

Date of Hearing: August 27, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1311 (Bradford) – As Amended: August 18, 2014

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: 57-14 (May 13, 2013) SENATE: 34-2 (August 21, 2014)

SUBJECT: Recall elections and voter registration.

SUMMARY: Establishes a process for filling a vacancy in an office that occurs after a recall petition has been filed against the vacating officer and clarifies provisions of law related to voter registration assistance for a conservatee. Specifically, this bill:

- 1) Requires the elections official or officials to verify the signatures on the recall petition that have been submitted as of the date of the vacancy.
- 2) Provides that if a sufficient number of signatures have been filed for the recall to qualify as of the date of the vacancy, the recall election shall proceed.
- 3) Provides that if an insufficient number of signatures or no signatures were filed for the recall to qualify as of the date of the vacancy, the recall shall not proceed and the vacancy shall be filled as provided by law.
- 4) Provides that a person who is the subject of a recall petition may not be appointed to fill the vacancy in the office that he or she vacated nor shall that person be appointed to fill any other vacancy in office on the same governing board for the duration of the term of office of the seat that he or she vacated.
- 5) Deletes the requirement that any person appointed to fill a vacancy shall hold the office only until a successor is selected.

The Senate amendments:

- 1) Prohibit a person, including a conservatee, from being disqualified from voting on the basis that he or she signs the affidavit of voter registration with mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of registration with the assistance of another person.
- 2) Make other corresponding changes.

AS PASSED BY THE ASSEMBLY, this bill established a process for filling a vacancy in an office that occurs after a recall petition has been filed against the vacating officer.

EXISTING LAW:

- 1) Provides that if a vacancy occurs in an office after a recall petition is filed against the vacating officer, the recall election shall proceed. Provides that the vacancy shall be filled as provided by law, but any person appointed to fill the vacancy shall hold office only until a successor is selected and the successor qualifies for that office.
- 2) Permits a person who is a United States citizen, a resident of California, and at least 18 years of age at the time of the next election to register to vote.
- 3) Provides that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.
- 4) Permits an individual to receive assistance from another person when completing an affidavit of registration. Requires any person that assists an individual in completing the affidavit, to sign and date the affidavit below the signature of the affiant.
- 5) Requires an individual to certify the content of the affidavit of voter registration as to its truth and correctness, under penalty of perjury, with a signature and the date of signing. If the individual is unable to write, he or she may instead sign with a mark or cross or use a signature stamp, as specified.
- 6) Prohibits a citizen from being denied the right to vote in any federal, state, or local election conducted in any state or political subdivision of a state because of his or her failure to comply with any test or device. Defines a "test or device" to include, among other things, any requirement that a person demonstrate the ability to read, write, understand, or interpret any matter.
- 7) Provides for voters who need assistance to vote by reason of blindness, disability, or inability to read or write to be given assistance by a person of the voter's choice.
- 8) Regulates the terms and conditions of conservatorships and creates various requirements for a court and a court investigator with regard to informing a proposed conservatee that he or she may be disqualified from voting if he or she is not capable of completing an affidavit of voter registration. Requires a person be deemed mentally incompetent and disqualified from voting if a court finds that he or she is not capable of completing an affidavit of voter registration, as specified.
- 9) Requires the court, whenever an order establishing a conservatorship is made and in connection with the order it is found that the person is not capable of completing an affidavit of voter registration, to forward the order and determination to the county elections official of the person's county of residence.

FISCAL EFFECT: None. This bill is keyed non-fiscal by Legislative Counsel.

COMMENTS:

- 1) Prior Committee Consideration of This Measure: In May of last year, this committee considered and approved this measure on a 5-1 vote. At the time, this measure would have established a process for filling a vacancy in an office that occurs after a recall petition has been filed against the vacating officer. Subsequent to the committee's approval of this measure, it was amended in the Senate to add language to the bill related to voter registration assistance for a conservatee. As a result, this bill has been re-referred to this committee for further consideration pursuant to Assembly Rule 77.2.

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

California law specifies circumstances under which a person is disqualified from voting. One of these is a finding by a court that a person is mentally incompetent. Californians with intellectual or developmental disabilities who are placed under conservatorship are evaluated during a court proceeding for mental competency. If the potential voter in question is unable to complete a voter registration application, he or she is disqualified. California's Election Code allows a person to receive assistance when registering to vote, but the allowances are not referenced or included in the statutes regulating conservatorship proceedings. This lack of clarity holds the potential for qualified voters to be disenfranchised.

[Additionally, questions] have arisen of how current law would be interpreted regarding the timing of a vacancy in an office subject to a recall. Specifically, concerns have been raised over "musical chairs" gamesmanship, where someone might resign to avoid a recall moving forward then get appointed to another vacancy on the same governing body. Current law provides that if an elected official resigns after a recall petition is filed with the county elections official, the entire recall process, including the requirement that an election be held, must proceed. . . . AB 1311 addresses this conflict by clarifying the process to be followed when the elected official resigns after recall petitions have been filed with a county elections office.

- 3) Conservatee Rights: In California, if an adult is unable to manage his or her medical, personal, and financial decisions, a conservator of the person may be appointed. While a conservator of the person has charge of the care, custody and control of the conservatee, that power is not absolute. According to a form adopted by the Judicial Council entitled Notice of Conservatee's Rights, when a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. After appointment of a conservator, the conservatee keeps specified rights including the right to vote unless the court has limited or taken that right away.
- 4) Voting Rights Complaint: In July of this year the Disability and Abuse Project of Spectrum Institute filed a formal complaint with the United States Department of Justice's Civil Rights Division against the Los Angeles Superior Court regarding their application of existing state law deeming conservatees ineligible to register to vote if they are not capable of completing an affidavit of voter registration. The complaint asserts that this practice constitutes a violation of the federal Voting Rights Act's (VRA) prohibition on use of a test or device as a prerequisite for voter registration. The United States Department of Justice has not yet

responded to the complaint.

- 5) Voter Registration Assistance: Article II, Section 2 of the California Constitution permits a person who is a United States citizen, a resident of California, and at least 18 years of age at the time of the next election, to register to vote. Additionally, Article II, Section 4 of the California Constitution provides that the Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony. Moreover, Section 208 of the federal VRA provides that voters who need assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice. Section 201 of the VRA provides that no citizen shall be denied the right to vote in any federal, state, or local election conducted in any state or political subdivision of a state because of his or her failure to comply with any test or device. The VRA defines a "test or device" to include, among other things, any requirement that a person demonstrate the ability to read, write, understand, or interpret any matter.

Current state law permits an individual to receive assistance from another person when completing an affidavit of voter registration and requires the person that assists the individual in completing the affidavit to sign and date the affidavit, as specified. Additionally, state law requires an individual to certify the content of the affidavit of voter registration as to its truth and correctness, under penalty of perjury, with a signature and the date of signing and provides that if the individual is unable to write he or she may instead sign with a mark or cross or use a signature stamp, as specified.

This bill ensures federal and state laws related to voter registration assistance are applied equally to any individual who seeks to register to vote. Accordingly, this bill prohibits a person, including a conservatee, from being disqualified from voting on the basis that he or she signs the affidavit of voter registration with mark or a cross, signs the affidavit of voter registration with a signature stamp, or completes the affidavit of registration with the assistance of another person. In addition, this bill clarifies provisions of state law that regulate the establishment and review of conservatorships by the court to include references to existing law regarding the completion of an affidavit of voter registration.

- 6) Previous Legislation: AB 2088 (Adams) of 2010, was substantially similar to the recall related portions of this measure except that AB 2088 would have clarified a conflict regarding the number of signatures that need to be verified using a random sampling technique when recall petitions are filed. AB 2088 was vetoed by Governor Schwarzenegger. In his veto message, Governor Schwarzenegger said that "this bill would limit an important power of direct democracy by limiting voters' ability to recall an elected official and elect a replacement. Unfortunately recall efforts can become punitive rather than a constructive effort to replace an officeholder; however, the recall process as a whole is an important component of the people's right to directly change their government. Under the provisions of this bill, an official subject to a recall could resign and allow a successor to take their place. This limits the ability of the voters to select the replacement through a recall election."

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen (sponsor)
The ARC of Ventura County
Association of Regional Center Agencies
California Foundation for Independent Living Centers
Disability & Abuse Project
Institute for Ethical Leadership
7 Individuals

Opposition

None on file.

Analysis Prepared by: Nichole Becker & Lori Barber / E. & R. / (916) 319-2094