

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 504 (Berman) – As Amended March 19, 2019

SUBJECT: Voter registration: residency confirmation.

SUMMARY: Provides that a voter's residency is confirmed for the purposes of pre-election residency confirmation processes and voter list maintenance procedures if the voter verifies their registration record on the internet website of the Secretary of State (SOS). Clarifies residency confirmation procedures that county elections officials must follow. Conforms state law to a United States (US) Supreme Court decision that interpreted a provision of federal law governing voter list maintenance. Specifically, **this bill:**

- 1) Requires an inactive voter registration to be changed to active if the voter confirms their registration record on the internet website of the SOS. Permits county elections officials to exclude voters who have confirmed their voter registration records on the internet website of the SOS in the past year from any otherwise required residency confirmation process. Provides that these provisions shall become operative only after the SOS certifies that the state's statewide voter registration database developed in compliance with the requirements of the federal Help America Vote Act (HAVA) has been modified to notify county elections officials when a voter confirms the voter's registration record on the SOS's internet website.
- 2) Clarifies that for the purposes of a provision of law that allows county elections officials to use postal service change-of-address data such as the National Change of Address System (NCOA) in lieu of mailing postcards when conducting a pre-election residency confirmation process, the change-of-address data from the United States Postal Service (USPS) may be obtained by the SOS and shared by the SOS with county elections officials through the statewide voter registration database, rather than being obtained by the county elections official directly.
- 3) Makes a provision of law inoperative that allows, but does not require, a county elections official to mail an alternate residency confirmation (ARC) postcard to a voter who has not voted in an election within the preceding four years if the voter's residence address, name, or party preference has not been updated during that time. Repeals this provision of law effective January 1, 2029.
- 4) Clarifies that if a county elections official receives change-of-address information for a voter from the USPS or its licensees that indicates that the voter has moved to a new residence address in California, the county elections official shall *not* update the voter's registration to inactive because the voter's registration instead is updated to that voter's new California address.
- 5) Clarifies that if a county elections official receives change-of-address information for a voter from the USPS or its licensees that indicates that the voter has moved and left no forwarding address, the county elections official shall update the status of the voter's registration to inactive.

- 6) Requires, instead of permits, a county elections official to make a voter's registration inactive if mailings from the elections official to the voter are returned as undeliverable.
- 7) Requires an elections official, if a voter's registration is inactive based on the voter's failure to respond to an ARC postcard, to send a forwardable address verification mailing, as specified. Requires the county elections official to cancel the voter registration record of a voter who fails to respond to that forwardable address verification mailing and who does not vote or offer to vote at any election between the date of the mailing and two federal general elections after the date of the mailing.
- 8) Requires, rather than permits, an elections official to cancel the registration of a voter if both of the following are true:
 - a) The voter's registration has been made inactive as a result of USPS change-of-address information that indicates that the voter has moved and left no forwarding address, and the voter failed to respond to the forwardable address verification mailing that was sent as a result; and,
 - b) The voter does not vote or offer to vote at any election between the date of the forwardable address verification mailing and two federal general elections after the date of that mailing.
- 9) Updates various terminology that is used to describe voter registration records and the status of those records from terms that reflect paper-based voter registration lists and files to terms that more precisely describe registration processes with an electronic voter registration database.
- 10) Makes technical and corresponding changes.

EXISTING STATE LAW:

- 1) Requires each county elections official to conduct a pre-election residency confirmation of each registered voter pursuant to one of the following procedures prior to each primary election:
 - a) By mailing a non-forwardable postcard to each voter in the county who has not voted at an election in the six months preceding the start of the confirmation procedure;
 - b) By contracting with the USPS or its licensees to obtain use of the postal service change-of-address data such as NCOA;
 - c) By contracting with a consumer credit reporting agency or its licensees to obtain use of change-of-address data, as specified; or,
 - d) By including the return address of the elections official's office along with specified language on the outside of the county voter information guide mailed to the voter for an election conducted within the six months prior to the start of the confirmation process. If an elections official uses this procedure, the official must confirm the addresses of voters

who were not eligible to vote at an election during that six months period using one of the other permitted procedures.

- 2) Provides that the following actions shall be taken with respect to information that the county elections official receives from the USPS or its licensees as a result of the pre-election residency confirmation process:
 - a) If NCOA data indicates that the voter has moved and left no forwarding address, the voter's registration may be made inactive.
 - b) If a postcard or sample ballot is returned as undeliverable and without a forwarding address, the registration of that person may be made inactive, and the elections official must send the voter a forwardable postcard asking the voter to confirm the voter's residence address. If the voter's registration is made inactive, the voter does not reply to the forwardable postcard, and the voter does not vote between the time of that mailing and the second federal general election conducted after that mailing, the voter's registration may be canceled.
 - c) If postal service change-of-address data indicates that the voter has moved to a new address in California, the voter's registration is updated to reflect the new address and the voter is mailed a postcard indicating that the voter's registration will be changed unless the voter notifies the elections official within 15 days that the change-of-address was not a change of the voter's permanent residence.
- 3) Permits a county elections official to send an ARC postcard to any voter who has not voted in an election within the preceding four years, and who has not updated their residence address, name, or party preference during that time. Requires a county using the ARC process to notify all voters of the procedure in the county voter information guide or a separate mailing. Permits a county elections official to make a voter's registration inactive if the voter fails to respond to an ARC postcard.
- 4) Provides that voters whose registrations are inactive shall not receive election materials and are not included in calculations to determine various election administration related thresholds and processes.
- 5) Provides that any voter whose registration is inactive and who offers to vote or who notifies the elections official of a continued residency shall be removed from the inactive list and placed on the active voter list.

EXISTING FEDERAL LAW:

- 1) Requires each state, as specified, to do all of the following pursuant to the National Voter Registration Act of 1993 (NVRA):
 - a) 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;

- b) Notify each voter registration applicant of the disposition of the application;
 - c) Provide that the name of a registrant may not be removed from the official list of eligible voters except at the registrant's request, as provided by state law by reason of criminal conviction or mental incapacity, or as provided by specified procedures outlined in the NVRA; and,
 - d) Conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of death of the registrant, or a change in the residence of the registrant, as specified.
- 2) Requires all of the following, pursuant to NVRA and HAVA:
- a) That any state program or activity to ensure the maintenance of the voter registration list for federal elections comply with both of the following:
 - i) Be uniform, nondiscriminatory, and in compliance with the federal Voting Rights Act; and,
 - ii) Not result in the removal of the name of any person from the official list of voters by reason of the person's failure to vote, provided that this provision is not construed to prohibit a state from using specified procedures to remove an individual from the official list of registered voters on the grounds that the individual has changed residence.
 - b) That a voter not be removed from the list of eligible voters in elections for federal office on the ground that the registrant has changed residence unless either of the following is true:
 - i) The registrant confirms their change in residence in writing, as specified; or,
 - ii) The registrant has failed to respond to a specified notice and has not voted or appeared to vote in an election between the time that the notice is sent and the date of the second federal general election after the notice is sent.
 - c) That a voting registrar shall correct an official list of eligible voters in elections for federal office in accordance with change of residence information obtained in conformance with the state program or activity to ensure the maintenance of an accurate and current voter registration roll for elections for federal office.

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

COMMENTS:

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

State and federal law require elections officials to follow specified procedures to confirm the residency of registered voters periodically. These residency confirmation procedures are designed to keep voter registration rolls up-to-date by ensuring that voters' registrations are updated when voters move. If information from a residency confirmation process indicates that a voter has moved and not left a forwarding address, the voter's registration becomes inactive. A voter whose registration is inactive remains eligible to vote, but their registration eventually may be canceled if the voter does not vote or confirm their address with the elections official.

The inactive list of voters is one tool that California uses to protect voters from being disenfranchised inadvertently if county elections officials receive inaccurate information about the residence address of a voter. A recent court case, however, requires elections officials to cancel certain inactive registrations even in situations where the elections official has not received any information to suggest that a voter has moved.

In keeping with the state's commitment to developing policies that protect the rights of voters, AB 504 expands the tools that may be used to confirm the residence address of registered voters. Specifically, AB 504 provides that if a voter confirms their address by logging in to the Secretary of State's "My Voter Status" website, that confirmation ensures that the voter's registration remains active, or makes the registration active again if it was inactive. AB 504 also ensures that voters' registrations are not made inactive unless the elections official receives information from a governmental entity that indicates that the voter has moved. To ensure consistent application throughout the state, AB 504 also clarifies residency confirmation procedures that county elections officials must follow.

2) **My Voter Status:** HAVA generally requires each state to implement a single, centralized, interactive computerized statewide voter registration list that is defined, maintained, and administered at the state level and that contains the name and registration information of every legally registered voter in the state. California's federally compliant statewide voter registration database is known as VoteCal.

When California launched VoteCal in September 2016, the SOS also launched a "My Voter Status" portal that allows eligible Californians to register to vote, check their voter registration status, and check the status of their vote by mail or provisional ballots, among other functions. To access the "My Voter Status" website, a voter must provide their name, driver's license or identification card number, the last four digits of their Social Security number, and their date of birth.

This bill provides that when a voter verifies their registration record on the My Voter Status

website, that verification serves as a residency confirmation for the purposes of pre-election residency confirmation processes and voter list maintenance procedures, as specified.

- 3) **Inactive Voters and the *Husted* Decision:** California law provides that a voter's registration may become "inactive" under specified circumstances. Voters whose registrations are inactive do not receive election materials that otherwise are sent to registered voters and are not included in voter registration numbers for the purposes of certain election administration related processes, but remain eligible to vote. The inactive list is one tool that California uses to protect voters from being disenfranchised inadvertently if elections officials receive inaccurate information about the residence address of a voter. Under state law, a voter's registration may be made inactive when the elections official receives information from the USPS that indicates that the voter has moved and has not provided a new address. Additionally, a voter's registration may be made inactive even in situations where the elections official has not received information that suggests that a voter has moved. Specifically, state law allows (but does not require) elections officials to conduct an ARC process under which voters who have not voted in at least four years are sent a residency confirmation postcard. If the voter fails to return that postcard, state law allows the voter's registration to be made inactive.

State law provides that if a voter's registration is inactive as a result of information from the USPS, the registration remains inactive for two consecutive federal general elections, and the voter does not vote or confirm their residency during that time, the voter's registration may be canceled if the voter was notified of that possibility. Due to a stipulated settlement between the state and the federal government in the 1990s and subsequent changes to state law to conform to that settlement, however, state law does not permit voters whose registrations were made inactive as a result of the ARC process from having their registrations canceled for failure to vote. (See comment #4 below for more information on this settlement.)

Last June, the US Supreme Court issued its ruling in *Husted v. A. Philip Randolph Inst.* (2018) 138 S. Ct. 1833. In that case, the Supreme Court found that a process used by the state of Ohio to cancel voters' registrations on the grounds that those voters had moved did not violate the NVRA and HAVA. Specifically, Ohio law provides for voters to be sent a residency confirmation postcard containing specified information under certain circumstances. If a voter did not respond to that postcard, and did not vote in an election between the time that the postcard was sent and the next two federal general elections, the voter's registration is canceled.

In the 5-4 *Husted* decision, the Supreme Court not only held that the Ohio procedure was permissible under the NVRA and HAVA, but the majority opinion also stated that federal law makes it *mandatory* for a voter's registration to be canceled if certain conditions are met. Specifically, Justice Samuel Alito, writing for the majority, wrote "the provision of the NVRA that directly addresses the procedures that a State must follow before removing a registrant from the rolls on change-of-residence grounds, provides that a State may remove a registrant who '(i) has failed to respond to a notice' and '(ii) has not voted or appeared to vote . . . during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice'

(about four years). 52 U. S. C. §20507(d)(1)(B). Not only are States allowed to remove registrants who satisfy these requirements, but federal law makes this removal mandatory.”

Earlier this year, the SOS and the Los Angeles County Registrar of Voters (LA County) reached a settlement agreement in a lawsuit that was brought in federal district court in late-2017 by various plaintiffs, including Judicial Watch, Inc., in which the plaintiffs alleged that registered voters who met specified conditions are required to have their registrations canceled under the NVRA. The SOS and LA County maintained that the cancellation of voters’ registrations in those circumstances was permissible, rather than mandatory, under the NVRA. The settlement agreement specifies that “[a]ll Parties’ legal positions constitution good-faith interpretations of the relevant statute.”

In light of the Supreme Court’s decision in *Husted*, which was issued after Judicial Watch filed the lawsuit, the parties agreed to settle the lawsuit without further litigation, and without admission of liability or wrongdoing. As part of the settlement, the SOS is required to send an advisory to all county elections officials specifying that the relevant language in the *Husted* decision “indicates that current federal law requires the cancellation of a registrant who has failed to respond to [a specified NVRA] Notice and who then fails to vote, offer to vote, correct the Registrar’s record, or otherwise have their eligibility to vote confirmed for a period of time including the next two general federal elections.” This bill updates California law to conform to the relevant language in the *Husted* decision. In so doing, this bill helps clarify the situations under which a county elections official is required to cancel an inactive voter registration.

- 4) **Alternate Residency Confirmation Process:** Existing law permits, but does not require, a county to conduct an ARC procedure for registered voters who have not voted in recent elections, as described above. The legislation that authorized the use of that procedure was enacted at a time when federal litigation was pending between the federal government and California over the state’s implementation of the NVRA. After that legislation was enacted, the federal government filed a motion for further relief, arguing that the ARC procedure was inconsistent with the NVRA because it used a “non-voting trigger” to send residency confirmation cards to voters.

In February 1998, the state of California, without conceding that the ARC procedure was contrary to the NVRA, entered into a stipulation with the United States that prohibited the cancellation of the registration of any voter who was moved to the inactive list as a result of the ARC process. As a result of that stipulation—and of subsequent legislation that was designed to conform to that stipulation—voters in California whose registrations were made inactive as the result of the ARC process were required to be maintained as inactive registrations indefinitely (rather than being canceled), unless the elections official received other information that could be used to update the voter’s record (e.g., if the elections official received a death notice for the voter, that voter’s registration would be canceled at that point).

In light of the language in the *Husted* decision that is described above, this bill establishes a procedure for handling the voter registration records that have been made inactive as a result of the ARC process. Specifically, this bill requires that a NVRA-specified mailing be sent to

all voters whose registrations are inactive due to the ARC process. Voters who fail to respond to that mailing or otherwise confirm their registration and who do not offer to vote at any election between the date of the mailing and two federal general elections after that mailing will have their voter registrations canceled. Furthermore, this bill makes the provision of law that allows the use of the ARC process inoperative on January 1, 2020, thereby ensuring that voters' registrations are made inactive in the future only when an elections official receives postal service information that indicates that the voter has moved and failed to provide a new address. While that provision of law would become inoperative on January 1, 2020, it would remain in statute until January 1, 2029 as part of the legal framework for handling the voter registrations that currently are inactive as a result of the ARC process.

- 5) **Contracting with the USPS:** As detailed above, state law gives county elections officials various options for how to conduct the required pre-election residency confirmation process. One option is for counties to contract with the USPS or its licensees to obtain use of the postal service change-of-address data, such as NCOA. In practice, the SOS obtains NCOA information directly, and loads that information into VoteCal—the statewide voter registration database—where it is then available to counties so that they may update voter registration records as appropriate. This bill clarifies state law to reflect the process by which counties obtain NCOA information through VoteCal.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State Alex Padilla (sponsor)
American Civil Liberties Union of California
California Association of Clerks and Election Officials

Opposition

None on file.

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