

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1716 (Garrick) – As Introduced: February 16, 2012

UPDATED: April 17, 2012

SUBJECT: Elections: voter identification.

SUMMARY: Makes significant changes to voting procedures. Specifically, this bill:

- 1) Requires a voter who is returning a vote by mail (VBM) ballot to include the last four digits of the voter's California driver's license, identification card number or, if the voter has neither, the last four digits of the voter's social security number (SSN) on the VBM ballot identification envelope.
- 2) Prohibits a VBM ballot from being counted unless the signature and numeric identifying information is verified as being consistent with the voter's state or federal records, prior to counting the ballot.
- 3) Requires a VBM identification envelope to include a security flap or sleeve to conceal the voter's signature and identifying information during mailing.
- 4) Requires a person who desires to vote at a polling place to first provide the precinct worker proof of identification before being permitted to sign the roster of voters.
- 5) Defines the phrase, "proof of identification," for the purposes of this bill, to mean a document that satisfies all of the following:
 - a) The document shows the name of the individual to whom the document was issued and the name conforms to the name on the individual's voter registration record;
 - b) The document shows a photograph of the individual;
 - c) The document includes an expiration date, and the document is either not expired or, the document expired after the date of the most recent general election; and
 - d) The document was issued by the United States or the State of California.
- 6) Provides that if a voter is unable or declines to show proof of identification, or if a member of the precinct board determines that the proof of identification presented does not meet the requirements of this bill, the voter may request and be issued a provisional ballot and be permitted to vote that ballot.
- 7) Provides that the provisional ballot cast pursuant to the procedure outlined above will only be counted if, within 10 days following the election, the voter provides the required proof of identification to the county voter registration office or establishes that they are exempted

from such a requirement.

- 8) Exempts a voter who resides at a state-licensed care facility that is being used as a polling place from the requirements of this bill.
- 9) Permits a voter, who declares that he or she has a religious objection to being photographed by executing a sworn affidavit before a superior court clerk or county elections board, in a manner prescribed by the board, to vote by providing a copy of the signed affidavit and proof of identification that meets all the other criteria specified in this bill, except for the photograph.
- 10) Permits a registered voter to obtain a state-issued identification card from the Department of Motor Vehicles at no cost once for each period of validity of the card, for the purposes of complying with this bill.

EXISTING LAW:

- 1) Requires a voter who appears at the polling place to vote to announce his or her name and address to a precinct officer. Requires the precinct officer, upon finding the name in the roster of voters, to repeat the voter's name and address. Requires the voter to then write his or her name and residence address on a roster of voters, whereupon the voter is provided a ballot.
- 2) Permits a voter to vote a provisional ballot if his or her qualification or entitlement to vote cannot be immediately established upon examination of the roster of voters for the precinct or upon examination of the records on file with the county elections official.
- 3) Authorizes a member of the precinct board to challenge the ability of a person to vote on various grounds, including that the voter is not the person whose name appears on the index, is not a precinct resident, is not a U.S. citizen, has already voted on that day, or is on parole for the conviction of a felony.
- 4) 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.
- 5) Requires a voter who submits his or her voter registration form by mail and who has not previously voted to present one of a number of specified documents to establish identity before receiving a ballot. This requirement only applies the first time an individual votes after registering to vote.

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

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

This bill seeks to protect the integrity of the voting process and to protect our constitutional right from those who seek to defraud our election system and the legal voters of California.

Photo ID's are required to make certain purchases and to do hundreds of day-to-day tasks. We are required to show valid proof of ID for:

- Buying pseudoephedrine
- buying spray-paint
- going to an R-rated movie
- buying alcohol
- buying cigarettes
- buying nicotine patches to quit smoking
- renting videos
- renting a surfboard
- renting a bike
- Taking tests such as SAT, ACT, ASVAB, LSAT, BAR, etc.
- Using your credit card
- Running in an organized race
- Going through security at the airport
- Traveling to different countries
- Show your ID for bank transactions
- Renting a car
- Renting a hotel room
- Picking a kid up from school if you aren't the parent
- Volunteering at a school
- Participating in elite sporting events
- Applying for a marriage license
- To operate a vehicle
- Apply for a bank account
- Government social program participation (ie. WIC, Welfare)
- Valid photo ID required for getting a job and filing your W-9
- Applying for a loan
- Require at Live Scan
- Entrance into a nightclub

Proof of ID is even required by unions such as the International Association of Machinists and Aerospace Workers to present a photo ID before voting for their contracts. New York lawmakers are seriously considering "Digital DNA" ID's to combat test taking fraud, after several highly publicized incidents of cheating on the SAT and ACT tests. Somehow requiring identification for things of this nature are not viewed in a negative light, in fact it is usually considered necessary, whereas trying to create a security system for one of our most sacred rights, voting, is viewed as wrong by a few.

This nationwide problem pertaining to violations of our voting system is cast aside and labeled unjust. Some groups charge that laws requiring photo IDs suppress the ability of minority groups to vote. The facts say otherwise. One such example is in Georgia, African-American voter turnout for the midterm election in 2006 was 42.9 percent. After Georgia passed a photo ID law, African-American voter turnout in the 2010 midterm, rose to 50.4 percent. African-American turnout also rose in Indiana and Mississippi after photo IDs were required.

A June 2011 Rasmussen Poll showed that over 75% of respondents are in favor of requiring photo ID to vote. Another survey conducted by Resurgent America show that a large majority of Hispanic voters are also in favor. In Florida, 88 percent of those surveyed said they support the laws, while just ten percent oppose them. In Colorado 71 percent support the law, while 26 percent oppose, and in New Mexico, 73 percent support the law, while 25 percent oppose.

With no safeguards in place to ensure a secure election process, we leave a gaping hole that is an invitation to fraud by non-eligible individuals. It is important that we do everything we can to preserve the fundamental right of every legal citizen, to cast their ballot with the knowledge that the state of California has this basic right protected. AB 1716 will ensure the security of our voting process, while protecting the vote of legal California voters, from the fraud and abuse our current system allows.

- 2) Is This Bill Necessary? In the background information provided by the author's office, the author argues that the current election system has no safeguards and leaves a gaping hole that is an invitation for fraud and abuse. However, the author has not provided any evidence that voter fraud of the type that would be prevented by identification requirements at the polls and on VBM ballots is a problem in need of a solution.

California law already 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. Given that a signature comparison is already done on every VBM ballot before the ballot is counted to protect against fraud, and given that casting a fraudulent VBM ballot is a felony, it is unlikely that VBM ballot fraud is widespread.

In addition, a voter who wishes to vote at the polls on election day must have and confirm his or her name and address on the roster of voters. If a voter's name is not on the roster, that person is allowed to vote a provisional ballot, which is later reviewed by the elections official to determine the person's right to vote, before being included in the official canvass. As such, the roster of voters plays a big role on election day to minimize the occurrence of fraud. Current law requires county elections officials to take several steps to ensure that the voter rolls are accurate, such as continuous review and maintenance of the rolls to remove obsolete, duplicative, and non-eligible names.

Other efforts required by law to reduce potential fraud include a voter fraud hotline maintained by the Secretary of State (SOS), the ability of a member of the precinct board to challenge any person attempting to vote at the polls if the voter's qualifications to vote are in

question, and vigorous prosecutions by local law enforcement agencies working together with the SOS's office.

Furthermore, according to information provided by the SOS's Election Fraud Investigation Unit, from 1994 to 2010, there have been 23 convictions for double voting, 6 convictions for fraudulent voting, and 4 convictions for non-citizen voting. However, it is unclear whether these acts occurred while attempting to vote at the polls or if the violations occurred by a VBM voter. However, given the small amount of convictions in the past decade, it is reasonable to believe that the current efforts to thwart voter fraud are working.

- 3) Voters Who Lack ID: A November 2006 survey by the Brennan Center for Justice found that 11% of United States citizens do not have government-issued photo identification. To the extent that this figure is reflective of the California electorate, it is possible that a significant number of Californians who are eligible and registered to vote do not have a form of identification that would meet the requirements of this bill. This same survey also demonstrated that certain groups – primarily poor, elderly, and minority citizens – are less likely to possess these forms of identification.

Although this bill allows an individual to obtain an identification card at no cost from the DMV, it does not provide any assistance to those individuals to meet the sometimes difficult requirements of obtaining an identification card. For example, in order to be issued a card, an individual must go to a DMV office during business hours and provide, among other things, verification of birth date by submitting documents such as a certified copy from the state or local vital statistics office of the individual's birth certificate. Such documentation may be difficult to obtain and typically requires an additional fee.

- 4) Will This Bill Disenfranchise Voters Due to Inadvertent Errors? While it seems unlikely that this bill will provide any meaningful protection against fraud, it also seems likely that one consequence of this bill will be the invalidation of a number of legally cast ballots. For instance, if a voter transposed two of the digits from his or her driver's license number, identification card number, or SSN on their VBM envelope, his or her ballot would be rejected under the provisions of this bill even if the signature on the ballot was a match to the signature on that voter's registration card. Similarly, to the extent that a person neglected to provide the last four digits of his or her driver's license number, identification card number, or SSN, or failed to provide that information due to fear of identity theft, this bill would require that the ballot be invalidated even if there was no question that the ballot was cast by the voter to whom it was issued.
- 5) Changing Voting Procedures: This bill would change the procedures that voters are currently used to when going to the polls on election day. This bill allows any voter who is unable to present a valid form of identification to cast a provisional ballot. However, this bill also provides that the provisional ballot will only be counted if the voter presents the required form of identification to the county elections official's office within 10 days following the election. This could present a significant obstacle to these voters. Even if the voter in question has valid photo identification, but does not have that identification at the polling place on election day, that voter could be forced, in some large counties, to travel several hours to provide the county elections official with valid identification in order to have his or her ballot counted. In situations where the voter does not have valid identification, it is highly unlikely that the voter would be able to obtain such identification in the 10 days after

the election. Currently, a California identification card is mailed within 60 days, if all information is valid. These new requirements could lead to significant voter disenfranchisement for those voters who are unable to obtain the appropriate identification required under this bill and for those voters who are not willing or are unable to travel to show the required identification.

Additionally, 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.

Finally, it should be noted that this bill does not provide for any outreach efforts to educate voters regarding the significant changes to the voting procedures prescribed in this bill. If the appropriate steps are not taken to inform the public of these changes, many eligible voters will likely be disenfranchised.

- 6) Arguments in Opposition: The American Civil Liberties Union of California, in opposition to this bill, writes:

No eligible citizen should have to pay to vote. This law represents modern-day poll tax because individuals without IDs must pay to obtain supporting documents necessary for a state identification card—the birth and marriage certificates, for instance. On top of the monetary cost, it is a heavy burden for many to obtain the IDs: shift-workers, those without childcare, the disabled, people without cars and people living in rural communities will all encounter greater difficulty in traveling to a government office, like a DMV, during business hours. While the cost of identification documents may seem negligible to some, it represents a significant cost to many Californians.

- 7) State Mandates: The 2011-2012 state budget included the suspension of various state mandates as a mechanism for cost savings. Included on the list of suspensions were all six existing elections-related mandates. All the existing elections-related mandates have been proposed for suspension again by the Governor in his budget for the 2012-2013 fiscal year. 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 663 (Morrell) of 2011, would have required a voter to present proof of identification before being permitted to sign the roster of voters and receive a ballot. AB 663 failed passage in this committee.

AB 945 (Donnelly) of 2011, which was substantially similar to this bill, would have required a completed VBM ballot identification envelope to contain the last four digits of the voter's California driver's license number, identification card number, or SSN in order for that ballot to be counted and would have required a person desiring to vote to produce and show a valid form of state-issued photographic identification to the precinct worker at the polling place, among other provisions. AB 945 failed passage in this committee.

SB 802 (Runner) of 2011, would have required a voter to present proof of identity before

receiving a ballot at the polling place, among other provisions. SB 802 was not heard in the Senate Elections and Constitutional Amendments Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

American Civil Liberties Union of California
Asian Americans for Civil Rights & Equality
California Common Cause
League of Women Voters of California
Mexican American Legal Defense and Educational Fund
NALEO Educational Fund
Service Employees International Union, California

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