

Date of Hearing: April 29, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

AB 1461 (Gonzalez, Alejo, and McCarty) – As Amended April 20, 2015

SUBJECT: Voter registration.

SUMMARY: Provides for every person who has a driver's license or state identification card and who is eligible to register to vote to be automatically registered to vote, unless that person opts out, as specified. Specifically, **this bill:**

- 1) Requires the Secretary of State (SOS), in consultation with the Department of Motor Vehicles (DMV), to establish a schedule for the DMV to electronically provide to the SOS the records of a person who is issued an original or renewal driver's license or state identification card, as specified.
 - a) Requires the DMV to electronically provide the records to the SOS of a person who is issued an original or renewal of a driver's license or state identification card if the proof that the applicant is required to submit to prove that his or her presence in the United States is authorized under federal law also establishes that the applicant is a citizen of the United States.
 - b) Requires the records to include the person's name, age, residence address, and electronic signature.
 - c) Prohibits the DMV from electronically providing the records of a person who is issued a driver's license pursuant to specified provisions of law because that person is unable to establish satisfactory proof that his or her presence in the United States is authorized under federal law.
- 2) Requires the SOS, upon receipt of the records from the DMV, to provide the records to the county elections official of the county in which the person may be registered to vote, unless the SOS determines that the person is not eligible to register to vote or is already registered to vote.
- 3) Requires the SOS to notify each person whose records are sent to a county elections official of the following:
 - a) That the person will be registered to vote unless he or she declines to be registered within 21 days after the date the SOS issues the notification;
 - b) The method by which the person may decline to be registered to vote; and,
 - c) The method by which the person may include his or her political party preference on his or her voter registration.

- 4) Provides that if a person notified as detailed above does not decline to be registered to vote within 21 days after the date that the SOS issues the notification, that person's records shall constitute a completed affidavit of registration and the person shall be registered to vote.
- 5) Provides that this bill shall not affect the confidentiality of a person's voter registration information, including for any of the following individuals:
 - a) Individuals who are enrolled in the Address Confidentiality for Victims of Domestic Violence, Sexual Assault, and Stalking program, as specified;
 - b) Individuals who are enrolled in the Address Confidentiality for Reproductive Health Care Service Providers, Employees, Volunteers, and Patients program, as specified;
 - c) Public safety officers who have had their residence addresses, telephone numbers, and email addresses made confidential pursuant to specified provisions of law; and,
 - d) Individuals with life-threatening circumstances who have been granted confidentiality of their voter registration information by a court under specified provisions of law.
- 6) Requires the SOS to adopt regulations to implement this bill.
- 7) Provides that this bill may be known as the California New Motor Voter Program.
- 8) Contains various findings and declarations.

EXISTING LAW:

- 1) Requires, pursuant to the National Voter Registration Act (NVRA) of 1993, each state to offer voter registration services at motor vehicle agency offices, offices that provide public assistance, offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, Armed Forces recruitment offices, and other state and local offices within the state designated as NVRA voter registration agencies.
- 2) Requires the DMV to provide the opportunity to register to vote to individuals who apply for, renew or change an address for a driver's license or personal identification card issued by the DMV.
- 3) Requires a driver's license or identification application to be used as an application for voter registration, unless the applicant fails to sign the application.
- 4) Requires change of address information received by the DMV to be used for the purpose of updating voter registration records, unless the registrant chooses otherwise.
- 5) Provides that a person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

- 6) Requires a county elections official to cancel the registration of any person if the mental incompetency of that person is legally established, as provided.
- 7) Provides a person may not be registered to vote except by affidavit of registration.
- 8) Permits a registered voter to cancel his or her voter registration at any time by submitting a signed, written request to the county elections official.

FISCAL EFFECT: Unknown

COMMENTS:

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

Congress enacted the federal National Voter Registration Act of 1993, commonly known as the "Motor Voter Law," to increase the number of eligible citizens who register to vote. However, more than 20 years after the passage of the Act, voter registration still stands as one of the biggest barriers to participation in our nation's democracy.

In fact, California ranked 38th among the 50 states in voter registration in 2014 with nearly 7 million Californians eligible to vote but not yet registered. Moreover, voter turnout nationwide was the lowest since World War II in 2014, with California ranking 43rd in voter participation.

Additionally, the federal Motor Voter Law is based largely on a paper process and does not fully utilize modern electronic data technologies to make voter registration easier, more convenient and more efficient.

AB 1461 will enact the California New Motor Voter Act to make voter registration easier when citizens get or renew a driver's license, thereby increasing opportunities for eligible citizens to participate in democracy by voting.

- 2) **National Voter Registration Act:** In 1993, the federal government enacted the NVRA, commonly referred to as the "motor voter" law, to make it easier for Americans to register to vote and to remain registered to vote. Among other provisions, the NVRA requires states to provide individuals with the opportunity to register to vote at the same time that they apply for or renew a driver's license, requires states to offer voter registration opportunities at all offices that provide public assistance, guarantees that citizens can register to vote by mail using uniform federal registration forms, and establishes procedures for how states maintain voter registration lists for federal elections.

One of the provisions of the NVRA prohibits the voter registration portion of a driver's license application from requiring any information that duplicates information required in the driver's license portion of the form, other than a second signature or a statement attesting to the person's eligibility to register to vote.

The California DMV, however, does not currently comply with NVRA's prohibition on requiring duplicate information. Rather, a separate voter registration form is attached to the driver's license form which requires the affiant to fill in duplicate information. This dual form policy was the result of a settlement in a lawsuit to force the State of California to comply with NVRA when former Governor Pete Wilson refused to implement it unless federal funding was provided (NVRA did not provide the states with any direct funding or any mechanism for reimbursement of costs associated with implementation).

Earlier this year, a letter was sent to the SOS from the ACLU Foundation of San Diego and Imperial Counties, Dēmos, Morrison & Forester LLP, and Project Vote stating that California is engaging in continuous and ongoing violations of the NVRA due to the state's dual form policy. The letter also stated that it constituted a formal notice of the senders' intent to initiate litigation at the end of the statutory 90-day waiting period should California fail to remedy the violations of the NVRA, as specified.

- 3) **California Registration Statistics:** According to the most recent report of registration produced by the SOS, there are 17,717,936 registered voters in California out of an estimated 24,362,774 Californians who are eligible to register to vote, meaning that approximately 72.7 percent of eligible Californians are registered to vote.

Over the last 50 years, the percentage of eligible Californians who were registered to vote has been as high as 80.2 percent (in 1996) and as low as 66.3 percent (in 1979).

- 4) **Oregon's Automatic Voter Registration:** No state currently takes the responsibility for proactively registering eligible individuals to vote—instead, almost every state puts the impetus on individuals to register themselves to vote (North Dakota, which is the only state without voter registration, is the exception). The idea of making the government responsible for proactively registering voters when the government has information to verify individuals' eligibility to vote—sometimes referred to as "automatic voter registration"—received renewed attention earlier this year when the Oregon Legislature passed and the Governor signed House Bill 2177, which will require Oregon elections officials to automatically register people to vote if the state Department of Transportation has information indicating that those people are eligible to register to vote. Individuals will have the option to opt-out of being registered.

However, Oregon's automatic voter registration bill was signed into law only last month, and the bill lacks many details on how automatic voter registration will work, instead allowing those details to be determined by regulation or rule. The bill did require, however, that the Oregon Secretary of State and the Department of Transportation must implement various aspects of the bill by January 1, 2016.

- 5) **VoteCal and Possible Amendment:** On October 29, 2002, President George W. Bush signed the Help America Vote Act (HAVA) of 2002 (116 STAT. 1666, Public Law 107-252). Enacted partially in response to the 2000 Presidential election, HAVA was designed to improve the administration of federal elections. Among other provisions, HAVA requires every state to implement a single, uniform, official, centralized, interactive computerized

statewide voter registration list defined, maintained, and administered at the state level. This statewide voter registration list will serve as the official list of eligible voters for any federal election held within the state.

At the time HAVA was approved, California was already using a statewide voter registration system, known as Calvoter, which achieved some of the goals of the voter registration list required by HAVA. However, Calvoter did not satisfy many of the requirements in that law, including requirements that the database be fully interactive and have the capability of storing a complete voter registration history for every voter. Discussions between the United States Department of Justice (Justice Department) and the SOS led to the adoption of a memorandum of agreement (MOA) between the two parties. In that MOA, the SOS committed to further upgrades to the Calvoter system to achieve short term interim compliance with the requirements of HAVA, and to complete development and implementation of a longer term solution for replacing the Calvoter system with a new permanent statewide voter registration system. That new permanent system is commonly known as VoteCal.

After a number of delays, the VoteCal system is being developed and is currently in testing. The system is scheduled to be rolled out to five counties this July as a pilot, and if VoteCal is operating as anticipated, it will then be deployed to the remaining 53 counties in six waves between October 2015 and March 2016. After the final wave is completed, the SOS will certify VoteCal as the system of record for voter registration information in California. The current project schedule provides for that certification to occur by June 2016.

The implementation of VoteCal will help streamline the voter registration process, including allowing voters to update their voter registration records seamlessly when they update their address with the DMV or with the state's Employment Development Department. VoteCal will also make it easier and more efficient for elections officials to do "list maintenance," including identifying and eliminating duplicate registrations, transferring a voter's record from one county to another when the voter moves, and canceling the registrations of individuals who are no longer eligible to vote.

Given the significant changes to the state's voter registration processes and infrastructure as a result of VoteCal, and given the critical nature of completing that project in a timely manner, it may be prudent for any attempt to automatically register voters based on information held by the DMV to occur only when VoteCal is operational. SOS staff has indicated that they do not intend for automatic voter registration to begin until after VoteCal is operational. In light of that fact, and to ensure that appropriate systems are in place before automatic voter registration begins, the committee may wish to amend this bill to make its implementation conditional on certification by the SOS that VoteCal is operational.

- 6) **Determination of Eligibility to Register:** Under California law, a person is eligible to register to vote if he or she is a United States citizen, a resident of California, not in prison or on parole for conviction of a felony, and will be at least 18 years old at the time of the next election. Additionally, as detailed above, existing law requires a county elections official to cancel the registration of any person if the mental incompetency of that person has been legally established, as specified.

Under this bill, the DMV would be required to provide the SOS with specified personal information about individuals who have a driver's license or identification card and who submitted documentation to the DMV that establishes that they are citizens.

Since 1994, every applicant in California for a state identification card or driver's license has been required to provide verification of birth date and proof of legal presence in the United States. (As detailed below, beginning this year, individuals who are unable to submit satisfactory proof of legal presence in the United States are now eligible to apply for and receive driver's licenses. Those driver's licenses—commonly referred to as "AB 60 licenses" after the bill that authorized their issuance, are distinguishable from non-AB 60 licenses. Individuals who wish to receive a non-AB 60 license are still required to provide proof of legal presence in the United States.) In order for a person to prove legal presence, an applicant is required to provide the original or a certified copy of one of 28 different documents to the DMV. Of those 28 documents, some (such as a United States passport) are documents that are available only to citizens, while others (such as a permanent resident card) would be issued only to individuals who were not citizens. Other acceptable documents (such as a United States military identification card) could be issued to citizens or non-citizens. According to the DMV and the State Transportation Agency, DMV records contain information about the document that individuals used to establish legal presence in the country. (For individuals who were originally issued a driver's license or identification card prior to 1994, the DMV does not have such information, since a person was not required to prove his or her legal presence in the country.)

Under this bill, the DMV would forward the personal information to the SOS of individuals who have a driver's license or identification card and who used a document to establish legal presence in the country that also establishes that the person is a citizen. Once that information was received from the DMV, the SOS would need to make a determination about which of those individuals are (1) eligible to register to vote, and (2) not already registered to vote. In order to determine which individuals were already registered to vote, the SOS would need to check the list received from the DMV against the statewide voter registration database. In order to establish a person's eligibility to vote, the SOS would need to limit the information received from the DMV to those individuals who were at least 18 years old, and then would need to check that list of names against records that the SOS receives (including court records and death records) to exclude those individuals who are not eligible to register to vote.

Because the procedure established by this bill is limited to people for whom the DMV has evidence that they are citizens, many individuals who are eligible to vote will not be registered to vote under this bill, even if those individuals have driver's licenses or state identification cards. For example, the DMV does not know whether a licensee is a citizen or not if that licensee used a United States military identification card to prove his or her legal presence in the country. Similarly the DMV will not necessarily have information to confirm the citizenship of individuals who were originally issued licenses or identification cards prior to 1994, or for individuals who became citizens after being issued a driver's license or identification card. As a result, the number of voters who are registered to vote under this

bill likely will be considerably less than the number of Californians who are eligible to vote, but who are not currently registered to vote.

- 7) **Effect on Other Election Policies:** Various provisions of the state's elections laws are dependent on the numbers and percentages of registered voters. Because this bill has the potential to substantially increase the number of registered voters in California, many of those provisions may need to be reevaluated and adjusted to reflect the increase in registered voters that is likely to occur with this bill.

For example, existing law limits each precinct to a maximum of 1,000 voters as of the 88th day before the election. Unless that figure is adjusted, elections officials could be required to create thousands of new precincts around the state to reflect the increase in voter registration that could occur with this bill.

Similarly, one test that a political party may meet under existing law in order to be qualified to participate in elections is having at least 0.33 percent of the state's registered voters registered as having declared a preference for that political party. Because voters registered under this bill would be "no party preference" (NPP) voters by default, as detailed below, this bill could make it considerably more difficult for certain political parties to maintain their qualification to participate in elections if this bill increases the percentage of NPP voters.

Other state laws and policies that are dependent on numbers or percentages of registered voters include:

- a) *Local Initiatives, Referenda, and Recall Measures:* Although the number of signatures necessary to qualify a state initiative, referendum, or recall for the ballot is based on the number of voters who cast a ballot in a recent election, under existing law, the number of signatures needed to qualify a municipal initiative or referendum or a district initiative for the ballot is based on the number of registered voters in the jurisdiction.

Similarly, the number of signatures necessary to qualify a local recall for the ballot, and the time period that proponents have to collect those signatures, are based on the number of registered voters in the jurisdiction.

- b) *Various Local Government Petitions:* Existing law provides for petitions to be used as a means for initiating or blocking certain actions with respect to local government entities. The number of signatures needed on those petitions often is set as a percentage of the number of registered voters in the jurisdiction. Among the types of petitions that are affected are the following:
- i) Petitions to form, to oppose the formation of, or to reorganize, various types of local governmental entities;
 - ii) Petitions to change the method of selecting board members to various types of local governmental entities; and,
 - iii) Petitions to force an election to be held to fill a vacancy on the governing board of certain local governments.

- 8) **Other Policy Considerations:** In addition to those outlined above, there are a number of other policy issues where the Legislature may wish to provide greater policy direction in the text of this bill, rather than leaving those policy determinations to be made entirely by the SOS by regulation. Among the issues on which the Legislature may wish to provide policy direction are the following:
- a) *Which DMV Records?* This bill is silent on the issue of how recent a DMV record must be in order for that record to be used as the basis for registering a person to vote. Oregon's legislation did not specify such a timeline, but subsequent news reports indicate that the state is planning to review the previous two years' worth of driver's license records to identify individuals who are eligible to vote.
 - b) *Information Requested on Voter Registration Forms:* This bill requires the SOS to notify a person who is registered under its provisions of the procedure for opting out of registering to vote and for choosing a political party. Political party preference information, however, is just one piece of information that is requested on a voter registration form that is not requested on a driver's license application. Among the other information that is requested of voter registration applicants, but not driver's license applicants, is the following:
 - i) The applicant's language preference;
 - ii) The applicant's race;
 - iii) The applicant's email address;
 - iv) The applicant's phone number (the driver's license application asks for a daytime phone number);
 - v) The applicant's prior registration information; and,
 - vi) Whether the applicant wants to be a permanent vote by mail voter.

The Legislature has previously decided that there is value in asking voter registration applicants to provide the information detailed above, as that information may help facilitate communication with voters and allow elections officials to better maintain the voter rolls and meet voters' needs. It may be appropriate to request some or all of this information from voters as part of the notification that the SOS sends to a person who is registered to vote under this bill.

Additionally, to provide for a more efficient voter registration process in the future, it may be worth considering whether modifications should be made with respect to information that the DMV requests and collects, so that more of this information can be collected at the time a person applies for a driver's license or state identification card, rather than attempting to collect that information through a follow-up communication after a person has been identified as a candidate to be registered under the provisions of this bill.

- 9) **Conditional Voter Registration (a.k.a., "Election Day" Registration):** AB 1436 (Feuer), Chapter 497, Statutes of 2012, permits "conditional voter registration," under which a person is allowed to register to vote and vote at the office of the county elections official at any time, including on election day, if certain requirements are met. Conditional voter registration will

not go into effect until January 1 of the year following the date that the SOS certifies the operation of VoteCal. Under conditional voter registration, voters will cast provisional ballots which will be counted only if the elections official is able to determine the person's eligibility to vote, as specified.

Once conditional voter registration is in effect, registering to vote in advance of an election will no longer be necessary, and voter registration requirements will be less of a barrier to voter participation than under existing law. Notwithstanding that fact, there will still be advantages to having voters registered to vote prior to election day. First, voters who are registered in advance of election day will receive official election materials that contain information about the candidates, races, and measures that will appear on the ballot. Second, conditional voter registration is not required to be offered at every polling place—instead it will be offered only at the office of the county elections official, and at satellite locations that may be set up at the discretion of elections officials. By registering to vote in advance of election day, voters will be able to cast a ballot at their local polling place, or will be able to cast a vote by mail ballot if they desire. In light of these facts, and notwithstanding the fact that conditional voter registration will soon be in effect, automatically registering certain individuals to vote unless they opt out could help reduce barriers to voter participation.

- 10) Increase in “No Party Preference” Voters?** California's voter registration form asks the registrant whether he or she wishes to disclose a political party preference. A registrant has the option of selecting to disclose a preference for one of the six qualified political parties in the state, to disclose a preference for a political body that is attempting to qualify as a political party, or to decline to disclose a party preference. Any voter who chooses this last option, along with any voter who fails to choose any option, is registered as NPP.

While this bill requires the SOS to notify every voter who is registered to vote under its provisions of the procedure for choosing a political party, those who do not avail themselves of that procedure will automatically be designated as NPP voters. By virtue of that fact, it is reasonable to expect that this bill will result in a significant increase in the number and percentage of voters who are registered as NPP voters.

- 11) **AB 60 Licensees:** AB 60 (Alejo), Chapter 524, Statutes of 2013, requires the DMV to issue an original driver's license to an applicant who is unable to submit satisfactory proof of legal presence in the United States. Driver's license applicants under AB 60 must meet all other qualifications for licensure and must provide satisfactory proof of identity and California residency. The DMV began accepting applications for licenses under AB 60 on January 2, 2015.

Because the AB 60 licensing process was specifically established for individuals who are unable to submit satisfactory proof of legal presence in the United States, this bill expressly prohibits the DMV from transmitting information to the SOS about individuals who applied for or received a driver's license pursuant to AB 60.

- 12) **Arguments in Support:** The sponsor of this bill, Secretary of State Alex Padilla, writes in support:

We should make every effort to facilitate the participation of all citizens in our democracy. In recent years, modern technology is transforming voter registration and voting practices. Since 2012, California has offered online voter registration. In addition, by July 2016, California is scheduled to launch VoteCal, a new statewide centralized voter registration database that will replace voter registration files currently maintained by each of the state's 58 county elections officials. VoteCal and Online Voter Registration rely on existing data-sharing between the DMV and the [SOS] pursuant to an agreement required by federal law....

AB 1461 will enact the "California New Motor Voter Act" to make voter registration easier when citizens obtain or renew a driver's license, thereby increasing opportunities for eligible citizens to participate in our elections. The bill would require the DMV to transfer to the [SOS] voter registration information when a citizen obtains or renews a driver's license or state identification card. AB 1461 would require the DMV to only send the SOS the information of citizens who have [provided] the DMV with documentation that verifies their citizenship. The bill would require an opportunity for each citizen whose information is transferred to choose a political party or decline to be registered to vote.

- 13) **Related Legislation:** AB 786 (Levine), which was scheduled to be heard in the Assembly Transportation Committee on the afternoon of April 27, 2015 (at the time that this analysis was prepared, the outcome of that hearing was unknown), requires the DMV, in coordination with the SOS, to the extent the state's plan for implementation of the federal NVRA is inconsistent with the NVRA, to take additional steps to fully implement and further comply with the NVRA. AB 786 was approved by this committee on April 15, 2015 on a 5-1 vote.

SB 439 (Allen), which is pending in the Senate Appropriations Committee, permits county elections officials to offer conditional voter registration at satellite offices during the entire 14 days immediately preceding election day, among other provisions.

- 14) **Double-Referral:** This bill is double-referred to the Assembly Transportation Committee, and was scheduled to be heard in that committee on the afternoon of April 27, 2015. At the time that this analysis was prepared, the outcome of that hearing was unknown.

Pursuant to a suspension of Assembly Rule 56, this committee has noticed this bill for hearing on April 29, 2015, pending the receipt of the bill from the Assembly Transportation Committee. This bill will only be heard in this committee on April 29 if the bill is approved by the Assembly Transportation Committee and is received by this committee by the time of the hearing.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)
California Public Interest Research Group
Service Employees International Union, California State Council

Opposition

None on file.

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