

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 2375 (Oberholte) – As Introduced February 14, 2018

**SUBJECT:** Voter registration database: Electronic Registration Information Center.

**SUMMARY:** Permits the Secretary of State (SOS) to apply for membership with the Electronic Registration Information Center (ERIC) to share voter registration information or data with other states or groups of states, and to use the information to update California's voter registration lists, as specified. Specifically, **this bill:**

- 1) Permits the SOS to apply for membership with ERIC. Permits the SOS, if the membership application is approved, to execute a membership agreement with ERIC on behalf of the state.
- 2) Requires the SOS to ensure that any confidential information or data provided by another state to the SOS remains confidential while in his or her possession.
- 3) Authorizes the SOS, notwithstanding specified provisions of existing law or any other law, to provide confidential information or data to persons or organizations pursuant to an agreement entered into under the provisions of this bill.
- 4) Permits the SOS to adopt regulations necessary to implement the provisions of this bill.

**EXISTING LAW:**

- 1) Permits a person who is a United States citizen, a resident of California, not imprisoned or on parole for the conviction of a felony, and is at least 18 years of age at the time of the next election to register to vote in any local, state, or federal election.
- 2) Requires a county elections official to cancel the registration of any person if the mental incompetency of that person is legally established, as provided.
- 3) Requires each state, pursuant to the federal Help America Vote Act of 2002 (HAVA), to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.
- 4) Requires certain information on affidavits of voter registration, such as the name, home address, telephone number, email address, and party affiliation, to be provided to, among others, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the SOS.
- 5) Requires an affiant's driver's license number, identification card number, social security number, and the signature contained on an affidavit of registration or voter registration card to be confidential and not be disclosed, as specified.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

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

AB 2375 allows the Secretary of State to enroll California in the Electronic Registration Information Center (ERIC). ERIC is a non-profit organization with the sole mission of assisting states to improve the accuracy of America's voter rolls. ERIC is governed and managed by the member states. ERIC allows member states to run their voter rolls against several databases, including DMV and Social Security to insure that everyone's rolls are as clean and up-to-date as possible. ERIC doesn't just facilitate cleaning up voter rolls; it also helps states identify individuals who may need to register, such as someone who just moved to the state. ERIC is an important technological modernization that California can participate in that can lead to a cost saving by minimizing costs for things like unnecessary printing of absentee ballots.

A 2012 Pew Research Center study found that roughly one in eight voter registrations is out of date, inaccurate, or a duplicate. That totals 24 million people across the country, including 1.8 million people who have died and nearly 3 million who are registered in more than one state. Additionally, people frequently move or change their names, and don't notify the [proper] authorities to have their voter registration updated. California would be joining 23 other states that are currently members of ERIC.

2) **Election Registration Information Center:** The ERIC program is a non-profit organization with the sole mission of assisting states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens. With the assistance of the PEW Charitable Trust, ERIC was formed in 2013 and is owned, governed, and funded by the states that choose to join. As of January of this year, Washington D.C. and 23 states are members of ERIC (Alaska, Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Illinois, Louisiana, Maryland, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia, and Wisconsin.). Each state has a vote, however only the first 20 states to join ERIC are members of the Board of Directors.

According to information provided on the ERIC website, the ERIC data center allows states to securely and safely compare voter data, thereby improving the accuracy of the voter rolls. States that choose to participate in ERIC are able to compare information on eligible voters from official data sources submitted by the states. Each member state submits at a minimum its voter registration and motor vehicles department data. The data includes names, addresses, dates of birth, driver's license (DL) or state identification numbers, and the last four digits of the social security numbers (SSN). Other information, such as phone numbers, email addresses, and record status, are also submitted as available. Materials further state that ERIC has safeguards in place that anonymizes sensitive identifying data by converting it into indecipherable characters that is unreadable and unusable to potential hackers, such as "one-way hashing."

These records go through a data-matching exchange that cross checks the information against lists from other member states as well as other data sources such as the National Change of Address data from the United States Postal Service and other existing government databases, such as death records from the Social Security Administration. ERIC then reports back to the states where there is a highly confident match indicating a voter moved or died, or the existence of a duplicate record. It is unclear, however, exactly how many data points constitute a match. Once states receive the reports, they can then begin the process under federal and state law to clean up the voter rolls. Participating states also receive information on unregistered individuals who are potentially eligible to vote. ERIC bylaws require member states to use information regarding eligible or possibly eligible individual who are not registered to vote to initiate contact with each and every eligible or possible eligible individual and inform them how to register to vote. Member states pay annual dues which vary depending on the population size of the state. Large states usually pay more than small states.

This bill permits the SOS to apply for membership with ERIC and, if approved, this bill permits the SOS to execute a membership agreement with ERIC on behalf of the state. Additionally, this bill authorizes the SOS, notwithstanding existing law, to provide confidential information or data to persons or organizations if an agreement is entered into to participate in ERIC.

- 3) **Access to Confidential Voter Registration Information:** Current law requires certain information from affidavits of voter registration, such as the name, home address, telephone number, email address, and party affiliation, to be provided to, among others, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes, as determined by the SOS. Existing law explicitly requires an affiant's driver's license number, identification card number, social security number, and the signature contained on an affidavit of registration or voter registration card to be confidential and not be disclosed, as specified.

This bill changes California's longstanding policy to keep certain personal identifying voter information confidential. As mentioned above, this bill permits the SOS to apply for membership to the ERIC program and authorizes the SOS to provide confidential information or data to persons or organizations if an agreement is entered into to participate in ERIC.

The ERIC bylaws require the SOS to provide the following data fields, if available, for both the voter registration lists and DMV lists: all name fields, all address fields, DL or state identification number, last four digits of the SSN, date of birth, activity dates as defined by the ERIC Board of Directors, current record status, affirmative documentation of citizenship, the title/type of affirmative documentation of citizenship presented, phone number, and email address or other electronic contact method.

In order to participate in the program, the SOS would be required to share personal identifying information such as a voter's DL number, SSN, and date of birth, two of which are currently prohibited by law from being disclosed.

This bill does not contain any requirements for the SOS to inform a voter that his or her personal voter registration information is being shared, nor does the bill require a voter to

consent to his or her information being shared. The committee may wish to consider whether this policy change will set a new precedent that allows a voter's personal information to be shared without their consent.

- 4) **Protected Confidential Voter Registration Information:** According to documents from the ERIC website, there are three primary components to ERIC's data matching process: data collection, anonymization, and file transfer. To protect sensitive information, such as last four digits of the SSN and DL number, ERIC provides an anonymization application to each participating jurisdiction. The anonymization, also known as "one-way hashing," converts sensitive identifying data into indecipherable characters that is unreadable and unusable to potential hackers. Documents state that to further strengthen the security measures around the data, all records are sent through the anonymization process twice – once at the state level, before data is ever sent to ERIC, and once by ERIC as it receives data. States are then given account credentials to access a secure file transfer protocol (sFTP) site where their anonymized files are uploaded to a state-specific location. ERIC proceeds to run and generate reports that are available for state-specific download on the same sFTP site. Additionally, ERIC runs reports, identifying records that may be outdated or inaccurate and flagging residents who appear to be eligible but have not yet registered. Once the reports are generated, they are available for state specific download on the same sFTP site. According to the ERIC's membership agreement, participating states are required to upload voter data every 60 days.
- 5) **What Is Considered Private Information by ERIC?** The Frequently Asked Questions document on the ERIC website states that "[each] member submits at a minimum its voter registration and motor vehicle licensee data. The data includes names, addresses, date-of-birth, and last four digits of the social security number. Private data, such as the date of birth and the last four digits of the [s]ocial [s]ecurity number are protected using a cryptographic one-way hash and then transmitted to ERIC." ERIC only considers dates of birth, SSNs, and DLs to be private data. As a result, all other data fields that are required to be submitted, such as names and addresses, are not considered private data and as a result are not anonymized.
- 6) **Statewide Voter Registration Database:** On October 29, 2002, President George W. Bush signed HAVA. 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 computerized statewide voter registration list maintained at the state level. This statewide voter registration list serves as the official list of eligible voters for any federal election held within the state.

In September of 2016, the SOS certified VoteCal and declared it to be the system of record for voter registration in California. VoteCal's many functions will improve service to voters such as connecting the SOS and all 58 counties offices to improve the voter registration process, provide a single, official statewide database of voter registration information, and provide a publically available website which allows a voter to register online, check their voter registration status, find their polling place, opt-out of being mailed a state voter information guide, and check if their VBM or provisional ballot was counted by their county elections official and, if not, the reason why it was not counted.

- 7) **Voter File Maintenance:** A variety of methods are used to ensure voter registration rolls are accurate and up-to-date with the goal of maintaining an accurate list to prevent ineligible people from voting, prevent anyone from voting twice, and to reduce inaccuracies and speed up the voter check-in process at polling places. States vary on how this is accomplished, but most generally have processes in place for removing duplicate records, deceased voters, felons, and people who have moved. These checks can be conducted with data from federal agencies, state agencies, and other states. In California, federal agencies used to verify voter information include the Social Security Administration, the United States Post Office, and National Change of Address files. On the state level, voter registration data is cross-checked with information from Department of Vital Statistics, Department of Motor Vehicles (DMV), the Department of Corrections and Rehabilitation, and the Department of Health Services. On the local level, current law requires the clerk of the superior court of each county to provide reports to the county elections officials that list individuals convicted of felonies and requires county elections officials to conduct a pre-election residency confirmation procedure by the 90th day before each statewide primary election, as specified.

According to a 2014 National Conference of State Legislatures report, states also cooperate in a variety of ways to ensure accuracy of voter registration and to prevent duplicate vote records. For instance, if a new voter in a state fills out a voter registration form and indicates that he or she was registered in another state previously, jurisdictions will typically inform the other state that the voter has moved. That is the current practice in California. However, according to the report, in recent years there has also been an increased focus on interstate database comparisons such as ERIC. These allow participating states to directly compare their data to identify potential duplicate registrations or inaccuracies. In order to participate in these programs some states have needed to pass authorizing legislation while others are able to participate without legislation.

- 8) **Presidential Commission:** In 2013, the Presidential Commission on Election Administration (Commission) was established by Executive Order with the mission to identify best practices in election administration and to make recommendations to improve the voting experience. The Commission submitted a report in January 2014 entitled, "The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration." One of the main recommendations reported by the Commission focused on voter registration, specifically voter roll accuracy. The report states that voter lists are essential to the management of elections and accurate lists can affect the ability of people to vote, of elections offices to detect problems and of courts and others monitoring elections to detect election fraud or irregularities. Moreover, the report contends that states, counties and local elections officials face two major challenges – outdated paper-based registration record keeping systems and a fairly mobile population. According to the report, while the country is now much better off with the statewide voter registration lists mandated by HAVA, prior to HAVA, counties were in charge of voter registration lists in most states and voters who moved between counties or states would sometimes appear on two county registration lists for a considerable time. In an effort to increase the accuracy of voter rolls, the Commission report makes the following recommendations with respect to voter registration: 1) States should adopt online registration, 2) Interstate exchanges of voter registration information should be expanded, and, 3) States should seamlessly integrate voter data acquired through the DMV with their statewide voter registration lists.

- 9) **Wisconsin Voters Deactivated:** In 2016, Wisconsin joined ERIC. As a member of ERIC, the Wisconsin Election Commission (WEC) staff identified approximately 348,000 voters who may have moved, either within Wisconsin or to another state, based on data provided by ERIC. As required, in November of last year, WEC staff reached out to voters who ERIC had flagged as having potentially moved and Wisconsin conducted its first postcard mailing based on data received from ERIC. The postcards reminded voters to register to vote at their new address, or gave them the option to continue their registration at their current address if they did not move. According to WEC documents, December 15, 2017 was the deadline for voters to respond with a request for continuation and December 22, 2017 was the deadline before deactivating any voter who did not respond.

According to media reports, during Wisconsin's February primary, many voters went to their polling place and found that their voter registration was deactivated despite not having moved. In order to vote, many voters had to re-register and show proof of residency. The WEC spokesman attributed some of the problems voters experienced to ERIC, as the system sent postcards to close to 400,000 voters that ERIC had identified as people who had moved and would need to either confirm their voter registration information with updated information.

According to WEC documents, during the February primary, WEC staff received inquiries from local election officials and voters who believed they should have been on the poll book and were not. WEC staff researched each situation that was reported to the WEC office and determined that many of these voter records were deactivated for reasons other than the ERIC mailing delivered last November and that a small number of voters were identified who received the ERIC postcard but did not move. Moreover, according to WEC documents, these cases are being investigated by both ERIC and the Wisconsin DMV and to avoid similar issues at Wisconsin's April election, WEC staff has recommended special procedures to be used for the election.

- 10) **Arguments in Support:** In support, Kammi Foote, Inyo County Registrar of Voters writes:

[VoteCal], the Statewide database, automatically updates voter registrations for citizens who move within California and who have re-registered to vote in another county. However, there is not a process for Registrars of Voters to follow up with a voter, who has moved outside California, forgot to cancel their voter registration and who did not leave a forwarding address notification through the Post Office or DMV.

ERIC, is a data matching center that is owned, funded, and operated by participating states. Through ERIC, states can gain access to match voter records from other participating states. This allows Registrars of Voters additional tools to follow up with voters who have moved outside of California.

Earlier this year, the U.S. Supreme Court heard oral arguments for *Husted v. Phillip Randolph Institute*, where attorneys for both sides argued the benefits of state joining ERIC. This case involved a challenge to list maintenance procedures – much like the challenge that the Secretary of State of California is currently facing by Judicial Watch for alleged claims that some counties are not carrying out their list maintenance, as required by statute.

California should lead the nation in using technology to improve democracy. California voters could benefit greatly by having good, clean voter rolls in elections offices. This would [result] in more accurate turn-out numbers, less expensive elections (by saving the cost of having to print and mail election materials to voters who no longer live in California), and would increase voters confidence in our elections by reducing the number of duplicate voters on the rolls across state-lines.

11) **Arguments in Opposition:** In opposition, the American Civil Liberties Union of California Center for Advocacy and Policy writes:

AB 2375 would allow the Secretary of State to share confidential information or data, "notwithstanding...any other law." California could thus participate in ERIC and share, without an individual's knowledge or consent, sensitive voter file, motor vehicle, and potentially other government agency data in spite of California Vehicle Code, Government Code, and Civil Code provisions that explicitly protect this data.

First, the California Department of Motor Vehicles is explicitly prohibited from sharing residence address data. California Vehicle Code Section 1808.21(a) states, "Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.00 or 1808.23." Sections 1808.22 and 1808.23 create exceptions that would not apply to ERIC.

Second, California Government Code Section 6254.4 states, "[t]he California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on a voter registration card of a registered voter, or added to the voter registration records to comply with the requirements of the Help American Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.), are confidential and shall not be disclosed to any person." There are no exceptions.

Third, California has a comprehensive ban on state agencies sharing data. California Civil Code Section 1798.24 states "No agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains." That code section includes a list of exceptions, none of which would include ERIC.

Participation in ERIC would also be in conflict of Article I, Section 1 of the California Constitution, which guarantees an inalienable right to privacy. Placed in the Constitution by ballot proposition in 1972, this provision has been read by the State Supreme Court to create "a legal and enforceable right of privacy for every California," enforceable against both the government and private parties.

Finally, participation in ERIC could put California voters at risk of being moved to inactive status, depriving them of important elections-related mailings and

information, or worse, eventually triggering wrongful removal from the voter file. The state of Wisconsin joined ERIC in 2016, and in the February 2018 primary, in Milwaukee alone, approximately 100 residents who had not moved discovered nonetheless that their voter registrations had been deactivated due to flawed data erroneously processed through ERIC. Elections officials there estimated as many as 3,000 voters in Milwaukee could be affected by the flawed data. California should not expose its voters to the harmful impact a flawed data sharing and matching program can have on voter access and participation in our elections.

12) **Previous Legislations:** AB 2433 (T. Allen) of 2016, which had provisions that were substantially similar this bill, passed out of this committee on a 7-0 vote and passed out of the Committee on Privacy and Consumer Protection on a 8-1 vote. AB 2433 was held on the Assembly Appropriations Committee's suspense file.

13) **Double Referral:** This bill is double-referred to the Assembly Privacy and Consumer Protection Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Kammi Foote, Inyo County Registrar of Voters

##### **Opposition**

American Civil Liberties Union of California Center for Advocacy and Policy

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