

Date of Hearing: August 29, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 145 (Pan) – As Amended: August 20, 2012

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (June 3, 2011) SENATE: 25-13 (August 28, 2012)

SUBJECT: Voter registration: paid registration activities.

SUMMARY: Prohibits a person from paying another person or receiving payment for registering voters if that payment is on a per-affidavit basis.

The Senate amendments delete the Assembly version of the bill, and instead:

- 1) Prohibit a person from offering to pay or paying money or other valuable consideration to another person, either directly or indirectly, on a per-affidavit basis to assist another person to register to vote by receiving the completed affidavit of registration.
- 2) Prohibit a person from receiving money or other valuable consideration, either directly or indirectly, on a per-affidavit basis to assist another person to register to vote by receiving the completed affidavit of registration.
- 3) Provide that nothing in this bill shall be construed to prohibit payment for assisting another person to register to vote by receiving the completed affidavit that is not, either directly or indirectly, on a per-affidavit basis.
- 4) Make corresponding and technical changes.

EXISTING LAW:

- 1) Requires any person who accepts money or other valuable consideration in return for assisting with voter registration to sign and affix on the voter registration form his or her full name, telephone number, address, and the name and phone number of the person, company, or organization, if any, that agrees to pay money or valuable consideration for the completed affidavit of registration.
- 2) Requires any person, company, or other organization that agrees to pay money or other valuable consideration to a person for assisting with voter registration to maintain specific records.
- 3) Establishes penalties for fraudulent activity related to signature gathering and voter registration.

AS PASSED BY THE ASSEMBLY, this bill repealed and recast provisions establishing the High-Speed Rail Authority and established the Department of High-Speed Trains.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

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

Recently reports of organized voter registration fraud taking place in Sacramento County have come to light. Since then we have found that the problem lies with “Bounty Hunters” companies and organizations that pay per-affidavit for switched voter registrations cards. By eliminating per-affidavit payment we will eliminate an incentive to forge affidavits while protecting the integrity of voters. This will reduce the volume of voter cards that are invalid due to fraud thereby reducing the amount of staff time the county registrars need to spend validating them. Decreasing the backlog and strain on the county registrars can save significant resources for county governments that are struggling in our difficult budget climate.

Jill LaVine, Sacramento County’s Registrar of Voters, reported that her office found “numerous” examples of voters having their political party affiliation switched to “Republican” against their wishes. This and many similar reports have taken place all over California. The Sacramento County Registrar was also inundated by phone calls the day of the June election, with more victims of voter registration fraud that weren’t caught until they actually reached the ballot box. People who went to the polls and received ballots for parties they never signed up for felt that their rights as a voter had been violated. Voter Registration Fraud is a real crime and the victims of these crimes need to have their voices heard.

2) Voter Registration Fraud: While some voter registration drives pay employees on an hourly or salaried basis, other voter registration drives pay workers a specified amount of money for each completed voter registration card. In some cases, voter registration drives that pay workers on a per-registration basis only pay workers for voters who register with a specific political party, or pay the workers a larger amount of money for voters who register with a specific political party. While these per-registration payments may create incentives to register voters with a particular political party, they also may create financial incentives for the individuals who are registering voters to commit fraud.

In each of the last four election cycles, complaints have been filed by voters who said they were misled into changing their party affiliations. According to media reports of these complaints, the voter registration workers who were accused of misleading these voters were paid as much as \$15 for each new voter that the worker registered with a particular political party.

In 2006, complaints were reported in Orange, Riverside, and San Bernardino Counties. According to the Orange County Register, 11 individuals were eventually convicted of falsifying voter registrations and other charges in connection with the complaints in Orange County, and eight of those 11 served jail time. In 2008, press reports focused on similar complaints in Los Angeles, Riverside, San Bernardino, and Ventura Counties, while in 2010,

complaints were filed in Orange and Sacramento Counties. In 2012, complaints were reported once again in Sacramento County. In every instance, media reports of the complaints indicated that the firms that were conducting the voter registration drives or the individuals who were registering voters as part of those drives were being paid on a per-registration basis.

In all, according to the Secretary of State's Election Fraud Investigation Unit (EFIU), between 1994 and 2010, the EFIU opened 960 cases for fraudulent voter registration or fraudulently altering party affiliation on voter registration cards. Out of these, 99 were referred to district attorneys for prosecution, resulting in 64 convictions. Since the EFIU was created in 1994, it has opened more cases, and a larger number of convictions have been obtained, for voter registration fraud than for any other election crime.

- 3) Other States: At least 11 states (Colorado, Florida, Georgia, Iowa, Kentucky, Missouri, Nevada, Pennsylvania, South Dakota, Washington, and Wisconsin) have laws prohibiting payments for registering voters if those payments are based on the number of registrations obtained. Ohio similarly had a law that prohibited payments for registering voters if those payments were based on anything other than time worked. Ohio's law also prohibited payments for collecting signatures on election petitions if the payments were based on anything other than time worked. The Ohio law was struck down by the Sixth Circuit Court of Appeals in Citizens for Tax Reform et al. v. Deters et al. (2008), 518 F.3d 375. However, while the Court struck down the entire Ohio law, including the provisions regarding payments for registering voters, the Court's decision focused on the portion of the law governing payments for collecting signatures on petitions, and did not include substantive discussion about the restrictions on payments for voter registration.
- 4) Labor Law Implications: This bill prohibits the payment of individuals on a per-piece basis for voter registration. Typically, in California, individuals who are paid to register voters on a per-piece basis are independent contractors. However, to the extent that this bill forces individuals who are paid to register voters to be paid an hourly wage, this bill could also result in these individuals being considered employees under California law. As such, the individual, corporation, or group paying individuals to register voters may be required to pay minimum wage, provide workers compensation insurance and unemployment insurance for its employees, and maintain a payroll system.
- 5) Increased Costs: As noted in comment #4, individuals or groups paying people to register voters may be required to provide certain benefits such as unemployment insurance and workers compensation insurance. This may result in higher costs to those groups that pay individuals to register voters. In addition, prohibiting payment of individuals on a per-registration basis could increase costs because it may become more difficult to measure the work product of employees who are being paid to register voters. Potential increased costs may be partially offset if, by reducing the incentive to submit fraudulent registrations, this legislation results in individuals submitting fewer invalid registrations.
- 6) Arguments in Opposition: The Peace and Freedom Party of California opposes the bill unless it is amended to lower the registration requirement for political bodies to become qualified political parties, and for qualified political parties to maintain their status as qualified political parties. In its letter of opposition, the Peace and Freedom Party of

California writes:

The connection between this proposal and the payment of voter registration workers is direct and immediate. Small political parties in California are already threatened by the consequences of Proposition 14 and SB 6, which effectively eliminate the percentage of vote test for remaining ballot-qualified. Small parties must now rely exclusively on increasing and maintaining their voter registration numbers. Eliminating payment per affidavit would make that much more costly and, combined with the continuous removal of voters from the active list of registered voters, would make it very difficult.

Even without AB 145, the ballot access requirement needs to be changed in response to Proposition 14. Banning payment per affidavit would make the need even more acute. This bill is therefore an appropriate place for the change to be made. We continue to believe that the connection between payment per affidavit and any potential for fraud in voter registration campaigns is tenuous at best, and that such payments should be allowed.

- 7) Previous Legislation: This bill is similar to SB 205 (Correa) of 2011, which was vetoed by Governor Brown, and to SB 812 (Correa) of 2007, which was approved by this committee, but subsequently was amended and used for an unrelated purpose. In his veto message to SB 205, Governor Brown wrote, "I understand the author's desire to stop fraudulent voter registration. But I don't believe this bill - which makes it a crime to pay people for registering voters based on the number of registrations they secure - will help. Voting is at the heart of our democracy. Efforts to register voters should be encouraged, not criminalized."

AB 2946 (Leno) of 2006, would have prohibited the payment of an individual to register voters if that payment was on a per-registration basis, among other provisions. AB 2946 was vetoed by Governor Schwarzenegger, though his veto message focused on other parts of that bill, and did not address the provisions of the bill that would have prohibited per-registration payments for registering voters.

- 8) Prior Version: The prior version of this bill, which was approved by the Assembly, dealt with high-speed rail. Those provisions were removed from this bill in the Senate, and the current contents were added. As a result, this bill has been re-referred to this committee pursuant to Assembly Rule 77.2.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen

Opposition

Peace and Freedom Party of California (unless amended)

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