

Date of Hearing: August 29, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 216 (Swanson) – As Amended: August 15, 2012

CONCURRENCE IN SENATE AMENDMENTS

ASSEMBLY: (May 31, 2011) SENATE: 25-12 (August 21, 2012)
(vote not relevant)

SUBJECT: Voters: residency confirmation.

SUMMARY: 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 (USPS), for the purpose of updating and maintaining the accuracy of voter registration lists.

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

- 1) Permit a county elections official, when conducting a pre-election residency confirmation procedure as required pursuant to 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. Require any such contract with a consumer credit reporting agency to comply with the following conditions:
 - a) Require the elections official to provide the consumer credit reporting agency with the name and residence address of each registered voter in the county, except for the names and addresses of registered voters whose registrations are deemed confidential pursuant to specified provisions of existing law;
 - b) Require the consumer credit reporting agency to search its databases for each name and address provided by the elections official and to report to the elections official any information indicating that the registered voter changed his or her address; and,
 - c) Provide that the consumer credit reporting agency may use the information provided by a county elections official only for the purpose of searching its database and reporting to the elections official as described above, and prohibit the credit reporting agency from retaining any information received from the county elections official.
- 2) Require a county elections official who contracts with a consumer credit reporting agency pursuant to the provisions outlined above to send a forwardable notice, as specified, to each voter for which the official receives change-of-address information from the credit reporting agency. Require the notice to include a postage-paid and preaddressed return form to allow the voter to verify or correct his or her address information. Require the elections official to take the following action with respect to a voter for which the official receives change-of-

address information from the credit reporting agency:

- a) If the voter responds to the notice mailed as specified above, and indicates that he or she has moved to a new address within the same county, 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;
 - b) If the voter responds to the notice mailed as specified above, and indicates that he or she has moved to a new address in another county, cancel that voter's registration if the voter's signature on the returned notice matches the signature on file for that voter; or,
 - c) If the voter does not respond to the 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, take no action with respect to that voter's registration.
- 3) Specify that a voter's registration may only be moved to the inactive list of voters, and may not be canceled, if the voter fails to vote in a specified number of elections and does not respond to a specified residency confirmation mailing.
- 4) Make technical and corresponding changes.

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); or,
 - c) 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 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.
- d) 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.

AS PASSED BY THE ASSEMBLY, this bill allowed the California Community Colleges to receive full funding for courses offered in correctional institutions.

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

COMMENTS:

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

Allowing counties to use credit bureau data in lieu of USPS change-of-address data will reduce waste and save California counties millions of dollars in the future, because credit bureau change-of-address data is simply more up-to-the-minute and comprehensive than USPS data.

Before each election, elections officials must confirm they have the most up-to-date address for each registered voter in the county by using one of two procedures to get the job done:

1. Mailing to All Registered Voters. Under this method in California Elections Code (EC) section 2220, elections officials send a postcard to each registered voter to collect any address changes since the last election. Because of the cost involved in mailing a postcard to every voter, most elections officials do not choose this option.
2. Using U.S. Postal Service Change-of-Address Data. Under this method permitted in EC section 2222, elections officials utilize change-of-address data from the United States Postal Service (USPS) and send a postcard only to those voters who appear to have moved according to USPS National Change-of-Address (NCOA) data....

Major credit bureaus are widely considered the most credible and reliable sources for up-to-date address data for people living in the United States. This is because people are far more likely to update their address with their financial institutions than they are with the USPS. This bill would give county elections officials the option of using credit bureau data in lieu of USPS data to get updated address information on voters before each election. Under this bill, county elections officials who choose this option would be required to:

- Release only the names and addresses of each registered voter to a consumer credit reporting agency, as defined in Civil Code section 1785.2(d).
- Send a forwardable postcard, similar to the current postcard generated based on NCOA data, to all voters who appear to have moved based on matching data received from the credit reporting agency.
- Update voter addresses and remove voters who have moved out of county, only after the voter responds to the postcard by sending a signed, written confirmation that the voter has moved and wish to change their address or be removed from the voter rolls.

The bill prohibits credit bureaus from retaining name and address data received and permits elections officials to receive only change-of-address data back from the credit bureau. No sensitive data, such as social security number or credit history, is shared in either direction.

Orange County has tested and proved the dramatic cost savings of this approach. In addition to complying with current law, the county contracted with Experian to check the addresses of 250,000 registered voters and received 122,000 possible new addresses. The county sent postcards to each and success was overwhelming: 18,800 voters responded in writing confirming their move and asking the county to update their address information. This saved Orange County over \$44,000 in the first election alone – savings that will grow with each passing election as the county avoids repeatedly mailing materials to 18,800 out-of-date addresses. Orange County's full report on this pilot can be viewed at www.OCvote.com.

- 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. This bill maintains that 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.

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 USPS 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.

On the other hand, as noted above, if a county were to use change-of-address information from a consumer credit reporting agency pursuant to the provisions of this bill 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. This bill 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, even if the use of information from credit reporting agencies allows county elections officials to receive a larger number of valid addresses for

voters than the use of NCOA data, it is possible that a county using the procedure outlined by this bill will have a larger number of voters who have moved, but for whom the county is unable take any action with respect to those voter's registrations as a result of the pre-election residency confirmation process. 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. For other voters, however, the pre-election residency confirmation process outlined in this bill will result in those voters remaining on the active list, even though the same voters would have had their registrations moved to the inactive list of voters if the county had used NCOA data or mailed preelection residency confirmation postcards pursuant to existing law.

- 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 provides 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 appears to allow the cancelation of registrations in this circumstance, however, in practice, registrations cannot 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. In light of this fact, notwithstanding the plain language of state statute, under existing law, when a voter's registration is placed on the inactive list of voters as a result of the alternative residency confirmation procedure, that registration cannot be canceled due to the voter's failure to vote.

This bill amends the Elections Code to delete language that allows a voter's registration to be canceled for failure to vote when that registration has been placed on the inactive list of registered voters as the result of the alternative residency confirmation procedure, thereby conforming to existing practice, as described above.

- 6) Prior Version: The prior version of this bill, which was approved by the Assembly, dealt with funding for the California Community Colleges. 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 (sponsor)
California Association of Clerks and Election Officials
California State Association of Counties

Opposition

None on file.

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