STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0096
(916) 319-2094
FAX: (916) 319-2194

Assembly
California Legislature



ASSEMBLY COMMITTEE ON
ELECTIONS AND REDISTRICTING
PAUL FONG, CHAIR

# AGENDA

1:30 P.M. – April 22, 2014
State Capitol, Room 444

*BILLS HEARD IN SIGN-IN ORDER*

| Item | Bill No. & Author | Summary |
|---|---|---|
| 1. | AB 1836 (Jones) | Vote by mail ballots. |
| 2. | AB 2394 (Gorell) | Elections: Secretary of State. |
| 3. | AB 2550 (Roger Hernández) | Election dates. |
| 4. | AB 2631 (Dababneh) | Elections voting machines. |
| 5. | AB 2661 (Bradford) | Political Reform Act of 1974: conflicts of interests: Energy Commission. |
| 6. | AB 2692 (Fong) | Political Reform Act of 1974: expenditures. |
| 7. | AB 2715 (Roger Hernández) | District-based municipal elections. |
| 8. | ACA 12 (Gorell) | Elections: Secretary of State. |

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Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 1836 (Jones) – As Amended: March 11, 2014

SUBJECT: Vote by mail ballots.

SUMMARY: Requires a person who is returning a vote by mail (VBM) ballot for another voter to sign a roster and to provide specified information when returning that ballot. Specifically, this bill:

1) Requires a VBM identification envelope to contain the residence address of any person who has been authorized by the voter to return the VBM ballot.

2) Requires an elections official to provide each polling place with a blank roster for recording the following information from each person returning a VBM ballot:

   a) The name of the VBM voter;

   b) The name of the person authorized by the voter to return the VBM ballot;

   c) The signature of the person authorized by the voter to return the VBM ballot;

   d) The residence address of the person authorized by the voter to return the VBM ballot; and,

   e) The relationship to the voter of the person authorized by the voter to return the VBM ballot.

3) Requires the voter or person authorized by the voter to return the VBM ballot, before returning a VBM ballot to an elections official or a member of the precinct board, to fill in the information required above and requires the person authorized by the voter to return the VBM ballot to present proof of his or her identity and residency that must match his or her name and residence address printed on the identification envelope.

4) Requires that the proof of identity and residency consist of a current and valid photographic identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the person. Requires an elections official or precinct board member, if a person is unable to present proof of his or her identity or residency, to contact the voter to verify that the person is authorized to return the voter's VBM ballot. Prohibits a voter's VBM ballot from being counted unless the person returning the ballot presents proof of identity and residency or the elections official or precinct board member verifies that the person is authorized to return the ballot.

5) Requires the roster to be preserved with other elections documents.

EXISTING LAW:

1) Requires that an application for a VBM ballot be made in writing to the elections official having jurisdiction over the election between the 29th and the 7th day prior to the election.

2) Permits a VBM voter who is unable to return his or her VBM ballot to designate his or her spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the VBM voter to return the voter's VBM ballot to the elections official from whom it came or to the precinct board at a polling place within the jurisdiction.

3) Prohibits a VBM ballot from being returned by a paid or volunteer worker of a general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest the individual designated to return the ballot is performing a service. Provides this prohibition does not apply to a candidate or candidate's spouse.

4) Requires a VBM identification envelope to contain spaces, which must contain the name, relationship to the voter, and signature of the person who is authorized to return the VBM ballot for another voter. Provides that a VBM ballot shall not be counted if it is not delivered pursuant to existing law.

5) 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 in the state prison for 16 months or two or three years, or in county jail not exceeding one year.

6) Provides that every person who defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

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

COMMENTS:

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

> As we seek to expand voter participation and make it ever easier for people to register and vote, we also increase opportunities for fraud. Therefore, while the goal of increasing the participation of the electorate is important, it must also be balanced with the other safeguards to protect the integrity of our voting system.
>
> This concern was voiced by former Gov. Gray Davis when he vetoed a bill that would have allowed VBM voters' co-workers or friends to return their ballots to the polls. Gov. Davis noted that "this bill would weaken the most important safeguard against fraud by allowing virtually anyone to handle an official ballot on behalf of the voter."
>
> Governor Davis' concerns about the susceptibility of VBM ballots to fraud were also shared by the National Commission on Federal Election Reform in 2001, a bi-partisan

commission of election experts co-chaired by former Presidents Jimmy Carter and Gerald Ford. The Commission issued a number of recommendations for reforming the electoral process in the U.S, but it specifically discouraged the growing use of no-fault absentee balloting.

"Growing use of absentee voting has turned this area of voting into the most likely opportunity for election fraud now encountered by law enforcement officials. These cases are especially difficult to prosecute, since the misuse of a voter's ballot or the pressure on voters occurs away from the polling place or any other outside scrutiny. These opportunities for abuse should be contained, not enlarged."

The Commission noted that VBM ballots increase opportunities for ballot box stuffing schemes, one of the oldest and most frequently practiced forms of vote fraud, citing cases in which persons had fraudulently voted absentee ballots without the knowledge of voters, or had voted them on behalf of vulnerable persons such as nursing home residents.

In California, a policeman for the City of Bell informed the FBI and the Secretary of State that city officials had ordered off-duty police officers to provide VBM ballots to voters and to instruct residents how to vote. He also asserted that ballots were filled out for people who were dead. Other Bell residents complained that city officials walked door-to-door encouraging them to fill out VBM ballots. In one case, a woman said she signed papers she had been told were election paperwork, but when she went to the polls on Election Day, records showed that she had already voted absentee. Two other voters said that two council members came to their homes urging them to fill out VBM ballots. The voters did – and a few weeks later the council members collected the ballots, saying that they would personally submit them.

The illegal VBM ballot harvesting in Bell was especially harmful to its citizenry because VBM ballots supplied most of the votes cast in a 2005 special election that cleared the way for Bell City Council members to significantly increase their own salaries. The high salaries subsequently paid to top administrators — including nearly $800,000 for the former city manager — sparked widespread outrage and criminal charges.

Further, in 2001, a court annulled the results of a Compton City Council election after it found that the winning candidate had illegally registered non-citizens to vote, told them how to vote, was present when they voted, harvested their VBM ballots, and then delivered the ballots to the polls. This vote fraud never would have been uncovered except for the fact that the incumbent mayor contested the related mayoral election, which was on the same ballot, after losing by less than 300 votes.

Although current law limits the persons who may deliver a VBM voter's ballot to the polls and prohibits candidates and campaigns from doing this, these safeguards are impossible to enforce in actual practice. When third parties show up at a polling place with one or two, or even a boxful of VBM ballots, they are not asked who they are, whether they were authorized by the voter, or whether they are working for a campaign. As we have seen, illegal VBM harvesting is most likely to be performed by persons associated with political candidates and parties.

AB 1836 cannot stop all the forms of fraud associated with VBM ballots. But it will go a long way to prevent the kind of illegal VBM ballot harvesting schemes we have seen in Bell and Compton, by ensuring that persons who deliver VBM ballots to polling places are properly authorized by the voters in question to handle their ballots. It will also provide a paper trail as to the identity of these persons, should any questions arise regarding their qualifications.

2) Current Practice: Under current law, a person that is unable to return his or her VBM ballot is permitted to designate his or her spouse, child, parent, grandparent, grandchild, sibling, or a person residing in the same household as the VBM voter to return the voter's VBM ballot to the elections official from whom it came or to the precinct board at a polling place within the jurisdiction. Additionally, existing law requires the designated person to provide his or her name, relationship to the voter, and his or her signature on the VBM identification envelope and provides that a ballot shall not be counted if it is not delivered in compliance with the law. This bill makes changes to this practice and requires a designated person, when returning the VBM ballot to a polling place, to also fill out a roster and provide his or her name, the name of the VBM voter, the signature of the authorized person, the residence address of the authorized person, and his or her relationship to the voter. In addition, an authorized person must also show proof of identity and residency. This bill prohibits a voter's VBM ballot from being counted unless the person returning the ballot presents proof of identity and residency. Moreover, if the authorized person is unable to show proof of identity and residency, this bill prohibits the ballot from being counted unless the elections official or precinct board member verifies that the person is authorized to return the ballot. In other words, this bill could require a VBM ballot to be rejected through no fault of the voter if the person who is returning the VBM ballot fails to comply with any of the provisions of this bill.

3) Existing Penalties: Current law provides for a variety of safeguards in law to protect against voter fraud and abuse. Existing law makes it a felony for any person who defrauds any voter at any election by deceiving and causing him or her to vote for a different person for any office than the candidate for whom he or she intended or desired to vote. As mentioned above, current law also provides that a VBM ballot returned by an authorized voter will not be counted unless the designated person provides his or her name, signature and relationship to the voter on the VBM ballot identification envelope.

   Moreover, once the ballot is received by the elections official, California law 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 in state prison.

   Furthermore, the Legislature has taken steps recently to address the potential for fraud in connection with VBM ballots. For example, many elders in state-licensed or state-subsidized facilities or programs have physical and cognitive impairments or conditions that may limit their ability to independently cast a vote. As a result, many elders choose to vote via VBM ballot. As a result of the high use of VBM ballots in this population, some questions and concerns have arisen regarding the influence elders are receiving from caregivers in the receipt, completion, and return of their ballots. In response to those concerns, the Legislature

approved and the Governor signed AB 547 (Gatto), Chapter 260, Statutes of 2011, which makes it a misdemeanor for a person who is providing care or direct supervision to an elder in a state-licensed or state-subsidized facility or program to coerce or deceive the elder into voting for or against a candidate or measure contrary to the elder's intent or in the absence of any intent of the elder to cast a vote for or against that candidate or measure.

4) Is There a Problem? In the background information provided by the author's office, the author argues that the current election system is susceptible to fraud and abuse, especially for VBM ballots. According to the author, due to the separation of both ballot and voter from the polling place, a VBM ballot is vulnerable to the possibility of voter coercion and intimidation. The author provides three examples specific to California that the author argues demonstrate the need for this bill. According to the author, a House of Representatives investigation revealed that a 1996 congressional election in Orange County included 748 votes that had been cast illegally, including 624 votes cast by non-citizens and 124 invalid VBM ballots. In addition, in 2001 a court annulled the results of Compton City Council election after it found that the winning candidate had illegally registered non-citizens, told them how to vote, was present when they voted, harvested their VBM ballots, and then delivered the ballots to the polls. Finally, it was alleged that in 2009 illegal VBM ballot harvesting took place in the City of Bell, where allegedly ballots were filled out for people who were dead, voters were told how to vote and then their ballots were collected and returned.

   While these examples may demonstrate that VBM ballot harvesting occasionally occurs, in violation of state law, it is unclear whether the three examples demonstrate that this sort of election fraud is a widespread problem throughout the state of California. According to information provided by the Secretary of State's Election Fraud Investigation Unit, from 1994 to 2010, there has been 1 conviction for fraudulent VBM voting, 0 convictions for fraudulent handling of ballots, and 0 convictions for corruption of voters.

   Additionally, the examples provided involve complicated multifaceted election schemes to thwart voters and commit voter fraud. As a result, it is unclear whether this bill, which only addresses VBM ballots returned at the polls, would have prevented this type of election abuse from occurring and ultimately be an appropriate remedy.

   Finally, even if VBM ballot harvesting is a significant problem, as alleged by the author, the committee may wish to consider whether this bill is an appropriate response to such a problem. Should a VBM voter who completes a ballot in accordance with existing law be disenfranchised due to improper conduct of a person who returns that voter's ballot, even if the voter was not involved in that improper conduct?

5) Logistical Issues: This bill adds a variety of new requirements to the VBM process that has the potential to create new barriers for an eligible voter who is trying to cast his or her VBM ballot. Moreover, due to the likelihood for increased voter confusion as a result of these new requirements, there will likely be significant delays in processing voters and subsequently increased wait times at polling places. To the extent that this bill results in longer lines at polling places, this bill could result in reduced voter participation by those voters who are not willing or able to wait in the longer polling place lines.

   Furthermore, this bill does not provide any detail as how or when an elections official or

precinct board member must contact the voter and verify that the person is authorized to return the voter's VBM ballot, when an authorized voter is unable to present proof of identity and residency. Current law requires a county elections official to certify elections results no later than 28 days after election day. This new requirement adds new duties and tasks to elections officials that could negatively impact the elections officials' ability to certify election results on time.

6) Arguments in Opposition: The California Association of Clerks and Election Officials writes in opposition:

> Current law provides that if a ballot is received in a timely manner and the signature matches the signature on file for voter whose name appears on the ballot, then the ballot is to be tallied. This is true for ballots returned by mail or personal delivery by the voter or an authorized third party. This bill would place an additional burden upon those voters unable to personally mail or return their voted ballot who must, in order to cast their votes, rely upon their ability to secure a third party to return it in their stead. Our concern is that this could lead to a decrease in participation among these voters…
>
> While we share the Assembly Member's concern for security and integrity of elections, we do not believe this bill would improve the effectiveness of existing controls and security measures. If passed, this bill would result in voters being treated unequally and has the potential to disenfranchise eligible voters and decrease voter participation. It would increase costs and cause congestion at the poll place, negatively impacting voting at the polls.

7) State Mandates: The last three state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2014-15 fiscal year. This bill adds another elections-related mandate by requiring county elections officials to provide blank rosters at polling places and record information, as specified, from an authorized person returning a VBM ballot as well as verify with the VBM voter that the person is authorized to return the ballot if an authorized voter is unable to show proof of identity and residence. 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 876 (Garcia) of 2006, would have required a person who is returning a VBM ballot for another voter to sign a roster and to provide specified information when returning that ballot. AB 876 (Garcia) failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Asian Americans Advancing Justice – Los Angeles
California Association of Clerks and Election Officials
California Professional Firefighters

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

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Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2394 (Gorell) – As Introduced: February 21, 2014

SUBJECT: Elections: Secretary of State.

SUMMARY: Requires elections for Secretary of State (SOS) to be conducted using a nonpartisan election system, and requires the SOS, instead of the Attorney General (AG), to prepare the titles and summaries for proposed state initiatives and for qualified state ballot measures. Specifically, this bill:

1) Makes elections for the office of SOS nonpartisan.

2) Requires the SOS, instead of the AG, to prepare the title and summary of each proposed state initiative or referendum measure.

3) Requires the SOS, instead of the AG, to prepare the ballot label and the ballot title and summary that appears in the state ballot pamphlet for each statewide ballot measure.

4) Provides that this bill shall become operative only if an unspecified Assembly Constitutional Amendment is approved by the voters.

5) Makes technical and corresponding changes.

EXISTING LAW:

1) Establishes the office of SOS and makes the SOS the chief elections officer of the state. Requires the SOS to see that elections are efficiently conducted and that state election laws are enforced.

2) Specifies that all judicial, school, county, and city offices, including the office of Superintendent of Public Instruction (SPI), are nonpartisan. Prohibits a candidate's political party preference from being included on the ballot for nonpartisan office.

3) Requires that primary elections for Congress and for state elective office, other than SPI, be conducted in a manner such that every voter, regardless of party affiliation, may vote for any candidate for that office without regard to the political party of the candidate, provided that the voter is otherwise eligible to vote for that office. Provides that the two candidates that receive the highest number of votes at a primary election for Congress or for state elective office other than SPI, regardless of political affiliation, move on to the general election.

4) Allows any candidate for congressional or state elective office, except a candidate for SPI, to have his or her political party preference, or lack of party preference, indicated on the ballot.

5) Requires the proponents of a state initiative or referendum measure, prior to circulating petitions for that measure, to submit a draft of the proposed measure to the AG with a written request that a circulating title and summary of the chief purpose and points of the proposed

measure be prepared.

6) Requires the AG to prepare a summary of the chief purposes and points of a proposed state initiative or referendum. Limits the circulating title and summary to not more than 100 words.

7) Requires a petition for a proposed state initiative measure to include the circulating title and summary prepared by the AG on each page of the petition on which signatures are to appear and on each section of the petition preceding the text of the measure.

8) Requires the AG to provide and return to the SOS a ballot title and summary and a ballot label for each measure submitted to the voters of the whole state. Provides that the ballot title and summary shall express in not more than 100 words the purpose of the measure. Provides that the ballot label shall be a condensed version of the ballot title and summary, including the financial impact summary, and shall be not more than 75 words long.

FISCAL EFFECT: Unknown

COMMENTS:

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

> The primary responsibility of the Secretary of State (SOS) is to oversee the election process in the state. Although the SOS vows to carry out his or her duties in an impartial manner, there are inherent conflicts when a referee of elections is explicitly affiliated with a particular political party. The growing trend of both overtly partisan figures running to be the state's chief election official and increasing involvement of superPACs in Secretary of State races is a concerning pattern that can undermine the integrity of elections in California and throughout the nation.
>
> The State of California turned a once partisan Superintendent of Public Instruction into a non-partisan office because the job of implementing policies to improve the education of our students should not be tainted by political biases and agendas. There are no compelling reasons why the overseer of elections should retain their ballot identification with a political party when taking on the duty of enforcing a fair election process.
>
> There is evidence throughout the nation in which partisan secretaries of states on both sides of the aisle have attempted to unfairly influence the outcome of elections and ballot measures. In almost every major election since 2000, partisan secretaries of states have been key figures in the outcomes of those election battles—perhaps the most controversial being the 2000 ballot controversy in Florida that sealed the outcome of the next President of the United States.
>
> In 2004, Ohio's Secretary of State engaged in controversial voting rules that favored a particular political party and influenced the outcomes of very close races. In 2008, Minnesota's Secretary of State was in the middle of voter fraud

and recount controversies that influenced the outcome of a razor-close U.S. Senate race.

There is enough evidence for voters to be concerned about the integrity of our elections and to support reforms that address the inherent tension involved with partisan officials serving as election referees.

While having a non-partisan chief election referee does not remove the opportunity for partisan decision-making, it does remove the obligation.

Additionally, the responsibility of issuing title and summary for ballot initiatives should also reside in a non-partisan constitutional election office. A recent Sacramento Bee editorial agreed that the partisan manner in which ballot initiatives are summarized is unacceptable in our democratic system. When ballot initiative responsibility is in the hands of partisan constitutional officers, they face considerable pressures and conflicts of interest as a result of their explicit affiliation.

2) Would Nonpartisan Elections Change Officials' Behavior? The author expresses concern that partisan Secretaries of State may be unable to enforce election law in a nonpartisan manner, or, at the very least, can undermine voters' confidence that elections will be conducted in a fair and impartial manner. However, it is unclear whether making the SOS a nonpartisan post would fundamentally change the behavior of candidates for SOS or the behavior of the SOS once he or she is in office.

   Nothing in this bill prohibits the SOS from engaging in partisan or other political activity of the type described by the author in his statement in support of the need for this bill. The author's statement above, for instance, references the 2000 Presidential election, and the controversy surrounding the counting of ballots in Florida. In that case, the impartiality of the SOS was questioned in part because she simultaneously served as the co-chair of George W. Bush's Florida campaign committee while overseeing the Presidential election in her role as SOS. But this bill does not prohibit the SOS from simultaneously overseeing an election while taking an active role in the campaign for one of the candidates appearing on the ballot at that election, nor does it prevent or prohibit the SOS from using the power of his or her office improperly to affect the outcome of an election.

3) Top Two Primary & Voter Information: In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010, statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices, including the office of SOS. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election. Candidates who are running for one of the offices covered by the top two primary election system are permitted to have their political party preferences printed on the ballot.

   Elections conducted using the top two primary system are fairly similar to nonpartisan elections, given that all candidates are listed on the ballot during the primary election, and voters are free to vote for any candidate at the primary election. In fact, there are only two

noteworthy differences between elections conducted using the top two system and nonpartisan elections. First, a candidate for nonpartisan office can win the election outright in the primary election by receiving more than 50 percent of the vote, while under elections conducted using the top two system, the two candidates who received the most votes advance to the general election, regardless of whether one candidate received more than 50 percent of the vote (except in special elections). Second, the political party preferences of candidates for office in elections governed by the top two election system are included on the ballot, and the political party preference histories for the preceding ten years of the candidates are included on the SOS's website. Information about candidates' political party preferences are not included in official election materials for nonpartisan offices.

While this bill requires elections for SOS to be conducted using a nonpartisan election process, candidates for SOS would still be permitted to register as preferring a political party. By virtue of the fact that elections for SOS would be nonpartisan, however, information about the candidates' current and historical political party preferences no longer would be provided to the voters in official election materials. By limiting the information that voters receive about the political party preferences of candidates for SOS, could this bill actually make the potential partisan biases of candidates for SOS less apparent?

4) Other States: According to information from the National Association of Secretaries of State, 34 states directly elect the person who serves as the state's chief election official (in most cases, the SOS is the state's chief election official). In the 16 other states, the chief election official is appointed, typically either by the Governor, the Legislature, or a board or commission that oversees state elections.

   None of the 34 states that directly elect the chief election official have nonpartisan elections for that office.

5) Is the SOS the Appropriate Entity to Prepare Titles & Summaries? The purpose of a title and summary of a proposed initiative or referendum measure, and of a qualified state ballot measure, is to provide a short overview to voters of the primary changes to existing law that would be made by a measure. In that respect, one could argue that it is appropriate that the AG be the entity to prepare the title and summary, since the AG is the chief lawyer of the state and has legal expertise. The SOS, on the other hand, oversees state elections, but does not have the level of expertise that the AG does in the context of summarizing the changes that a measure would make.

6) Companion Measure and Suggested Amendment: This bill contains language specifying that it will not become operative unless voters approve an unspecified ACA. ACA 12 (Gorell), which is also being heard in this committee today, is a companion measure to this bill that would make the necessary changes to the California Constitution in order for this bill to become operative. In light of that fact, committee staff recommends that this bill be amended to specify ACA 12 as the measure that voters must approve in order for this bill's provisions to become operative.

7) Arguments in Opposition: In opposition to this bill, the California School Employees Association, AFL-CIO, writes:

The role of the Attorney General is to offer legal advice and guidance to state officers and the government at large. The Attorney General represents the People of California in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States. The Attorney General also serves as legal counsel to state officers and, with few exceptions, to state agencies, boards and commissions. The office is intimately intertwined with the rule of law and the multitude of codes that make up the body of California law.

It is with this unique charge that the Attorney General is the most qualified officer to prepare the legal title and summary of ballot measures, which alter the laws and Constitution of California. The opinion of the Attorney General is essential to preparing the proper analysis of ballot measures and a [measure's] impact on the law. The Secretary of State on the other hand, is better equipped to handle the mechanics of California's elections and business registration. Asking the civil office of the Secretary of State to prepare legal analyses of ballot measures would be similar to asking a lay person for legal representation.

8) Related Legislation: SB 1294 (Huff), which is scheduled to be heard in the Senate Elections & Constitutional Amendments Committee today, would make the Legislative Analyst, instead of the AG, responsible for preparing the ballot label and ballot title and summary for statewide ballot measures.

9) Previous Legislation: AB 5 (Canciamilla), ACA 33 (Canciamilla), and SCA 4 (Denham) of the 2005-06 Legislative Session all proposed having nonpartisan elections for the office of SOS, among other provisions. AB 5 failed passage in this committee, and SCA 4 failed passage in the Senate Elections, Reapportionment, and Constitutional Amendments Committee. ACA 33 was never heard in committee.

   AB 319 (Niello) of 2009 and AB 1968 (Niello) of 2010 would have required the Legislative Analyst, instead of the AG, to prepare the circulating titles and summaries for state initiatives and referenda, and the ballot titles and summaries and ballot labels for state measures that will appear on the ballot, among other provisions. AB 319 failed passage in this committee, while AB 1968 failed passage in the Assembly Appropriations Committee. ACA 20 (Niello) of 2009 was a companion measure to both AB 319 and AB 1968. ACA 20 failed passage in this committee. AB 2209 (Niello) and ACA 18 (Adams) of 2008 were similar to AB 319, AB 1968, and ACA 20. AB 2209 failed passage in this committee, while ACA 18 was never heard in committee.

10) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the Fair Political Practices Commission and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the Political Reform Act (PRA). Most amendments to the PRA that are not submitted to the voters must further the purposes of the initiative, require a two-thirds vote of both houses of the Legislature, and must comply with certain other procedural requirements.

    Certain provisions of the PRA specify the information that is to be included in the state ballot pamphlet, including a requirement that the pamphlet include the "official summary [of each state ballot measure] prepared by the Attorney General." Because this bill seeks to make the SOS, instead of the AG, responsible for preparing the official summary of state measures,

this bill proposes to amend that provision of the PRA accordingly.

The Office of the Legislative Counsel indicates that they believe that the changes proposed to the PRA by this bill are conforming changes, rather than substantive amendments to the PRA, since this bill is contingent upon a constitutional amendment that would make the SOS responsible for preparing the official summary of state measures. In accordance with that determination, this bill has been keyed as a majority vote bill by the Legislative Counsel, and the Legislative Counsel has not identified this bill as one that is subject to the other procedural requirements for amending the PRA.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California School Employees Association, AFL-CIO
Secretary of State Debra Bowen (unless amended)

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2550 (Roger Hernández) – As Amended: March 28, 2014

SUBJECT: Election dates.

SUMMARY: Eliminates the ability of general law cities, school districts, community college districts, and special districts to hold their general elections and certain special elections in March or June of odd-numbered years or in April of even-numbered years, except as specified, thereby requiring most local jurisdictions to hold these elections at the same time as the statewide primary or statewide general election, or on the first Tuesday after the first Monday in November of odd-numbered years. Specifically, this bill:

1) Eliminates the second Tuesday in April of each even-numbered year, and the first Tuesday after the first Monday in March and June of each odd-numbered year, from the list of dates that are considered "established election dates" on which cities may hold their general municipal elections, and on which special districts may hold their general district elections.

2) Eliminates the second Tuesday in April of each odd-numbered year as a date on which cities may hold their general municipal elections.

3) Provides that this bill shall not be construed to do either of the following:

   a) Alter the date of a runoff election that is provided for in the principal act of a district; or,

   b) Shorten the term of office of any officeholder in office on the effective date of this bill. Provides that for each office for which this bill causes the election to be held at a later date than would have been the case, the incumbent shall hold office until a successor qualifies for the office.

4) Requires each county elections official to mail a notice to all registered voters in his or her jurisdiction not later than 30 days after the effective date of this bill, informing the voters of the change in each election date. Requires the notice to indicate whether an incumbent's term of office will be extended as a result of the change in the election date.

5) Makes corresponding changes.

EXISTING LAW:

1) Provides that the following dates are "established election dates":

   a) The second Tuesday of April in each even-numbered year;

   b) The first Tuesday after the first Monday in March of each odd-numbered year;

c) The first Tuesday after the first Monday in June in each year; and,

d) The first Tuesday after the first Monday in November in each year.

2) Requires all state, county, municipal, district, and school district elections to be held on an established election date, except as specified. Provides that the following types of elections, among others, are not required to be held on an established election date:

a) Any special election called by the Governor;

b) Elections held in chartered cities or chartered counties in which the charter provisions are inconsistent with state election laws;

c) School governing board elections conducted pursuant to specified provisions of law;

d) Elections required or permitted to be held by a school district located in a chartered city or county when the election is consolidated with a regular city or county election held in a jurisdiction that includes 95 percent or more of the school district's population.

e) County, municipal, district, and school district initiative, referendum, or recall elections.

f) Any election conducted solely by mailed ballot pursuant to specified provisions of law; and,

g) Elections held pursuant to specified provisions of law on the question of whether to authorize school bonds.

3) Provides that the following dates are "established mailed ballot election dates":

a) The first Tuesday after the first Monday in May of each year;

b) The first Tuesday after the first Monday in March of each even-numbered year; and,

c) The last Tuesday in August of each year.

4) Requires a general law city to hold its general municipal election on an established election date or on the second Tuesday in April of each odd-numbered year, except as specified.

5) Requires a school district, community college district, or county board of education to hold the regular election to select governing board members on the first Tuesday after the first Monday of November in each odd-numbered year, or at the same time as the statewide direct primary election, the statewide general election, or the general municipal election, except as specified.

6) Requires the general district election held to elect members of the governing board of a special district to be held on the first Tuesday after the first Monday in November of each odd-numbered year, unless the principal act of the district provides for the general district election to be held on a different established election date, or on an established mailed ballot

election date, as specified. Permits a special district to adopt a resolution requiring its general district election to be held on the same day as the statewide general election, upon approval of the county board of supervisors, as specified.

7) Requires various special elections, including the following types of elections, to be held on an established election date:

   a) An election to fill a vacancy on the governing board of a city, school district, or community college district;

   b) An election on a proposal to transfer territory between counties;

   c) An election to elect a county charter commission; and,

   d) Specified elections on proposals to form special districts.

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

COMMENTS:

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

> Democracy is based on civic participation. Multiple national studies over the last three decades affirm that off-cycle elections draw significantly lower voter turnout, especially in large urban areas. One scholar concludes that election timing is the single most important characteristic in determining voter turnout. Effects of lower voter turnout for off-cycle elections include increased cost per voter and vulnerability to special interests or partisanship influences.
>
> AB 80, Fong 2011(Chaptered 7/29/11) addresses consolidation of just a single election, the stand-alone presidential primary. The Author argues that "consolidating it with other statewide elections will save millions of dollars, [and] increase voter turnout". AB 80 addresses the stand-alone primary in 2008, which cost Californian's an additional $96,980,195. A recent report by the Greenlining Institute examined three California case studies comparing even-year consolidated elections and off-year elections. Their data illustrates even-year consolidated elections showing a benefit of up to 54% increased participation and savings up to $50.94 per voter. Even the low end of their results show significant improvements over our current system.
>
> By consolidating elections, AB 2550 will help avoid 'stand-alone' local elections and result in: decreased costs, reduction of special interested influence, and increased voter turnout.

2) History of Established Election Dates: In 1973, the Legislature approved and Governor Reagan signed SB 230 (Biddle), Chapter 1146, Statutes of 1973, which created "regular election dates" (which subsequently were renamed "established election dates"). The concept behind having a regular election schedule that governed when most elections would be held

was that such a schedule would encourage election consolidations, thereby potentially reducing election costs, and could encourage greater voter participation because voters would become used to voting on these regular election dates. SB 230 created five established election dates in each two-year cycle—three in even-numbered years (in March, June, and November), and two in odd-numbered years (in March and November).

One year after established election dates were first created, AB 4180 (Keysor), Chapter 1386, Statutes of 1974, added an additional established election date in May of odd-numbered years. The rationale for adding an established election date was that the eight-month gap between established election dates in March and November of odd-numbered years delayed many special local elections from taking place in a timely manner, including elections to fill vacancies, annexation elections, bond elections, and tax rate elections. Since that time, the exact dates that are established election dates have fluctuated, often moving to reflect changes in the date of the statewide primary election held in even-numbered years, though generally there have been at least three established election dates in each year.

Having multiple established election dates in each year, but specifying that many types of elections must be held on an established election date, reflects an attempt to balance the desire to hold most elections on a predictable, regular schedule, while still providing the flexibility to ensure that elections can occur in a timely manner when necessary.

3) Local General Election Dates: By eliminating three established election dates, this bill would limit the dates on which local governmental bodies can hold their regularly-scheduled elections to elect governing board members (commonly referred to as general municipal or general district elections). Charter cities, which are granted plenary authority under the California Constitution to establish the times at which municipal officers are elected, would not be affected by this bill. Counties are required by law to hold regularly scheduled county elections at the same time as statewide elections, so they also would not be affected by this bill (San Francisco, which is a consolidated city *and* county, has the authority over local elections that is granted to charter cities, and therefore it is not required to elect county officers at the same time as the statewide election, unlike other counties). General law cities (i.e., those cities that have not adopted a city charter), school districts, community college districts, and special districts, however, all could be affected by this bill.

   a) General Law Cities: According to the League of California Cities, there are 361 general law cities in California. As noted above, existing law permits general law cities to hold their general municipal elections on any established election date, or on the second Tuesday in April of odd-numbered years. This bill would force any general law city that is not conducting its general municipal election in November of odd-numbered years, or at the same time as the statewide primary or general election, to move the date of its general municipal election. Of the 361 general law cities in California, about 88 percent hold their general municipal elections on one of the three dates that are allowed by this bill, with 70 percent holding their elections at the same time as the statewide general election. Committee staff has identified 42 general law cities that hold general municipal elections on a date that would not be permissible under this bill, and thus which would be required to change the date of their general municipal elections. All but two of those general law cities that would be required to change election dates are located in Los Angeles County.

Of the 40 cities in Los Angeles County that would be required to change their election dates under this bill, 30 currently hold their elections in March of odd-numbered years, on the same day that the City of Los Angeles holds its municipal elections. Nine cities hold their elections in April of even-numbered years, on the same day that Long Beach holds its municipal elections.

b) School and Community College Districts: According to the California Department of Education, there are 1,043 school districts in California, and according to the Chancellor's Office of the California Community Colleges, there are 72 community college districts in California. With certain exceptions, school districts and community college districts are required to hold their general district elections in November of odd-numbered years, or they can choose to hold the general district elections at the same time as the statewide primary or general election, or at the same time as the general municipal election of the city in which the district is located. Because existing law permits general municipal elections to be held in March or June of odd-numbered years, or in April of even-numbered years, it is possible that school or community college district elections could be held at a time other than November of odd-numbered years, or at the same time as the statewide primary or general election. With the exception of school districts and community college districts that are located in charter cities (and that would not be required to change election dates under the provisions of this bill), committee staff has been unable to identify *any* school or community college district in the state that holds its general district elections at any time other than November of odd-numbered years, or at the same time as the statewide primary or general election. As a result, this bill is expected to affect few, if any, school and community college districts.

c) Special Districts: According to information from the 2010 report, "What's So Special About Special Districts? (Fourth Edition)," prepared by the Senate Committee on Local Government, there are about 3,300 different special districts in California. Special districts generally are required to hold their general district elections on the first Tuesday after the first Monday in November of odd-numbered years or at the same time as the statewide general election, unless the principal act of the district provides otherwise, or unless the district conducts its general district elections entirely by mailed ballot in accordance with existing law. According to information provided by the California Special Districts Association, water storage districts are the only type of district that they have identified that is permitted by law to hold their general district elections on a date that would not be permitted by this bill, and there are just eight water storage districts statewide. Committee staff has been unable to identify any other special districts that would be required to change their election date under the provisions of this bill, but it is anticipated that only a small number of districts would need to change their general district election dates if this bill becomes law.

4) Impact on Special Elections & Possible Amendment: In addition to affecting the dates available for local general elections, this bill also would limit the dates on which local governmental bodies could hold certain special elections. As noted above, most local initiative, referendum, and recall elections are not required to be held on established election dates, and thus would not be affected by this bill. Furthermore, as is the case with local general election dates, charter cities would not be affected by this bill. Special elections in

counties, general law cities, school districts, community college districts, and special districts that are required to be held on established election dates, however, could be affected by this bill. Such elections could be held on one of only three dates in each two-year period (June of even-numbered years and November of even- or odd-numbered years), compared to six dates under existing law, and there would be as long as one-year between established election dates. The local special elections that are required to be held on established election dates, and thus would be affected by the provisions of this bill, are as follows:

a) Counties: Proposals to adopt, amend, or repeal a county charter, and proposals to consolidate counties or to alter the boundaries of a county must be submitted to the voters on an established election date. Additionally, most measures submitted to the voters by the board of supervisors must appear on the ballot on an established election date.

b) General Law Cities: Elections that are held to fill vacancies in elective city office must be held on an established election date. Additionally, most measures submitted to the voters by the city council must appear on the ballot on an established election date.

c) School and Community College Districts: Elections that are held to fill vacancies on a school or community college board must be held on an established election date. Additionally, certain measures submitted to the voters by a school or community college board must appear on the ballot on an established election date.

d) Special Districts: Elections on the question of whether to form or dissolve certain types of special districts must be held on an established election date. Additionally, elections that are held to fill vacancies in elective district office, and some local measures that are put on the ballot by the governing board, must be held on an established election date.

In order to preserve the flexibility of local jurisdictions to conduct time-sensitive special elections in an expeditious manner, the committee and the author may wish to consider an amendment that would make the provisions of this bill applicable only to general municipal and general district elections, and to allow local jurisdictions to continue to hold these types of special elections on one of six established dates in each two-year period.

5) Limitations on Consolidations in Los Angeles County and Possible Amendment: Existing law requires all state, county, municipal, district, and school district elections that are held on a statewide election date to be consolidated with the statewide election, except that the Los Angeles County Board of Supervisors is allowed to deny a request for consolidation of an election with the statewide election if the voting system used by the county cannot accommodate the additional election. This unique provision allowing Los Angeles County to deny consolidation requests was created through the passage of SB 693 (Robbins), Chapter 897, Statutes of 1985, in response to attempts by a number of cities in Los Angeles to move their municipal elections to the same day as statewide elections. Los Angeles County sought the ability to deny consolidation requests because its voting system could accommodate only a limited number of contests at each election, and the county was concerned that the move by cities to hold their elections at the same time as the statewide election would exceed the capacity of that voting system. Los Angeles County still uses a variant of the voting system that it used in 1985, though the county is currently in the planning and design stage for developing and transitioning to a new voting system. One of the principles that the county

has articulated to guide the development of its new voting system is having a system that has "sufficient technical and physical capacity to accommodate…consolidation of elections with local districts and municipalities." That voting system, however, is not expected to be available for use countywide before 2018.

Because of the capacity limitations of Los Angeles County's voting system, the county has denied requests from various local governmental bodies in the county that have sought to hold their elections at the same time as—and to have their elections consolidated with—statewide elections. To the extent that those previous requests to consolidate elections reflect an ongoing desire by local jurisdictions to move their elections to the same time as statewide elections, it is expected that the implementation of a new voting system in the county that allows for such consolidations will result in many jurisdictions voluntarily moving their elections to a date that would be permitted under this bill.

Until Los Angeles county replaces its voting system and is able to accommodate a larger number of requests to consolidate elections with the statewide election, however, this bill will force many local jurisdictions in Los Angeles County to choose between holding their elections in November of odd-numbered years, or holding an election on the same day as a statewide election in even-numbered years, but not having that election be consolidated with the statewide election. When two elections are held on the same day, but are not consolidated, those elections are commonly referred to as "concurrent" elections. When concurrent elections are conducted, voters who are voting in both elections have separate ballots for each election, and often have separate polling locations for each election. As a result, concurrent elections can cause voter confusion, and otherwise can create challenges for voters, candidates, and election officials.

If this bill results in local jurisdictions in Los Angeles choosing to hold their elections concurrently with statewide elections, such a result would seem to run counter to the author's intent of trying to improve voter participation and to decrease election costs. Accordingly, in order to better realize the author's goals, the committee and the author may wish to consider an amendment to prohibit a local jurisdiction from holding its elections on the same date as a statewide election unless the jurisdiction's election is consolidated with the statewide election.

6) Charter City Autonomy May Limit Impact: One of the author's goals for this bill is to have most regularly scheduled elections conducted on one of a small number of stable election dates, so that voters know in advance when elections are going to occur, and so that greater attention is drawn to those regularly occurring elections since a large number of voters in a region will be voting at the same time.

   As noted above, however, existing law gives charter cities the plenary authority to establish the times at which municipal officers are elected, so charter cities would not be required to move the dates of their elections under this bill, and this bill cannot require that all regularly scheduled elections be held on one of the three dates (November of odd-numbered years, or June or November of even-numbered years) proposed in this bill. As a result, the autonomy for setting election dates that is granted to charter cities in the California Constitution may limit the effect of this bill.

7) Delayed Implementation and Possible Amendment: Because this bill does not have an urgency clause, if signed into law, it would go into effect on January 1, 2015. That effective date falls just two months prior to the date on which 31 general law cities are scheduled to hold their general municipal elections. Jurisdictions that are required to change the dates of their elections as a result of this bill may benefit from additional lead-time in order to take the necessary steps to change election dates in an orderly manner.

   Additionally, this bill requires each county elections official to mail a notice to all registered voters in his or her jurisdiction not later than 30 days after the effective date of this bill, informing the voters of the change in each election date, along with other specified information. The county elections official will not necessarily know the new election date for each jurisdiction, however, until each jurisdiction acts to choose a new election date that complies with the provisions of this bill.

   In order to address these two issues, the committee and the author may wish to consider an amendment to this bill to specify that the new election date requirements in this bill will not become effective until July 1, 2015, and to require jurisdictions that must change election dates pursuant to this bill to adopt a new date for general municipal or district elections by July 1, 2015. Such an amendment would allow local jurisdictions to hold their already scheduled general municipal or general district elections in the first part of next year. Additionally, this amendment would allow the notification to voters of a new election date to be sent by the county elections official after all local jurisdictions have selected the new date on which they will hold their general municipal or general district elections.

8) Technical Issues & Suggested Amendment: This bill provides that it shall not be construed to alter the date of a runoff election provided for in the principal act of a district. To the extent that a district is required to move the date of its general election, but not the runoff election, however, this bill could result in a situation where there is a long period of time between the general election and the runoff election. To more appropriately deal with districts that have a principal act that requires runoff elections, the committee may wish to consider amending this bill to instead provide that if the principal act of a district specifies the date of a runoff election, that all general district elections in that district shall be held on the dates specified by the principal act.

9) Arguments in Opposition: In opposition to this bill, the City of Norwalk writes:

   > AB 2550 does not appear to consider how eliminating [established election] dates may negatively impact the cities…Currently, the majority of cities in Los Angeles County have stand alone elections as the County does not have the capacity on the statewide ballots to accommodate all the local municipalities.
   >
   > Additionally, it also removes local control over our elections, can create higher election costs, causes lack of visibility of local candidates on a crowded county ballot, will likely increase voter wait times [at] the polls, and less services to the candidates.
   >
   > Holding separate municipal elections provides constituents an opportunity to focus their attention on important local issues and candidates without being over shadowed by state and national issues. The City of Norwalk has been holding elections in March or April

since incorporation in 1957. Our constituents are familiar with this voting cycle.

10) State Mandates: By eliminating three established election dates (and one other date that is currently available for cities to hold their general municipal elections), and thereby requiring certain local governments to change the dates of their elections, this bill could be deemed to impose a state-mandated local program, for which the state could be required to reimburse those governments for the costs associated with that mandate. Additionally, this bill requires county elections officials to mail specified notifications to voters in districts where the election date changes pursuant to this bill. The state could be required to reimburse counties for the costs of those notifications.

    The last three state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2014-15 fiscal year. In light of this fact, the Committee may wish to consider whether it is desirable to establish this new mandate when the Legislature has voted to suspend the existing election mandates.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

City of Norwalk

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

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Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2631 (Dababneh) – As Amended: April 9, 2014

SUBJECT: Elections: voting machines.

SUMMARY: Updates the definition of a "voting machine" and revises other provisions of the Elections Code that apply to elections conducted on a lever voting machine. Specifically, this bill:

1) Updates the definition of a "voting machine" to mean any electronic device including, but not limited to, a precinct optical scanner and a direct recording electronic (DRE) voting system, into which a voter may enter his or her votes, and which, by means of electronic tabulation and generation of printouts or other tangible, human-readable records, furnishes a total of the number of votes cast for each candidate and for or against each measure, instead of any device upon which a voter may register his or her vote, and which, by means of counters, embossing, or printouts, furnishes a total of the number of votes cast for each candidate or measure.

2) Clarifies and modifies provisions of law that allow any voter using a vote by mail (VBM) ballot, prior to the close of the polls on election day, to vote the ballot at an election official's office or satellite office. Requires an elections official, where DRE voting systems are used, to provide sufficient DREs to include all ballot types in the election.

3) Modifies and repeals precinct board requirements and procedures related to the closing of the polls, which includes the locking and sealing of voting machines and the reading, posting, and inspection of the return of votes cast for that precinct.

4) Repeals obsolete provisions of law regarding ballot labels for lever voting machines.

5) Makes other conforming and technical changes.

EXISTING LAW:

1) Defines a voting machine to mean any device upon which a voter may register his or her vote, and which, by means of counters, embossing, or printouts, furnishes a total of the number of votes cast for each candidate or for each measure.

2) Defines a DRE voting system to mean a voting system that records a vote electronically and does not require or permit the voter to record his or her vote directly onto a tangible ballot.

3) Permits any voter using a VBM ballot, prior to the close of the polls on election day, to vote the ballot at the office or satellite office of an elections official. Allows the elections official, where voting machines are used, to provide one voting machine for each ballot type used within the jurisdiction. Permits an elections official to use electronic voting devices for this purpose if sufficient devices are provided to include all ballot types in the election.

4) Requires a precinct board, as soon as the polls are closed, to comply with specified requirements related to the closing of the polls, including, but not limited to, the locking and sealing of voting machines and the reading and posting of the statement of return of votes cast for the precinct.

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

COMMENTS:

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

> The current definition of "voting machines" in the California Elections Code refers to obsolete gear-and-lever mechanical devices that have not been deployed for a California election since Merced County discontinued their use following the November 1994 general election. The days of gear-and-lever voting machines are long gone so it is time to update the definitions in the Election[s] Code relating to voting machines and polling place procedures to capture the nuances of the newer machines currently in use to bring clarity and transparency to the law.
>
> Assembly Bill 2631 (Dababneh) updates the definition of "voting machine" in California Elections Code and revises provisions regulating obsolete gear-and-lever voting machines. AB 2631 will reduce confusion by focusing statutory language on machines that are actually used in California elections. The current definition of "voting machine" was codified in the 1970s when the use of gear-and-lever machines was permitted, but those machines now fail to meet federal requirements specified in the federal Help America Vote Act of 2002 and statutes related to voting machines and polling place procedures fail to capture the nuances of newer machines currently in use. AB 2631 ensures that there is clarity in [the] Elections Code about the procedures and equipment used in California elections.

2) History of Mechanical Lever Machines: First introduced in the 1890s, mechanical lever voting machines were used in the 20th century. On a lever machine, the name of each candidate or ballot issue choice is assigned a particular lever in a rectangular array of levers on the front of the machine. A set of printed strips visible to the voters identifies the lever assignment for each candidate and issue choice. The levers are horizontal in their unvoted positions. The voter pulls down selected levers to indicate choices.

   The first official use of a lever type voting machine, known then as the "Myers Automatic Booth," occurred in Lockport, New York in 1892. Later, they were employed on a large scale in the city of Rochester, New York, and soon were adopted statewide. By 1930, lever machines had been installed in virtually every major city in the United States, and by the 1960's well over half of the Nation's votes were being cast on these machines.

   Because these machines are no longer made, the trend was to replace them with computer-based electronic systems. The outdated lever voting machines are no longer used in California elections.

3) Help America Vote Act of 2002: In 2002, Congress passed and President George W. Bush signed the Help America Vote Act (HAVA). Among its provisions, HAVA established

standards for voting equipment. In general, HAVA requires a voting system used in an election for federal office to notify the voter when he or she selects more than one candidate for a single office on the ballot, notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office, and provide the voter with the opportunity to correct the ballot before the ballot is cast and counted. Additionally, HAVA requires a voting system to meet certain requirements relating to audit capacity, alternative language accessibility, error rate, and accessibility for individuals with disabilities.

HAVA also provided federal matching grants to states to help pay for modernizing voting equipment. Most jurisdictions at the time did not have electronic voting systems, relying on punch cards, lever machines, and paper ballots. However, with the new HAVA voting system standards and HAVA funds, many jurisdictions purchased new voting systems, such as DRE voting systems and optical scanners. In April 2003, California received $265 million in HAVA funds; including $75 million for new voting equipment. These voting equipment funds were distributed to each county beginning in 2004. California counties were then authorized to purchase a new voting system. Nearly all California counties purchased their voting systems from five different vendors.

According to the author, not only are lever machines no longer used to conduct elections in California, but they fail to meet the federal HAVA requirements specified above. This bill, which updates the definition of a "voting machine" and revises other provisions of the Elections Code that apply to elections conducted on a lever voting machine, will bring greater clarity to the Elections Code and reduce confusion by focusing statutory language on machines that are actually used in California elections.

4) Changes to Existing Law: This bill updates the Elections Code to reflect that lever voting machines are no longer in use in California elections. The changes made to existing law by this bill are mostly non-substantive. First, this bill updates the definition of a "voting machine" to eliminate references of lever machines and instead reflect modern voting systems.

Second, this bill makes corresponding changes to provisions of the Elections Code regarding the procedures and equipment used in elections. For example, this bill repeals obsolete provisions of law regarding ballot labels that apply to elections that are conducted on a lever voting machine. In addition, this bill modifies precinct board requirements and procedures related to the closing of the polls, which includes the locking and sealing of voting machines and the reading, posting, and inspection of the return of votes cast for that precinct that apply to elections conducted on a lever voting machine.

Third, this bill clarifies and updates corresponding code sections where the term "voting machine" is used. Current law permits any voter using a VBM ballot, prior to the close of the polls on election day, to vote the ballot at an elections official office or satellite office. Existing law additionally allows the elections official, where voting machines are used, to provide one voting machine for each ballot type used within the jurisdiction. In practice most county elections officials use a DRE voting system to comply with this requirement because DREs have the ability to accept multiple ballot styles. This bill updates the code to reflect current practice and requires an elections official, where DRE voting systems are used, to provide sufficient DREs to include all ballot types in the election.

Finally, this bill makes other conforming changes.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Debra Bowen (sponsor)

Opposition

None on file.

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

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2661 (Bradford) – As Amended: March 28, 2014

SUBJECT: Political Reform Act of 1974: conflicts of interests: Energy Commission.

SUMMARY: Limits the ability of a person to be appointed to the California Energy Commission (CEC) if he or she received income from a load serving entity in the two years prior to his or her appointment. Moves conflict of interest provisions relative to the CEC into the Political Reform Act (PRA). Specifically, this bill:

1) Moves the following conflict of interest provisions that are applicable to the CEC from the Public Resources Code to the PRA, and gives the Fair Political Practices Commission (FPPC), instead of the Attorney General, the authority to waive these provisions if the interest is not sufficiently substantial to affect the integrity of services that the state may expect:

   a) A prohibition on a person from being a member of the CEC if, during the two years prior to appointment to the CEC, the person received any substantial portion of his or her income directly or indirectly from any electric utility or engages in the sale or manufacture of any major component of any facility.

   b) A prohibition on members of the CEC (except for the Secretary of the Resources Agency and the President of the Public Utilities Commission (PUC), who are ex officio members of the CEC) from holding any other elected or appointed public office or position.

   c) A prohibition on members or employees of the CEC maintaining a relationship as a partner, employer, employee, or consultant with a person who acts as an attorney, agent, or employee for a person other than the state in connection with a judicial or other proceeding, hearing, application, request for ruling, or other determination; contract; claim; controversy; study; plan; or other particular matter in which the CEC is a party or has a direct and substantial interest.

2) Expands the prohibition described in (1)(a) above, by additionally prohibiting the appointment of an individual who received a substantial portion of his or her income directly or indirectly from any load serving entity, as defined, or from any person engaged in or authorized to engage in generating, transmitting, or distributing electricity in the state.

3) Repeals the following restrictions on members and employees of the CEC:

   a) A prohibition on a member being employed by an electric utility, applicant, or, within two years after he or she ceases to be a member of the CEC, by any person who engages in the sale or manufacture of any major component of a facility.

   b) A prohibition on a member or employee participating personally and substantially in his or her official capacity in a proceeding in which any of the following has a direct or

indirect financial interest:

i) The member or employee;

ii) The member or employee's spouse or minor child;

iii) The member or employee's partner; or,

iv) An organization for which the following are true:

(1) The organization is not a governmental organization or an educational or research institution that qualifies as a nonprofit organization; and,

(2) The member or employee is serving or has served as an officer, director, trustee, partner, or employee while serving as a member or employee of the CEC or, for members of the CEC, during the two year period prior to the member's appointment.

4) Defines the following terms, for the purposes of this bill:

a) "Facility" to mean the structure or equipment necessary for generating, transmitting, or distributing electricity, including electric transmission lines and thermal, wind, hydroelectric, and photovoltaic plants.

b) "Load serving entity" to mean a person, including an electrical corporation, electric service provider, or community choice aggregator, who sells or provides, or is authorized to sell or provide, electricity to end users located in the state.

c) "Major component" to mean any product or equipment integral to facility construction or operation or to electrical generation, transmission, or distribution.

5) Provides that the term "income," for the purposes of the conflict of interest provisions that are specific to the CEC, includes the following payments that are not otherwise considered income for the purposes of the PRA: salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency, and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

6) Makes technical and conforming changes.

EXISTING LAW:

1) Establishes the State Energy Resources Conservation and Development Commission, also known as the CEC, within the Resources Agency, consisting of five members appointed by the Governor. Requires the CEC to be made up of members with the following backgrounds:

a) One member with a background in the field of engineering or physical science who has knowledge of energy supply or conservation systems;

b) One member who is an attorney and a member of the State Bar of California with administrative law experience;

c) One member with a background and experience in the field of environmental protection or the study of ecosystems;

d) One member who is an economist with a background and experience in the field of natural resource management; and,

e) On member from the public at large.

2) Prohibits a person from being a member of the CEC if, during the two years prior to appointment to the CEC, the person received any substantial portion of his or her income directly or indirectly from any electric utility or engaged in the sale or manufacture of any major component of any facility.

a) Defines "electric utility" to mean any person engaged in, or authorized to engage in, generating, transmitting, or distributing electric power by any facilities, including, but not limited to, any such person who is subject to the regulation of the PUC.

b) Defines "facility" to mean any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant, regulated according to specified provisions of the Public Resources Code.

3) Prohibits a member of the CEC from being employed by an electric utility or applicant or, within two years after the person ceases to be a member of the CEC, by any person who engages in the sale or manufacture of any major component of any facility.

4) Provides that the Secretary of the Resources Agency and the President of the PUC are ex officio members of the CEC and, with the exception of these two positions, prohibits members of the CEC from holding any other elected or appointed public office or position.

5) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the PRA.

6) Prohibits a public official, pursuant to the PRA, from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know that he or she has a financial interest.

7) Provides that violations of the PRA are subject to criminal, civil, and administrative penalties.

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

COMMENTS:

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

> Public Resources Code (PRC) Section 25205 specifies conflicts of interest and incompatible activities only applicable to Commissioners of the California Energy Commission (CEC). The section was adopted when the CEC was established, in 1974, prior to statutes that created competitive electricity markets.
>
> Also in 1974, voters enacted the Political Reform Act (Government Code sections 81000 et seq.), which - along with other later-enacted statutes - addresses the same issues that are the focus of PRC Section 25205: prohibiting financial conflicts of interests of public officials in public contracting, post-agency employment, and prohibiting the holding of incompatible public offices.
>
> PRC Section 25205 is exceedingly vague and, therefore, difficult to interpret. As a result, CEC Commissioners decline to participate in matters that the language of the statute may prohibit, but where no actual conflict exists.
>
> PRC Section 25205 may have made sense at the time of its adoption, but the subsequent adoption and development of generally-applicable conflicts law, shifts in the electricity market structure, and the ambiguity of many of its terms render it obsolete.

2) California Energy Commission Background: The CEC was created by the Legislature in 1974 through the passage of AB 1575 (Warren), Chapter 276, Statutes of 1974 as the state's primary energy policy and planning agency. The CEC's primary responsibilities include (1) forecasting future energy needs; (2) promoting energy efficiency and conservation by setting appliance and building efficiency standards; (3) supporting energy research that advances energy science and technology through research, development and demonstration programs; (4) developing renewable energy resources and alternative renewable energy technologies for buildings, industry and transportation; (5) licensing thermal power plants 50 megawatts or larger; and (6) planning for and directing state response to energy emergencies.

3) Effect of Moving Energy Commission Conflict Rules to the Political Reform Act: Legislation that created the CEC was signed into law two weeks prior to the adoption of the PRA by the voters through the passage of Proposition 9 at the June 1974 statewide primary election. As a result, at the time that the CEC was created, and its specific conflict of interest rules were established, the FPPC did not exist, and the state did not have the conflict of interest rules that were enacted through the PRA and through subsequent amendments to the PRA (although general conflict of interest rules existed prior to the adoption of the PRA, the PRA enacted more comprehensive rules, including a requirement for governmental agencies to adopt a conflict of interest code).

   Notwithstanding the fact that the CEC has its own set of conflict of interest rules, the conflict of interest provisions in the PRA apply generally to all public officials and public agencies, including the CEC and its members and employees. As noted above, this bill repeals certain provisions of the CEC's conflict of interest rules that limit the ability of members and

employees of the CEC to participate in governmental decisions that affect their financial interests. The PRA's conflicts of interest rules, however, will continue to apply to those governmental actions by the CEC and its members and employees.

This bill proposes transferring certain other conflict of interest rules that are specific to the CEC from the Public Resources Code into the PRA. This move, along with corresponding changes made in this bill, has two primary effects. First, by including these restrictions in the PRA, the FPPC will be primarily responsible for the enforcement and interpretation of the CEC's conflict rules. Second, violations of the CEC's conflict of interest rules will no longer be subject only to felony penalties. Instead, violations of these rules will be subject to the same penalties that apply to other violations of the PRA, namely misdemeanor criminal penalties, or civil or administrative fines.

4) Broadening of Energy Commission Conflict Rules & Suggested Amendments: In addition to moving the CEC's conflict of interest rules from the Public Resources Code to the PRA and repealing certain conflict rules, this bill also broadens existing restrictions on who can become a member of the CEC such that former employees of electricity providers other than electric utilities are also subject to restrictions on being appointed to the CEC. The author argues that this expansion appropriately reflects changes in the electricity market since the CEC was created, and would result in restrictions that apply to all electricity producers that are active in the energy markets today.

   The language of this bill, however, may inadvertently prohibit a person from being appointed to the CEC if that person is employed by a company that receives even a small portion of its income from energy-related activities. This bill, for instance, could prevent an employee of Home Depot from being appointed to the CEC because Home Depot sells solar panels, even though the sale of solar panels amounts to only a small portion of Home Depot's overall business. In order to ensure that this bill does not apply in such a broad manner, committee staff recommends that this bill be amended to provide that a person is prohibited from being appointed to the CEC only if that person receives a substantial portion of his or her income from an entity that receives a substantial portion of its income from energy-related activities.

5) Income from Governmental Bodies and Conflicts of Interest: Generally, the conflict of interest rules in the PRA do not treat income from governmental entities as a potential source for a conflict of interest. This bill, by contrast, provides that income from governmental entities can be a source of a conflict that would prevent a person from being appointed to the CEC. According to the author's office, the reason for making income from governmental entities a potential source for a conflict of interest is that municipal utilities, which are responsible for a sizeable share of electricity sales in the state, are subject to CEC oversight with respect to their procurement of renewable energy, energy efficiency program progress, and implementation of incentive programs.

6) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

7) Double-Referral: This bill has been double-referred to the Assembly Natural Resources Committee. Due to upcoming committee deadlines, if this bill is approved in committee today, it would need to be heard in the Assembly Natural Resources Committee next week. As a result, to ensure that this bill can be heard in both policy committees before the upcoming deadline, this bill should not be amended in committee today. Instead, if it is the committee's desire that this bill be amended, this bill should be passed out of committee with the author's commitment to amend the bill subsequent to passage by this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2692 (Fong) – As Introduced: February 21, 2014

SUBJECT: Political Reform Act of 1974: expenditures.

SUMMARY: Requires a person who improperly benefits from the personal use of campaign funds to forfeit the value of the personal benefit received, as specified. Specifically, this bill:

1) Provides that if the Fair Political Practices Commission (FPPC) determines in an administrative action that an expenditure was made that confers a substantial personal benefit to a person who had the authority to approve that expenditure, but the expenditure is not directly related to a political, legislative, or governmental purpose, that the individual who received the substantial personal benefit shall pay to the General Fund (GF) of the state an amount equal to the substantial personal benefit that he or she received.

2) Provides that a payment to the GF of the value of the benefit received, as required by this bill, shall be in addition to any penalty imposed by the FPPC.

EXISTING LAW:

1) Creates the FPPC, and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).

2) Requires campaign expenditures to be reasonably related to a political, legislative, or governmental purpose. Requires campaign expenditures that confer a substantial personal benefit on an individual with the authority to approve the expenditure of campaign funds to be directly related to a political, legislative, or governmental purpose. Provides that the term "substantial personal benefit" for these purposes means an expenditure that results in a direct personal benefit of more than $200. Provides that a violation of these provisions is punishable as follows:

   a) By a fine of up to $5,000 per violation in an administrative proceeding by the FPPC; or,

   b) By a penalty of up to three times the amount of the unlawful expenditure, in a civil action brought by the FPPC.

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

COMMENTS:

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

> California law recognizes that ethical concerns may arise when a candidate personally benefits financially from contributions received by his or her

campaign. For that reason, the Political Reform Act prohibits campaign funds from being used to compensate a candidate or elected officer for the performance of political, legislative, or governmental activities, except for reimbursement of out-of-pocket expenses incurred for political, legislative, or governmental purposes. Additionally, state law prohibits candidates and committee officers from using campaign funds for personal expenses.

Individuals who violate the "personal use" provisions of California law are subject to civil or administrative fines, but existing law does not require a person to forfeit the personal benefit that he or she received from the illegal expenditure of campaign funds. The purpose of California's "personal use" restrictions on campaign funds is to ensure that funds solicited for campaign purposes are used for those purposes, and are not used to personally enrich candidates, officeholders, and political committee officers. To further that purpose, and to provide a greater disincentive against the improper use of campaign funds, AB 2692 requires individuals who violate the "personal use" laws to forfeit the improper benefits that they received, in addition to any fines they face for violating state law.

2) Personal Use of Campaign Funds: Existing law generally prohibits campaign funds from being used for personal expenses, and instead requires campaign expenditures to be reasonably related to a political, legislative, or governmental purpose. When a campaign expenditure results in a personal benefit of more than $200 to an individual who had the authority to approve the expenditure, the expenditure must be *directly* related to a political, legislative, or governmental purpose. These provisions are intended to ensure that campaign funds are not used as a method of personally enriching candidates and officers of political committees.

As is the case with other suspected violations of the PRA, the FPPC may bring an administrative enforcement action if it believes that an individual or a committee has improperly used campaign funds for personal purposes. When the FPPC determines that a violation has occurred, it can impose a monetary penalty of up to $5,000 per violation. Because the maximum monetary penalty available in an administrative enforcement action is not dependent on the value of the personal benefit received, it is possible that a person could receive an improper personal benefit from campaign spending that exceeds the maximum penalty that the FPPC can impose through the administrative process. The FPPC does have the ability to bring a civil lawsuit for a violation of the personal use provisions of law, in which case the maximum monetary penalty available is three times the amount of the unlawful expenditure. Such civil lawsuits, however, are uncommon, and the FPPC deals with a substantial majority of enforcement cases through its administrative enforcement process. By requiring a person to forfeit the value of an improper personal benefit that he or she received, this bill will ensure that a person who uses campaign funds for personal purposes does not receive a benefit in excess of the maximum possible administrative fine.

3) Arguments in Support: In support of this bill, the League of Women Voters of California writes:

> The League believes that the regulation of campaign finance practices must support the public's right to know and combat corruption and undue influence, and that monitoring and enforcement must be effective. AB 2692 will help ensure that there is a direct political, legislative, or governmental purpose for any use of campaign funds that gives substantial personal benefit to a candidate, elected officer, or other individual with authority over those funds.
>
> We support this measure that will provide additional deterrence from the improper use of campaign funds.

4) Related Legislation: AB 1692 (Garcia), which was approved by this committee on April 1, 2014 on a 6-0 vote, prohibits the use of campaign funds to pay a fine, penalty, judgment, or settlement that is imposed for the improper personal use of campaign funds, among other provisions.

5) Political Reform Act of 1974: California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

League of Women Voters of California

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

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Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
AB 2715 (Roger Hernández) – As Amended: April 3, 2014

SUBJECT: District-based municipal elections.

SUMMARY: Requires cities with a population of 100,000 or more to elect city council members by district, instead of at-large. Specifically, this bill:

1) Prohibits a city with a population of 100,000 or more, as determined by the most recent federal decennial census, from using an at-large or "from district" method of election to elect members of the governing body of the city, and instead requires such cities to elect members of the governing body using one of the following methods:

   a) By districts, in five, seven, or nine districts; or,

   b) By districts in four, six, or eight districts, with an elective mayor who is elected at-large.

2) Requires the city council of a city that is subject to the provisions of this bill to establish and adjust the boundaries of the districts in accordance with provisions of existing law.

3) Becomes operative on July 1, 2015.

EXISTING LAW:

1) Permits a general law city that elects its councilmembers through at-large elections to provide for city council members to be elected by districts or from districts. Provides that such a change shall occur only upon the approval of voters of a measure submitted to them by the city council or placed on the ballot through the initiative process. Provides that the term "by districts," for the purposes of this provision, means the election of members by voters of the district alone; provides that "from districts" means the election of members who are residents of the districts from which they are elected, but who are elected by voters of the city as a whole.

2) Prohibits, pursuant to the California Voting Rights Act of 2002 (CVRA), an at-large method of election from being imposed or applied in a political subdivision (including a city) in a manner that impairs the ability of a protected class of voters to elect candidate of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

3) Provides that a violation of the CVRA may be established if it is shown that racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.

4) Requires a court, upon finding a violation of the CVRA, to implement appropriate remedies, including the imposition of district-based elections, which are tailored to remedy the violation.

5) Permits any voter who is a member of a protected class and who resides in a political subdivision where a violation of the CVRA is alleged to file an action in the superior court of the county in which the political subdivision is located.

6) Requires a general law city that elects councilmembers "by districts" or "from districts" to adjust the boundaries of the council districts following each decennial federal census so that the districts are as nearly equal in population as may be. Requires the districts to comply with specified provisions of the federal Voting Rights Act. Permits the city council to give consideration to the following factors when establishing the boundaries of districts:

   a) Topography;

   b) Geography;

   c) Cohesiveness, contiguity, integrity, and compactness of territory; and,

   d) Communities of interests of the districts.

7) Permits a city to provide for its own governance through the adoption of a charter by a majority vote of its electors voting on the question.

8) Permits a city charter to provide for the conduct of city elections, including the manner in which, the method by which, the times at which, and the terms for which municipal officers are elected or appointed.

9) Provides that a legally adopted city charter supersedes all laws inconsistent with that charter with respect to municipal affairs.

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

COMMENTS:

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

> In June of 2013, the U.S. Supreme Court declared certain elements of the federal Voting Rights Act (VRA) unconstitutional. This has increased use of the California Voting Rights Act (CVRA) of 2001. The CVRA prohibits at-large elections to be applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election.
>
> Public officials may be elected by all of the voters of the jurisdiction (at-large) or from districts formed within political subdivision (district-based).
>
> While the diversity of city councils across the State has increased, evidence

suggests that at-large based elections unsuccessfully reflect minority representation in large cities with sizeable minority populations. Currently, minority groups make up 57% of the population in California.

District based elections offer several benefits. Each geographic area is represented which helps ensure an even distribution of city resources. While each voter is represented by all city council members, each voter has one specific board member to petition to for help. Running for office may be less expensive since a smaller area is to be covered. Candidates may rely more on neighborhood campaigning and support of community groups and less on media advertising.

A lack of fair representation still exists in areas with at-large elections. Several California cities such as Modesto, Compton, Anaheim, and Whittier have recently undergone lawsuits seeking minority representation on the councils.

2) General Law Cities Only: The California Constitution gives cities the ability to exercise greater control over municipal affairs through the adoption of a charter by a majority vote of the city's electors voting on the question. Cities that have not adopted charters are commonly referred to as "general law" cities, because such cities are subject to the state's general laws, regardless of whether those laws concern a municipal affair.

   The California Constitution grants charter cities the plenary authority, subject only to restrictions contained in specified provisions of the California Constitution, to provide for the manner in which municipal officers are elected or appointed. Because this bill seeks to regulate the manner in which municipal officers are elected, the provisions of this bill would not be applicable to charter cities, but instead would apply only to general law cities.

3) Cities Affected: According to the 2010 United States Census, there are 66 cities in California with a population of at least 100,000 residents. Of those 66 cities, 41 are charter cities, and thus would not be affected by the provisions of this bill.

   Of the 25 general law cities in California with a population of 100,000 or more, 22 (Antioch, Concord, Corona, Costa Mesa, Daly City, El Monte, Fairfield, Fontana, Fremont, Fullerton, Garden Grove, Murrieta, Norwalk, Ontario, Orange, Oxnard, Rancho Cucamonga, Santa Clarita, Simi Valley, Temecula, Thousand Oaks, and West Covina) elect city council members at-large, and one (Elk Grove) elects city council members at-large from districts. Those 23 cities would be required to change their method of electing city council members under the provisions of this bill. (The City of Santa Clarita has reached a tentative settlement agreement in a CVRA lawsuit, but that agreement calls on the city to use an alternative voting method known as cumulative voting in an effort to address the voting rights issues raised in the lawsuit. Because cumulative voting would be conducted at large in the city, this bill would require the City of Santa Clarita to move to by-district elections, notwithstanding the tentative settlement. Additionally, it is unclear whether the tentative settlement can be implemented, since California law does not permit the use of cumulative voting.) Based on current population growth rates, as estimated by the United States Census Bureau, four additional cities (Rialto, Clovis, Jurupa Valley, and Mission Viejo) likely would be covered by this bill following the 2020 census.

The city of Escondido previously elected its council members using an at-large method of election, but it has agreed to transition to a district-based method of election for city council elections beginning this year, pursuant to a settlement reached in a lawsuit brought pursuant to the CVRA. The city of Moreno Valley was the only general law city in California with a population of at least 100,000 that elected city council members by districts prior to this year.

4) California Voting Rights Act of 2001: SB 976 (Polanco), Chapter 129, Statutes of 2002, enacted the CVRA to address racial block voting in at-large elections for local office in California. In areas where racial block voting occurs, an at-large method of election can dilute the voting rights of minority communities if the majority typically votes to support candidates that differ from the candidates who are preferred by minority communities. In such situations, breaking a jurisdiction up into districts can result in districts in which a minority community can elect the candidate of its choice or otherwise have the ability to influence the outcome of an election. Accordingly, the CVRA prohibits an at-large method of election from being imposed or applied in a political subdivision in a manner that impairs the ability of a protected class of voters to elect the candidate of its choice or to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of the protected class.

   Prior to the enactment of the CVRA, concerns about racial block voting led to the consideration of a number of bills that sought to prohibit at-large voting in certain political subdivisions (for instance, AB 2 (Chacon), of the 1989-90 regular session; AB 1002 (Chacon), of the 1991-92 regular session; AB 2482 (Baca), of the 1993-94 regular session; and AB 172 (Firebaugh), of the 1999-2000 regular session all proposed to prohibit at-large elections in school districts that met certain criteria; additionally, AB 8 (Cardenas) and AB 1328 (Cardenas), both of the 1999-2000 regular session, sought to eliminate the at-large election system within the Los Angeles Community College District). None of these bills became law—in many cases the bills were vetoed, while in other cases, the bills failed to reach the Governor's desk. For those bills that were vetoed, the veto messages typically stated that the decision to create single-member districts was best made at the local level, and not by the state.

   The CVRA followed these unsuccessful efforts; rather than prohibiting at-large elections in certain political subdivisions, the CVRA instead established a policy that an at-large method of election could not be imposed in situations where it could be demonstrated that such a policy had the effect of impairing the ability of a protected class of voters to elect a candidate of its choice or its ability to influence the outcome of an election. The CVRA specifically provided for a prevailing plaintiff party to have the ability to recover attorney's fees and litigation expenses to increase the likelihood that attorneys would be willing to bring challenges under the law.

   The first case brought under the CVRA was filed in 2004, and the jurisdiction that was the target of that case—the City of Modesto—challenged the constitutionality of the law. Ultimately, the City of Modesto appealed that case all the way to the United States Supreme Court, which rejected the city's appeal in October 2007. The legal uncertainty surrounding the CVRA may have limited the impacts of that law in the first five years after its passage.

   Since the case in Modesto was resolved, however, many local jurisdictions have converted or

are in the process of converting from an at-large method of election to district-based elections due to the CVRA. Generally, local government bodies must receive voter approval to move from an at-large method of election to a district-based method of election for selecting governing board members, though the State Board of Education (SBE) and the Board of Governors (BOG) of the California Community Colleges have the authority to waive the voter-approval requirement for school districts and community college districts, respectively. In all, the SBE and the BOG have combined to grant nearly 120 requests for waivers from the voter-approval requirement for school districts and community college districts that have sought to move to district-based elections for board members due to concerns about potential liability under the CVRA. According to information compiled by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, at least a dozen other local jurisdictions statewide have transitioned to electing governing board members by districts as a result of settlements to lawsuits brought under the CVRA. In all, approximately 130 local government bodies have transitioned from at-large to district-based elections since the enactment of the CVRA. While some jurisdictions did so in response to litigation or threats of litigation, other jurisdictions proactively changed election methods because they believed they could be susceptible to a legal challenge under the CVRA, and they wished to avoid the potential expense of litigation.

5) State Mandates: By requiring certain cities to elect city council members by districts, instead of at-large, this bill would impose a state-mandated local program, for which the state could be required to reimburse those cities for the costs of transitioning from an at-large election system to a district-based election system. On the other hand, political subdivisions that transition from at-large to district-based elections systems on their own, either as the result of a legal challenge brought under the CVRA, or for other reasons, must bear their own costs of changing election methods.

   The last three state budgets have suspended various state mandates as a mechanism for cost savings. Among the mandates that were suspended were all existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2014-15 fiscal year. In light of this fact, and given the fact that the CVRA provides a remedy to compel jurisdictions to move from at-large to district-based elections when at-large elections are impairing the ability of a protected class of voters to influence the outcome of an election, the Committee may wish to consider whether it is desirable to establish this new mandate when the Legislature has voted to suspend the existing election mandates.

6) Arguments in Support: In support of this bill, the California Teamsters Public Affairs Council writes:

   > In our view, district based elections are fundamentally more democratic and ensure that voters get a representative that truly represents them. Unfortunately, there are still many local governmental entities in this state that retain the old at-large system. For the most part, this means that well healed candidates that may be ideologically and socioeconomically very different from the folks they represent stand a good chance of getting elected anyway. This bill moves away from that old method of choosing leaders and closer to a more democratic system.

7) Arguments in Opposition: In opposition to this bill, the League of California Cities writes:

> The [CVRA] already provides enormous legal leverage to any voter who seeks to challenge an at-large election system of a city, school district, community college district or any other district authorized by the state. The CVRA makes it easier for plaintiffs to bring and prevail in lawsuits alleging that their votes are diluted in *"at large"* and *"from district"* elections. Cases have been trending toward plaintiffs, and many have been recently filed against school districts, community colleges, cities and a county…
>
> By *imposing*, effective July 1, 2015, a district-based election on…cities which fit the criteria of general law cities with populations at or above 100,000 and at-large election process, this measure would create a costly and chaotic environment costing millions of dollars to the affected agencies…
>
> The City of Santa Clarita recently settled a CVRA lawsuit challenging its at large election system, by agreeing to two specific changes: 1) Move the timing of council elections to November of even numbered years to increase voter participation, and 2) Retain the at-large system, but employ "cumulative voting" that would allow a voter to cast multiple votes for the same candidate or distribute votes among candidates. Thus, AB 2715 would remove flexibility that is provided under the CVRA.

8) Related Legislation: AB 1440 (Campos), which is pending in the Assembly Local Government Committee, requires any political subdivision that is switching from an at-large method of election to a district-based method of election to hold at least two public hearings on the proposed district boundaries prior to adopting those boundaries, among other provisions. AB 1440 was approved by this committee on a 7-0 vote.

9) Previous Legislation: AB 1979 (Roger Hernández) of 2012 would have required the City of West Covina to elect city council members by districts, instead of at-large. AB 1979 was pulled by the author prior to being heard in this committee.

   AB 450 (Jones-Sawyer) of 2013 would have required the Los Angeles Community College District to elect governing board members by trustee area, instead of at-large. AB 450 was approved by this committee on a 4-1 vote, but was held on the Assembly Appropriations Committee's suspense file.

10) Double-Referral: This bill has been double-referred to the Assembly Local Government Committee. Due to impending committee deadlines, if this bill is approved in this committee today, it would need to be heard in the Assembly Local Government Committee next week, absent a waiver of the Joint Rules. However, if this bill is amended in committee today, that may prevent this bill from being heard in the Assembly Local Government Committee before next week's deadline for policy committees to hear and report fiscal bills. In light of this fact, if it is the committee's desire to approve this bill with amendments, committee staff recommends that this bill be passed out of committee with the author's commitment to take those amendments subsequent to passage by this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Teamsters Public Affairs Council
Pomona Valley Democratic Club
Service Employees International Union, California State Council
State Building and Construction Trades Council, AFL-CIO
United Farm Workers

Opposition

Association of California Cities—Orange County
City of Brea
City of Glendora
City of Murrieta
City of Norwalk
City of Santa Clarita
City of West Covina
Howard Jarvis Taxpayers Association
League of California Cities

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094

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Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
ACA 12 (Gorell) – As Introduced: March 5, 2014

SUBJECT: Elections: Secretary of State.

SUMMARY: Requires elections for Secretary of State (SOS) to be conducted using a nonpartisan election system, and requires the SOS, instead of the Attorney General (AG), to prepare the titles and summaries for proposed state initiatives and for qualified state ballot measures. Specifically, this measure:

1) Makes elections for the office of SOS nonpartisan.

2) Requires the SOS, instead of the AG, to prepare the title and summary of each proposed state initiative or referendum measure.

3) Requires the SOS, instead of the AG, to prepare the ballot label and the ballot title and summary that appears in the state ballot pamphlet for each statewide ballot measure.

4) Makes technical and corresponding changes.

EXISTING LAW:

1) Establishes the office of SOS and makes the SOS the chief elections officer of the state. Requires the SOS to see that elections are efficiently conducted and that state election laws are enforced.

2) Specifies that all judicial, school, county, and city offices, including the office of Superintendent of Public Instruction (SPI), are nonpartisan. Prohibits a candidate's political party preference from being included on the ballot for nonpartisan office.

3) Requires that primary elections for Congress and for state elective office, other than SPI, be conducted in a manner such that every voter, regardless of party affiliation, may vote for any candidate for that office without regard to the political party of the candidate, provided that the voter is otherwise eligible to vote for that office. Provides that the two candidates that receive the highest number of votes at a primary election for Congress or for state elective office other than SPI, regardless of political affiliation, move on to the general election.

4) Allows any candidate for congressional or state elective office, except a candidate for SPI, to have his or her political party preference, or lack of party preference, indicated on the ballot.

5) Requires the proponents of a state initiative or referendum measure, prior to circulating petitions for that measure, to submit a draft of the proposed measure to the AG with a written request that a circulating title and summary of the chief purpose and points of the proposed measure be prepared.

6) Requires the AG to prepare a summary of the chief purposes and points of a proposed state initiative or referendum. Limits the circulating title and summary to not more than 100 words.

7) Requires a petition for a proposed state initiative measure to include the circulating title and summary prepared by the AG on each page of the petition on which signatures are to appear and on each section of the petition preceding the text of the measure.

8) Requires the AG to provide and return to the SOS a ballot title and summary and a ballot label for each measure submitted to the voters of the whole state. Provides that the ballot title and summary shall express in not more than 100 words the purpose of the measure. Provides that the ballot label shall be a condensed version of the ballot title and summary, including the financial impact summary, and shall be not more than 75 words long.

FISCAL EFFECT: Unknown

COMMENTS:

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

> The primary responsibility of the Secretary of State (SOS) is to oversee the election process in the state. Although the SOS vows to carry out his or her duties in an impartial manner, there are inherent conflicts when a referee of elections is explicitly affiliated with a particular political party. The growing trend of both overtly partisan figures running to be the state's chief election official and increasing involvement of superPACs in Secretary of State races is a concerning pattern that can undermine the integrity of elections in California and throughout the nation.
>
> The State of California turned a once partisan Superintendent of Public Instruction into a non-partisan office because the job of implementing policies to improve the education of our students should not be tainted by political biases and agendas. There are no compelling reasons why the overseer of elections should retain their ballot identification with a political party when taking on the duty of enforcing a fair election process.
>
> There is evidence throughout the nation in which partisan secretaries of states on both sides of the aisle have attempted to unfairly influence the outcome of elections and ballot measures. In almost every major election since 2000, partisan secretaries of states have been key figures in the outcomes of those election battles—perhaps the most controversial being the 2000 ballot controversy in Florida that sealed the outcome of the next President of the United States.
>
> In 2004, Ohio's Secretary of State engaged in controversial voting rules that favored a particular political party and influenced the outcomes of very close races. In 2008, Minnesota's Secretary of State was in the middle of voter fraud and recount controversies that influenced the outcome of a razor-close U.S. Senate race.

There is enough evidence for voters to be concerned about the integrity of our elections and to support reforms that address the inherent tension involved with partisan officials serving as election referees.

While having a non-partisan chief election referee does not remove the opportunity for partisan decision-making, it does remove the obligation.

Additionally, the responsibility of issuing title and summary for ballot initiatives should also reside in a non-partisan constitutional election office. A recent Sacramento Bee editorial agreed that the partisan manner in which ballot initiatives are summarized is unacceptable in our democratic system. When ballot initiative responsibility is in the hands of partisan constitutional officers, they face considerable pressures and conflicts of interest as a result of their explicit affiliation.

2) Would Nonpartisan Elections Change Officials' Behavior? The author expresses concern that partisan Secretaries of State may be unable to enforce election law in a nonpartisan manner, or, at the very least, can undermine voters' confidence that elections will be conducted in a fair and impartial manner. However, it is unclear whether making the SOS a nonpartisan post would fundamentally change the behavior of candidates for SOS or the behavior of the SOS once he or she is in office.

   Nothing in this measure prohibits the SOS from engaging in partisan or other political activity of the type described by the author in his statement in support of the need for this measure. The author's statement above, for instance, references the 2000 Presidential election, and the controversy surrounding the counting of ballots in Florida. In that case, the impartiality of the SOS was questioned in part because she simultaneously served as the co-chair of George W. Bush's Florida campaign committee while overseeing the Presidential election in her role as SOS. But this measure does not prohibit the SOS from simultaneously overseeing an election while taking an active role in the campaign for one of the candidates appearing on the ballot at that election, nor does this measure prevent or prohibit the SOS from using the power of his or her office improperly to affect the outcome of an election.

3) Top Two Primary & Voter Information: In February 2009, the Legislature approved SCA 4 (Maldonado), Res. Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010, statewide primary election ballot. Proposition 14 implemented a top two primary election system in California for most elective state and federal offices, including the office of SOS. At primary elections, voters are able to vote for any candidate, regardless of party, and the two candidates who receive the most votes, regardless of party, advance to the general election. Candidates who are running for one of the offices covered by the top two primary election system are permitted to have their political party preferences printed on the ballot.

   Elections conducted using the top two primary system are fairly similar to nonpartisan elections, given that all candidates are listed on the ballot during the primary election, and voters are free to vote for any candidate at the primary election. In fact, there are only two noteworthy differences between elections conducted using the top two system and

nonpartisan elections. First, a candidate for nonpartisan office can win the election outright in the primary election by receiving more than 50 percent of the vote, while under elections conducted using the top two system, the two candidates who received the most votes advance to the general election, regardless of whether one candidate received more than 50 percent of the vote (except in special elections). Second, the political party preferences of candidates for office in elections governed by the top two election system are included on the ballot, and the political party preference histories for the preceding ten years of the candidates are included on the SOS's website. Information about candidates' political party preferences are not included in official election materials for nonpartisan offices.

While this measure requires elections for SOS to be conducted using a nonpartisan election process, candidates for SOS would still be permitted to register as preferring a political party. By virtue of the fact that elections for SOS would nonpartisan, however, information about the candidates' current and historical political party preferences no longer would be provided to the voters in official election materials. By limiting the information that voters receive about the political party preferences of candidates for SOS, could this measure actually make the potential partisan biases of candidates for SOS less apparent?

4) Other States: According to information from the National Association of Secretaries of State, 34 states directly elect the person who serves as the state's chief election official (in most cases, the SOS is the state's chief election official). In the 16 other states, the chief election official is appointed, typically either by the Governor, the Legislature, or a board or commission that oversees state elections.

   None of the 34 states that directly elect the chief election official have nonpartisan elections for that office.

5) Is the SOS the Appropriate Entity to Prepare Titles & Summaries? The purpose of a title and summary of a proposed initiative or referendum measure, and of a qualified state ballot measure, is to provide a short overview to voters of the primary changes to existing law that would be made by a measure. In that respect, one could argue that it is appropriate that the AG be the entity to prepare the title and summary, since the AG is the chief lawyer of the state and has legal expertise. The SOS, on the other hand, oversees state elections, but does not have the level of expertise that the AG does in the context of summarizing the changes that a measure would make.

6) Arguments in Opposition: Secretary of State Debra Bowen, who has an "oppose unless amended" position on this measure, writes:

   > I must respectfully oppose ACA 12, as introduced, unless the provision withholding information from the voters about the Secretary of State's party preference is removed. I firmly believe that the Secretary of State should conduct herself or himself in a nonpartisan fashion. That is why since taking office, I have not endorsed or opposed any candidate or ballot measure.
   >
   > Simply designating the office of Secretary of State as nonpartisan will not require the Secretary to act in a nonpartisan fashion. What it will do is withhold key information from the voter—the party preference of the candidates for Secretary

of State—at the most critical time during the voting process when the voter is physically marking their ballot.

ACA 12 also moves responsibility for drafting the title and summary for ballot measures from the Attorney General to the Secretary of State. There will always be charges that the political preference of an office holder plays a role in the drafting of a measure's title and summary. Aside from my believe that no problem exists now that needs to be solved, moving the drafting responsibility to the Secretary of State will not cure any perceived problem that may or may not exist now or in the future and will not prevent those charges from being made.

7) Related Legislation: AB 2394 (Gorell), a companion bill to this measure, is also being heard in this committee today.

   SB 1294 (Huff), which is scheduled to be heard in the Senate Elections & Constitutional Amendments Committee today, would make the Legislative Analyst, instead of the AG, responsible for preparing the ballot label and ballot title and summary for statewide ballot measures.

8) Previous Legislation: AB 5 (Canciamilla), ACA 33 (Canciamilla), and SCA 4 (Denham) of the 2005-06 Legislative Session all proposed having nonpartisan elections for the office of SOS, among other provisions. AB 5 failed passage in this committee, and SCA 4 failed passage in the Senate Elections, Reapportionment, and Constitutional Amendments Committee. ACA 33 was never heard in committee.

   AB 319 (Niello) of 2009 and AB 1968 (Niello) of 2010 would have required the Legislative Analyst, instead of the AG, to prepare the circulating titles and summaries for state initiatives and referenda, and the ballot titles and summaries and ballot labels for state measures that will appear on the ballot, among other provisions. AB 319 failed passage in this committee, while AB 1968 failed passage in the Assembly Appropriations Committee. ACA 20 (Niello) of 2009 was a companion measure to both AB 319 and AB 1968. ACA 20 failed passage in this committee. AB 2209 (Niello) and ACA 18 (Adams) of 2008 were similar to AB 319, AB 1968, and ACA 20. AB 2209 failed passage in this committee, while ACA 18 was never heard in committee.

9) Approval of Voters: As a constitutional amendment, this measure requires the approval of the voters to take effect.

REGISTERED SUPPORT / OPPOSITION:

| Support | Opposition |
|---|---|
| None on file. | Secretary of State Debra Bowen (unless amended) |

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094