

Date of Hearing: March 27, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1805 (Huffman) – As Introduced: February 21, 2012

SUBJECT: Military or overseas voters.

SUMMARY: Establishes new voting procedures for military and overseas voters, as defined, to comply with the federal Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C Sec. 1973ff et seq.) and implement the policies of that act and the Uniform Military and Overseas Voters Act (UMOVA) adopted by the National Conference of Commissioners on Uniform State laws. Specifically, this bill:

- 1) Eliminates the term "special absentee voter" and replaces it with "military or overseas voter."
- 2) Defines a "military and overseas voter" as an elector who is any of the following:
 - a) A member of the active or reserve components of the United States (US) Army, Navy, Air Force, Marine Corps, or Coast Guard; a Merchant Marine; a member of the US Public Health Service Commissioned Corps; a member of the National Oceanic and Atmospheric Administration Commissioned Corps of the US; a member on activated status of the National Guard or state militia; or a spouse or dependent of a member of any of these organizations; or,
 - b) A citizen of the US outside of the territorial limits of the US or the District of Columbia.
- 3) Expands the definition of "elector" to include any citizen of the US outside the territorial limits of the US or the District of Columbia, who, except for the requirement that he or she must be a resident of an election precinct in the state at least 15 days prior to an election, is eligible to vote in California and meets any of the following conditions:
 - a) He or she was a resident of California when last living within the territorial limits of the US or the District of Columbia;
 - b) Had he or she been of voting age when last living within the territorial limits of the US or the District of Columbia, he or she would have been a resident of California; or,
 - c) He or she was born outside of the US or the District of Columbia, his or her parent or legal guardian was a resident of California when the parent or legal guardian was last living within the territorial limits of the US or the District of Columbia, and he or she was not previously registered to vote in any other state.
- 4) Provides that any military or overseas voter, as defined, has the right to register for and vote by a vote by mail (VBM) ballot in any election within the state, including any election for federal office, state office and state ballot measures, and any local government office or ballot measure held in the precinct in which he or she was a resident when last living within the territorial limits of the US or the District of Columbia, or in which his or her parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits

of the US or the District of Columbia.

- 5) Requires a military or overseas voter's VBM application to include the following:
 - a) The voter's name;
 - b) The voter's date of birth;
 - c) The address of the voter's residence in the state when the voter was last living within the territorial limits of the US or the District of Columbia or, if qualified, the address of the voter's parent or legal guardian when the parent or legal guardian was last living within the territorial limits of the US or District of Columbia;
 - d) The address to which the ballot is to be sent;
 - e) The political party preference or a statement that the voter declines to state a political party preference; and,
 - f) The voter's signature.
- 6) Requires an elections official that receives a completed federal postcard application from a qualified military or overseas voter to deem that application as an affidavit of registration, an application for a VBM ballot, and an application for permanent VBM status.
- 7) Requires an application made pursuant to this bill be received by the elections official no later than seven days prior to the date of the election.
- 8) Requires the Secretary of State (SOS) to ensure compliance with the provisions of this bill.
- 9) Requires the SOS to make available, to qualified military or overseas voters, information on procedures for military and overseas voters to register to vote and cast ballots.
- 10) Requires each elections official to have a system available which allows a military or overseas voter to electronically request and receive a VBM application, an unvoted ballot, and other information as required by this bill.
- 11) Requires the SOS to develop standardized military or overseas voting materials, as specified.
- 12) Requires the SOS to prescribe the form and content of a declaration for use by military or overseas voters, as specified, and prescribe requirements for the timely and proper completion of a military or overseas voter's ballot.
- 13) Requires each elections official to ensure the military or overseas declaration form is a prominent part of military or overseas voter's balloting materials for which the declaration is required.
- 14) Permits a military or overseas voter to use a federal write-in absentee ballot (FWAB) in any election in which they are qualified to vote.

- 15) Requires elections officials to send VBM ballots by means of transmission (mail, facsimile, or electronic transmission) requested by a qualified military or overseas voter.
- 16) Requires an elections official, for an election in which California has not received a waiver pursuant to the Military and Overseas Voter Empowerment Act (42 U.S.C. Sec. 1973ff et seq.), to transmit military or overseas ballots and balloting materials, not later than 60 days before the election, for all military and overseas voters who have submitted a valid application by that date. Requires an elections official who receives a ballot application from a military or overseas voters after the 60th day before the election to transmit a ballot and ballot materials not later than two business days after the application arrives.
- 17) Requires ballots from military or overseas voters to be submitted for mailing by the date necessary for the ballot to be received by the elections official from whom it was obtained or by the precinct board no later than the close of the polls on election day.
- 18) Permits a military or overseas voter to use a FWAB to vote for all offices and ballot measures for which they are qualified to vote.
- 19) Provides that a valid ballot cast and submitted for mailing pursuant to this bill shall be counted if it is received by the close of business on the day of the election.
- 20) Requires elections officials to include with the ballot a declaration to be signed by the military or overseas voter stating that a material misstatement of fact in completing the ballot may be grounds for conviction of perjury.
- 21) Requires elections officials to implement an electronic free access system, which allows military or overseas voters to determine by telephone, electronic mail or Internet whether their ballot was received.
- 22) Requires elections officials to request an electronic mail address from each military or overseas voter who registers after the effective date of this bill. Permits a military or overseas voter who provides an email address to request that his or her application for a ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period as specified by the voter.
- 23) Requires each elections official, at least 100 days before a regularly scheduled election and as soon as practicable before a special election, to publish on his or her website a list of all the ballot measures and federal, state and local offices that, as of that date, are expected to be on the ballot for that election. Requires the list to contain instructions as to how to vote on a FWAB, should the voter decide to do so. Permits military or overseas voters to request a copy of this list and requires each elections official to send the list to the voter using the method of transmission (mail, facsimile, or electronic transmission) that the voter requests. Requires the elections official to update the list on his or her website as soon as practicable with the certified list of candidates for office and certified ballot measures.
- 24) Provides that a military or overseas voter's mistake or omission in the completion of a document under this bill shall not invalidate the document if the mistake or omission does not prevent determining whether the voter is eligible to vote. Provides that a military or

overseas voter's failure to satisfy nonsubstantive requirements does not invalidate a document submitted pursuant to this bill.

- 25) Provides that, for FWABs, if the intention of the voter is discernible pursuant to what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of the candidate or a political party, shall be accepted as a valid vote.
- 26) Provides that the execution of a document under this bill is not required to be notarized.
- 27) Permits a court to issue an injunction or grant other equitable relief, as appropriate, to ensure compliance with, or enforce, this bill upon application by a military or overseas voter or an elections official.
- 28) Makes other conforming changes.

EXISTING LAW:

- 1) Defines a "special absentee voter" as an elector who is any of the following:
 - a) A member of the armed forces of the US or any auxiliary branch thereof;
 - b) A citizen of the US temporarily living outside of the territorial limits of the US or District of Columbia;
 - c) Serving on a merchant vessel documented under the laws of the US; or,
 - d) A spouse or dependent of a member of the armed forces or any auxiliary branch thereof.
- 2) Provides that an application for a VBM ballot by a special absentee voter or by an overseas voter shall be deemed an affidavit of registration and an application for permanent VBM voter status. Provides that such an application shall be accepted only if it contains the voter's name, residence address for voting purposes, the address to which the ballot is to be sent, the voter's political party for a primary election and the voter's signature.
- 3) Requires the county elections official to mail a ballot to all special absentee voters and overseas voters who are permanent VBM voters as soon as possible on or after the 60th day prior to an election. Requires county elections officials to send with the ballot a list of all candidates who have qualified for the ballot by the 60th day before the election and a list of the all measures that are to be submitted to the voters and on which the voter is qualified to vote.
- 4) Permits a special absentee voter to register to vote and apply for a VBM ballot by facsimile transmission. Allows an elections official to send a VBM ballot by mail, facsimile, or electronic transmission.
- 5) Allows a special absentee voter who is temporarily living outside of the US to return his or her ballot by facsimile transmission. Requires the ballot to be received by the voter's elections official no later than the closing of the polls on election day in order to be counted.

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

COMMENTS:

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

Current federal law requires that elections officials provide military and overseas voters with the appropriate mechanisms for casting ballots in *federal* elections. AB 1805 expands the voting rights of military and overseas voters to include state and local elections. This bill will change the terminology from "special absentee voter" to military or overseas voter." This bill provides procedures for military and overseas voters to register to vote, apply for voting ballots, receive voter information, and cast votes.

Thousands of overseas and military voters from throughout California serve in a variety of uniformed and civilian roles, from frontline active duty to restoration and international aid service. Often working in the world's hotspots of terrorism, disease and poverty, these men and women leave behind families – parents, spouses, children and friends – in the name of democracy. And while they must separate from their loved ones for months or years at a time, they maintain their connections, through their families and friends, to the California communities they call home.

AB 1805 allows these people to voice their opinions for the leadership and direction of the communities where their families live, giving these service personnel a long-distance voice to vote for councilmembers, supervisors, initiatives and other measures that will impact the care, education and services available to the people they love.

2) Evolving Definition of Military or Overseas Voters: In addition to changing the terminology used to describe military and overseas voters who are eligible to use special voting procedures under existing law, this bill also expands the universe of people who can be considered military or overseas voters. Specifically, this bill allows individuals who are not residents of California to vote in California elections if one of the following scenarios applies: 1) the person was a resident of California when he or she was last living within the territorial limits of the US or the District of Columbia; 2) had he or she been of voting age when he or she was last living within the territorial limits of the US or the District of Columbia, he or she would have been a resident of the state; or 3) he or she was born outside the US or the District of Columbia, however his or her parent or guardian was a resident of California when last living within the territorial limits of the US or the District of Columbia, and he or she has not previously registered to vote in any other state.

It is unclear, however, who is captured under scenario #2 that is not otherwise covered by this bill. Because the determination of a person's residency is not dependent on his or her age, any person covered under scenario #2 should also be covered by scenario #1. The committee may wish to consider whether this is necessary to include and ask the author to share who will be captured under this scenario that are not already captured in the other scenarios listed above.

In addition, the committee staff recommends a technical amendment to clarify that the voter is a citizen of the US *living* outside of the territorial limits or the District of Columbia and

amend the bill by inserting the word "living" after the word "States" on line 9 on page 3.

- 3) Facilitating Voting by Overseas Voters: On October 28, 2009, President Obama signed into law the Military and Overseas Voter Empowerment (MOVE) Act to expand the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which was established to protect the rights of service members to vote in federal elections regardless of where they are stationed. The MOVE Act builds on UOCAVA to provide greater protections for service members, their families, and other overseas citizens.
- 4) Existing Laws to Facilitate Voting by Overseas and Military Voters: The provisions of the MOVE Act have been in effect since the November 2010 election. However, given that California law already included provisions to facilitate voting by military members and other California residents who are outside of the US, the SOS's office and local elections officials only had to make minimal adjustments to their practices in order to be in compliance. For example, the MOVE Act requires states to establish procedures to allow overseas voters to request voter registration applications and absentee ballot applications by mail or electronically, and requires at least one means of electronic communication for voters to request, and for all states to send, voter registration applications, absentee ballot applications, and voting information. Current law allows a special absentee voter to register to vote and apply for VBM ballot by facsimile transmission and allows elections official to send a VBM ballot by mail, facsimile, or electronic transmission. Exceeding the requirement of the MOVE Act, current law allows a special absentee voter who is temporarily living outside of the US to return his or her ballot by facsimile transmission.

In addition, the MOVE Act requires states to transmit a requested absentee ballot to overseas voters not later than 45 days before an election for federal offices. Again, California law exceeds this requirement by specifically requiring the county elections official to send the special absentee ballot with a list of all candidates who have qualified for the ballot beginning on the 60th day before the election, along with a list of all measures on which the voter is qualified to vote.

In addition to being compliant with all provisions in the MOVE Act, California law also makes other accommodations to facilitate voting by military voters and other California residents who are outside of the US. Specifically, current law provides that an application for a VBM ballot by an overseas voter is deemed to be a request for voter registration (if the voter was not already registered to vote) and an application for permanent VBM voter status. In addition, California makes all overseas voters permanent VBM voters, thereby eliminating the need for overseas military voters and other overseas voters to request a VBM ballot for each election.

- 5) Use of Federal Write-In Absentee Ballots: One component of the UMOVA that will help facilitate participation by military and overseas voters is expanding the use of the FWAB by allowing it to be used by military or overseas voters in non-federal elections. Currently, the FWAB is only available for federal elections, and it is typically used as a back-up option when voters do not or cannot receive a regular ballot in time to vote. The new requirement in this bill to allow the FWAB to be used at statewide and local elections will enfranchise more military and overseas voters giving them the ability to have their voices heard in matters concerning their communities.

In addition, this bill establishes a mechanism for US citizens who have never lived in the US to vote in elections. This will encourage more participation from US citizens who are abroad due to circumstances or situations that may have been out of their control, including children who moved away from the US before they reached voting age.

- 6) Logistics: As stated above, California already has enacted many of the provisions of UMOVA, so compliance with many requirements should not be cause for concern. However, this measure does require a variety of new procedures and duties for county elections officials.

For example, this bill requires the elections officials to send a VBM ballot to qualified military and overseas voters using the means of transmission requested by the voter. This may be problematic for some counties that do not have all the ballot transmission capabilities envisioned by this bill.

In addition, this bill requires elections officials to accept VBM applications, as specified by this bill, until seven days before the date of an election. Will elections officials be able to get the ballot out to those voters in time for the voter to complete and return a ballot? Electronic transmission of materials could help to some degree, but not all counties offer the same options of electronic transmission of ballots and other election materials.

The bill also requires county elections officials to have available a system that would allow a military or overseas voter to electronically request and receive a VBM application, an unvoted ballot, and other information prescribed by this bill. Again this could be problematic if some counties do not have the capability to electronically transmit ballots and other election materials.

- 7) Inconsistent Resident Requirement: The bill as currently written provides a military or overseas voter, as defined, the right to register for and vote by a VBM ballot in any election within the state, including any election for federal office, state office and state ballot measures, and any election for local government office or ballot measure held in the precinct in which the military or overseas voter was a resident when last living within the territorial limits of the US or the District of Columbia, or in which his or her parent or legal guardian resided when the parent or legal guardian last lived within the territorial limits US or the District of Columbia. A strict read of this section of the bill only permits a military or overseas voter to legally vote for a local office or ballot measure if the voter or the voter's parent or legal guardian last resided within that jurisdiction. However the bill does not apply the same requirement for federal and state elections, thereby theoretically allowing a military or overseas voter to vote in any election for congressional or state legislative office regardless of whether or not the voter or the voter's parent or legal guardian last resided within that jurisdiction. According to the author, is it not the intent of the bill to allow military and overseas voters to vote in elections for which they are not legally qualified to vote. To clarify this provision, the committee staff recommends that the bill be amended as follows:

3102. (a) Any voter who qualifies as a military or overseas voter pursuant to subdivision (b) of Section 300 shall have the right to register for, and to vote by a vote by mail ballot, in any election within the state, including any general, special, or primary election for any federal office, statewide or state legislative office, and state ballot measure that is voted

on statewide. Any voter who qualifies as a military or overseas voter pursuant to subdivision (b) of Section 300 shall also have the right to register for, and to vote by a vote by mail ballot in, any other election for any office or ballot measure ~~a local election for a local government office or local ballot measure~~, held in the precinct in which he or she was a resident when he or she was last living within the territorial limits of the United States or the District of Columbia, or, for a military or overseas voter qualified pursuant to paragraph (3) of subdivision (b) of Section 321, in any precinct of the state in which his or her parent or legal guardian last lived within the territorial limits of the United States or the District of Columbia.

- 8) Suggested Technical Amendments: The bill provides that a military or overseas voter's ballot that is cast and submitted for mailing pursuant to this bill be counted if it is received by the close of business on election day. This provision sets a new standard for accepting military and overseas ballots, one that is inconsistent with other provisions of this bill. According to the author, it is not the intent to set a new standard for receiving military and overseas ballots. To clarify this provision, the committee staff recommends the bill be amended as follows, strike the words "close of business" on page 13, starting on line 20 and insert "closing of the polls."

In addition, the bill requires a military or overseas voter's VBM application to include the political party preference or a statement that the voter declines to state a political party preference. In February 2009, the Legislature approved SCA 4 (Maldonado), Res Chapter 2, Statutes of 2009, which was enacted by the voters as Proposition 14 on the June 2010 statewide primary election ballot. Proposition 14 implemented a "top two" primary election system in California for most elective state and federal offices. SB 6 (Maldonado), Chapter 1, Statutes of 2009, made various changes to state statute to implement the "top two" primary system. Earlier this year, AB 1413 (Fong), Chapter 3, Statutes of 2012, made numerous technical and substantive changes to state law to provide for the effective and efficient implementation of the "top two" system. The committee staff recommends the bill be amended to conform to current law. The committee staff recommends striking the word "state" on page 4, line 39, and inserting the word "disclose."

- 9) Arguments in Support: According to the Uniform Law Commission, National Conference of Commissioners on Uniform State Laws:

The federal Uniformed and Overseas Citizens Absentee Voting Act of 1985 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. And, the federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. This lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

- 10) 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.

- 11) Previous Legislation: SB 908 (Runner) of 2011 would have permitted a special absentee voter, as defined, who is temporarily living outside the US or is called for military services within the US on or after the final date to make application for a VBM ballot, to return his or her ballot by electronic mail, as specified. SB 908 failed passage in this committee.

AB 2941 (Bates), Chapter 821, Statutes of 2004, permitted special absentee voters who are temporarily living outside the US to return their ballots by facsimile transmission. AB 2786 (Salas), Chapter 252, Statutes of 2008, extended the sunset date on the provisions of AB 2941, and AB 2369 (Block), Chapter 261, Statutes of 2010, made the provisions of AB 2941 permanent.

AB 188 (Maze), Chapter 347, Statutes of 2003, streamlined a number of provisions of state law to make it easier for overseas voters to receive their ballots and cast a vote.

- 12) Double Referral: This bill has been double-referred to the Assembly Committee on Veterans Affairs.

REGISTERED SUPPORT / OPPOSITION:

Support

California Commission on Uniform State Laws (co-sponsor)
Department of Defense Federal Voter Assistance Program (co-sponsor)
Uniform Law Commission, National Conference of Commissioners on Uniform State Laws
United States Army Warrant Officers Association
Veterans of Foreign Wars of the United States, Department of California
Three individuals

Opposition

None on file.

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