted of

felonies and sentenced to prison from the Department of Corrections and Rehabilitation and from federal courts, change-of-address information and other voter information from the Department of Motor Vehicles and other state and federal agencies, notifications from other jurisdictions that a voter has reregistered in a new location, receipt of official mailings returned by the USPS as undeliverable, and direct notification from individual voters that they have moved to another jurisdiction or otherwise changed their registration information.

3) Information from Government Entities vs. Information from Private Third Parties:

Generally, existing state law allows a voter's registration to be canceled, or to be placed on the inactive list for possible eventual cancellation, only when the elections official receives information from a governmental entity or from the voter himself or herself that indicates that the voter has moved or otherwise should no longer appear on the active list of voters. Information from private third parties can be used by the elections official to identify voters who may have moved for additional follow-up research, but the elections official cannot cancel a voter's registration based solely on information from non-governmental sources other than the voter.

Last year the Governor signed AB 216 (Swanson), Chapter 495, Statutes of 2012, which permits a county elections official, when conducting a pre-residency confirmation procedure as required by existing law, to contract with a consumer credit reporting agency to obtain change-of-address data, in lieu of mailing residency confirmation postcards or contracting with the USPS to obtain postal service change-of-address data. However, AB 216 explicitly prohibits a county elections official from taking any action with respect to a voter's registration even if the county elections official receives information from the credit agency indicating that the voter has moved unless the voter affirmatively responds to the mailing that is sent out by the county elections official. In doing so, AB 216 maintained the long-standing policy allowing a county elections official to use information from a private consumer credit reporting bureau to do additional follow-up with voters who may have moved, but prohibiting a voter's registration from being canceled solely based on information from the credit bureau.

This bill, however, does not maintain that long-standing policy. Instead it repeals the prohibition mentioned above and allows information from consumer credit reporting agencies to be used to cancel a voter's registration. The committee may wish to consider whether this long-standing policy should be changed. Furthermore, the committee should consider whether this change will set a new precedent that allows information from other non-governmental sources to be used to cancel a voter's registration.

4) No Updates Unless Voter Responds: Under the pre-election residency confirmation procedures that are used under existing law, there are two ways in which the voter registration files can be "cleaned-up." First, county elections officials can update the voter rolls based on any affirmative response they receive from a registered voter. The second way that these procedures allow the voter rolls to be "cleaned-up," however, is that for any voter for whom the county receives information from US Postal Service indicating that the voter has moved, but from whom the county does not receive an affirmative response, the county can put that person on the inactive list of voters, and that voter's registration is canceled eventually if the voter does not vote in the next two federal general elections.

However, as noted above, if a county were to use change-of-address information from a consumer credit reporting agency for its pre-election residency confirmation, the only way the voter file gets “cleaned-up” is when a voter affirmatively responds to a mailing that is sent out in response to change-of-address information from the credit agency. As mentioned above, existing law does not permit any action to be taken with respect to a voter's registration if the county elections official receives information from the credit agency indicating that the voter has moved unless the voter affirmatively responds to the mailing that is sent out by the county elections official. For voters that don't respond to such a mailing, the county elections official does not have the option of canceling those registrations, nor does the elections official have the option of placing those registrations on the inactive list of voters.

As a result, it is possible that a county that chooses to use change-of-address information from a credit agency for its pre-election residency confirmation could have a larger number of voters who have moved, but for whom the county is unable take any action with respect to those voters' registrations as a result of the pre-election residency confirmation process. Furthermore, some voters may remain on the active list, even though the same voters would have had their registration moved to the inactive list of voters if the county had used NCOA data or mailed pre-election residency confirmation postcards pursuant to existing law.

However, for some of the voters who don't respond, the registration records will still be updated when the elections official receives undeliverable election materials that are returned by the postal service (including sample ballots and vote by mail ballots), when the voter registers to vote in another county, or when the voter updates his or her address with the DMV.

- 5) Alternative Residency Confirmation Process: SB 1313 (Mountjoy), Chapter 5, Statutes of 1996, permits, but does not require, a county to conduct an alternative residency confirmation procedure for registered voters who have not voted in recent elections. Under this procedure, a county sends a forwardable postcard to every voter who has not voted in the preceding four years with a request that the voter confirm his or her residence address. If a voter returns the postcard and confirms that he or she continues to live at the same address, the voter's registration remains on the active voter list. If a voter returns the postcard and indicates that he or she has moved, that voter's registration is updated to the voter's new address if the voter moved within the same county, or is canceled if the voter moved to another county. If the voter does not respond to the alternative residency confirmation postcard, and the postcard is not returned to the county, the voter's registration is moved to the inactive list.

When a voter's registration is moved to the inactive list of voters as the result of the alternative residency confirmation process, a provision of state law previously provided that the voter's registration may be canceled if the voter does not vote or offer to vote between the time of the alternative residency confirmation mailing and two federal general elections after the mailing. Despite the fact that state law appeared to allow the cancelation of registrations in this circumstance, however, in practice, registrations could not be canceled when a voter's registration has been placed on the inactive list of voters as the result of the alternative residency confirmation process due to a possible conflict with federal law and due to a stipulation between the state and the federal government.

In 1993, the federal government enacted the National Voter Registration Act (NVRA) of 1993, commonly referred to as "motor voter," to make it easier for Americans to register to vote and to remain registered to vote. Among other provisions, NVRA prohibited a state from removing the name of any person from the official list of voters registered to vote in an election for federal office by reason of the person's failure to vote. At the time the Legislature was considering SB 1313, committee analyses in both houses indicated that the bill could be inconsistent with this provision of the NVRA, and one analysis noted that a federal court case that was pending at the time was considering the issue of using a "non-voting trigger" to send residency confirmation cards to voters.

In October 1997, the United States filed a motion for further relief in that court case. In its motion, the United States contended that the alternative residency confirmation procedure in California law was inconsistent with the NVRA, as described above. In February 1998, the state of California, without conceding that the alternative residency confirmation procedure was contrary to the NVRA, entered into a stipulation with the United States that prohibited the cancellation of the registration of any voter who was moved to the inactive list as a result of the alternative residency confirmation process. To the committee staff's knowledge, this stipulation has not been modified, and remains in effect.

Subsequent to the adoption of that stipulation, the federal Help America Vote Act (HAVA) of 2002 amended the provisions of the NVRA that prohibit states from canceling voters' registrations for failure to vote. Specifically, the NVRA now provides that the prohibition against removing a name of a person from the list of registered voters for failure to vote shall not be construed to prohibit a state from using procedures outlined in the NVRA to remove an individual from the official list of voters if the individual has not responded to a specified notice from the county elections official and does not vote nor appear to vote in two or more consecutive federal general elections. However, the specified procedures included in the NVRA deal with change-of-address information supplied by the USPS, and other voter registration file maintenance based on the grounds that registrants *have changed residence*. Because the alternative residency confirmation procedure is not triggered by any information that suggests that the voter has moved, but rather is triggered entirely by a person's failure to vote during a specified time period, it appears that the alternative residency confirmation procedure may still be in conflict with federal law, notwithstanding the amendments made to the NVRA by HAVA. Furthermore, because the stipulation described above remains in effect, the state continues to be prohibited from canceling the registrations of voters based on the alternative residency confirmation process, regardless of whether such an action is permitted by the NVRA.

As mentioned above, last year, the Governor signed into law AB 216 (Swanson), Chapter 495, Statutes of 2012. Aside from permitting county elections officials, when conducting the pre-election residency confirmation, to contract with a consumer credit reporting agency to obtain change-of-address information, the provisions of AB 216 also resolved the issue described above. The measure deleted language in the Elections Code that allowed a voter's registration to be canceled for failure to vote when that registration had been placed on the inactive list of registered voters as the result of the alternative residency confirmation procedure, thereby conforming to existing practice and ensuring California was no longer in conflict with federal law. This bill reverses the actions that took place last year and amends the Election Code to add the specific language that was affirmatively deleted last year. This

bill would therefore allow a voter's registration to be canceled for failure to vote when that registration has been placed on the inactive list as a result of the alternative residency confirmation procedure. This change in law could result in California again being in conflict with federal law. The committee members may wish to consider whether it's prudent to support a bill that arguably could result in California being in conflict with federal law.

- 6) Arguments in Support: The California Association of Clerks and Election Officials (CACEO), who have a support if amended position on this bill, writes:

While [CACEO] favors the incorporation of consumer credit data into the administration of the central database of voters, [CACEO] has voted a Support If Amended due to the requirement that the county election official cancel the record of a voter who fails to respond and who subsequently fails to vote. We request cancellation of the voter's record continue to be discretionary, rather than mandatory. Therefore, we suggest amending the word "shall" to "may" in subsection (b) of Section 2226 and subsection (f)(3) of Section 2227.

- 7) Arguments in Opposition: The California Federation of Teachers writes in opposition:

[AB] 1170 (Donnelly) would require a county elections official to cancel the voter registration of a voter who fails to respond to an address verification mailing sent in response to a change-of-address data received from the United States Postal Service, a consumer credit report agency, or its licensees and who does not offer to vote or vote at any election between the date of the mailing and two federal general elections after the date of the mailing. The bill would additionally modify the form of a specified residency confirmation postcard to include information regarding the circumstances in which a voter's registration will be canceled. We believe this measure aims to construct yet another barrier to block eligible Californians from exercising their Constitutional right to vote.

- 8) Previous Legislation: AB 216 (Swanson), Chapter 495, Statutes of 2012, permits county elections officials to use change-of-address information from consumer credit reporting agencies, instead of using change-of-address information from the United States Postal Service, for the purpose of updating and maintaining the accuracy of voter registration lists.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Clerks and Election Officials (If Amended)

Opposition

American Civil Liberties Union of California
Asian Americans for Civil Rights & Equality
California Federation of Teachers
Secretary of State Debra Bowen

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