

Date of Hearing: March 27, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 1814 (Eng) – As Introduced: February 21, 2012

SUBJECT: Voting rights: language assistance.

SUMMARY: Requires each county elections official to report to the Secretary of State (SOS) regarding the county's compliance with federal and state laws and regulations related to providing voters with language assistance. Specifically, this bill:

- 1) Makes various findings and declarations about voter participation among voters with limited English proficiency.
- 2) Requires elections officials to make reasonable efforts to recruit election officials who are fluent in a language for any precinct where the county is required to post translated sample ballots in that language.
- 3) Requires elections officials, when selecting members of a precinct board, to evaluate complaints filed against precinct board members, and to excuse those who are found to be unsatisfactory in carrying out their duties in connection with the conduct of the election.
- 4) Requires every county to submit a report, not later than 120 days prior to the first statewide election held in each even-numbered year, to the SOS describing the county's plan for compliance with applicable federal and state laws and regulations related to providing voters with language assistance. Requires each county to submit an update detailing material changes to the plan it submitted for the first election of that year, not later than 120 days prior to each subsequent statewide election held in an even-numbered year. Provides that federal and state laws and regulations to be addressed by the plan include, but are not limited to, all of the following:
 - a) Section 203 (42 U.S.C. Sec. 1973aa-1a) and Section 4(f)(4) (42 U.S.C. Sec. 1973b(f)(4)) of the Federal Voting Rights Act of 1965, and the regulations issued by the United States Department of Justice (28 C.F.R. 55.1 to 55.21, inclusive);
 - b) The Federal Help America Vote Act (42 U.S.C. Sec. 15301 and following);
 - c) Section 12303 of the Elections Code, which requires the elections official to make reasonable efforts to recruit elections officials who are fluent in languages other than English under specified conditions; and,
 - d) Section 14201 of the Elections Code, which requires elections officials to post copies of the sample ballot in a language other than English under specified circumstances.
- 5) Requires the SOS to issue guidance for a uniform standard report format that will enable each county to comply with the requirements of this bill.
- 6) Requires the county to include, at a minimum, all of the following information in its plan:

- a) The plans for providing translated facsimile copies of ballots with ballot measures and ballot instructions required to be made available at polling places on election day;
 - b) The translated signage and ballot materials to be provided to voters prior to election day and at polling places;
 - c) The estimated number of bilingual precinct board members necessary to meet the language needs of voters with limited English proficiency and the planned method to recruit a sufficient number of bilingual precinct board members;
 - d) The methodology of assigning bilingual precinct board members to polling places, including the process for determining the need for bilingual voting assistance in additional precincts to meet state and federal language assistance requirements;
 - e) A description of the training provided to precinct board members to educate them about compliance with federal and state voting rights laws and regulations including the best practices approach used to assist voters, and any copies of precinct member training curricula and handbooks;
 - f) The plans for conducting outreach to and education of, voters with limited English proficiency, including electoral activities, the availability of translated materials and bilingual assistance through the display of public notices, the use of media outlets that serve language minorities, and direct contact with organizations that serve language minority populations; and,
 - g) The plans for operating voter hotlines that can adequately respond to telephone calls from voters with limited English proficiency.
- 7) Requires the SOS to post all reports required by this bill on his or her website not later than 90 days prior to each statewide election held in an even-numbered year.
 - 8) Requires the SOS to consult with an advisory body composed of members from voting rights organizations, elections officials, and other groups to develop best practices for implementing all federal and state laws and regulations listed above and for implementing the SOS's precinct board member training standards. Requires the SOS to make these best practices available to elections officials in a centralized repository and post those best practices on his or her official website. Requires the SOS to annually review the best practices and determine whether they need to be updated.
 - 9) Provides that any county that is already required under the federal Voting Rights Act of 1965 to furnish ballots in languages other than English, is not required to post a facsimile ballot in those particular languages. Requires the SOS, in those counties, to make determinations and findings, as specified in existing law, as to whether it is appropriate to post the elections materials in Spanish or other languages.
 - 10) Allows interested citizens or organizations, in addition to or instead of providing information to the SOS about the need for language assistance in a particular county or precinct, to provide such information to a local elections official so that the local elections official may determine whether it is necessary to post a facsimile ballot at the polling place in a language

other than English.

- 11) Requires the SOS to make determinations and findings, as specified in existing law, on whether it is appropriate to post elections materials in Spanish or other languages at each election year following an adjustment of Congressional, State Senatorial, Assembly and Board of Equalization districts boundary lines, as specified by the California Constitution.

EXISTING FEDERAL LAW:

- 1) Requires a state or a political subdivision of a state to provide voting materials in the language of a minority group when that group within the jurisdiction has an illiteracy rate that is higher than the national illiteracy rate, and the number of the United States citizens of voting age in that single language group within the jurisdiction meets at least one of the following:
 - a) Numbers more than 10,000;
 - b) Makes up more than five percent of all voting age citizens; or,
 - c) On an Indian reservation, exceeds five percent of all reservation residents.
- 2) Requires a state or political subdivision of a state to provide voting materials in the language of a minority group if all of the following apply:
 - a) Over five percent of the voting age citizens were, on November 1, 1972, members of a single language minority group;
 - b) Registration and election materials were provided only in English on November 1, 1972; and,
 - c) Fewer than 50 percent of the voting age citizens were registered to vote or voted in the 1972 Presidential election.
- 3) Defines language minorities or language minority groups, for the purposes of the above provisions, to mean persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage.

EXISTING STATE LAW:

- 1) Requires elections officials to make reasonable efforts to recruit election officials who are fluent in a language if three percent or more of the voting age residents in any precinct are fluent in that language and lack sufficient skill in English to vote without assistance.
- 2) Requires, in counties where the SOS has determined it is appropriate, each precinct board to post, in a conspicuous location in the polling place, at least one copy of the ballot with ballot measures and ballot instructions printed in Spanish. Requires the ballot to be posted in other languages if a significant and substantial need is found by the SOS.

- 3) Provides that in determining whether it is appropriate to require a county to post a copy of the ballot at the precinct in a language other than English, the SOS shall find a need to post such translated copies of the ballot if the number of residents of voting age in the precinct who are members of a single language minority and who lack sufficient skills in English to vote without assistance equals three percent or more of the voting age residents in the precinct.

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

COMMENTS:

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

AB 1814 would improve compliance with our state and federal voting rights law by strengthening the Secretary of State's ability to monitor the compliance of election officials in order to mitigate barriers and facilitate the ability of limited English-proficient and first time voters.

Specifically, this bill would require counties to submit a report to the Secretary of State describing the county's plan for compliance with state and federal laws enacted to assist voters with limited English proficiency, no later than 120 days before the first statewide election. The Secretary of State would be required to post those reports on his or her website no later than 90 days prior to each statewide election. In addition, this bill would also require a county elections official to evaluate complaints filed against precinct board members and would require the Secretary of State to develop a list of the best practices for elections officials and/or precinct board members training.

The Federal Voting Rights Act outlines requirements that help limited English proficient voters participate in the democratic process. In addition, state law outlines requirements for translated materials at polling sites and bilingual poll workers. The Secretary of State has the authority to require elections officials to make reports concerning elections in their jurisdictions and assist elections officials in discharging their duties.

When complied with, these laws facilitate the ability of limited English proficient and first-time voters to exercise their fundamental right to vote. For example, Latino and Filipino American voter registration increased by 21% in San Diego County, and Vietnamese American registration increased by 37%, after the county was brought into compliance with the Voting Rights Act.

Voters who lack English proficiency and/or new voters require much attention, as gaps between the state's voting and non-voting population increases. Barriers to voting such as complicated voting materials and unfamiliar voting processes contribute significantly to these gaps and pose challenges for millions of voters who are limited English proficient or new voters.

Poll monitors deployed by various organizations have observed poll sites failing to meet their legal requirements, resulting in voters being unable to exercise their right to vote. For example, poll sites have been found to: not provide translated voting materials; not have bilingual poll workers; not have trained poll workers; and fail to provide provisional

ballots. Without the assistance provided under voting rights laws, limited English proficient citizens have difficulty overcoming the barriers they face.

AB 1814 strengthens the Secretary of State's ability to monitor the compliance of elections officials with various voting rights laws. This monitoring will ensure that election officials have adequate plans for providing language assistance and incorporate best practices responding to the needs of limited English proficient.

- 2) Voting Rights Act of 1965: The 15th Amendment to the United States Constitution provides, in part, "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude." Additionally, the 15th Amendment authorizes Congress to enact legislation to enforce its provisions.

Congress determined that the existing federal anti-discrimination laws were not sufficient to overcome the resistance by state officials to enforce the 15th Amendment. As a result, Congress passed and President Johnson signed the Voting Rights Act of 1965. The Act provides, among other provisions, that "[n]o voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge that right of any citizen of the United States to vote on account of race or color."

In 1975, Congress adopted the language minority provisions of Sections 4(f)(4) and 203 of the Voting Rights Act. Congress extended these provisions in 1982, 1992, and 2006. Sections 4(f)(4) and 203 of the Act require certain jurisdictions with significant populations of voting age citizens who belong to a language minority community to provide voting materials in a language other than English. These determinations are based on data from the most recent Census.

Specifically, Sections 203 and 4(f)(4) require that when a covered state or political subdivision "[p]rovides registration or voting notices, forms, instructions, assistance, or other materials of information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

- 3) New Census Data: On October 13, 2011, the U.S. Census Bureau released a notice of determination of minority language status following the 2010 census. Based on the findings, several California counties will be required to provide materials to voters in new or additional languages. Pursuant to Section 203, the State of California is required to provide bilingual voting assistance to Spanish speakers. Additionally, pursuant to Section 203, 27 of California's 58 counties are individually required to provide bilingual voting assistance to Spanish speakers, and eight counties (Alameda, Los Angeles, Orange, Sacramento, San Diego, San Francisco, San Mateo, and Santa Clara) are required to provide voting materials in at least one language other than English and Spanish. Pursuant to Section 4(f)(4) of the Act, three counties are required to provide bilingual voting assistance to Spanish speakers, though two of those counties are also required to provide assistance pursuant to Section 203. In total, 28 of California's 58 counties are required to provide voting materials in at least one language other than English.

- 4) Standard for Bilingual Precinct Workers: Existing law requires an elections official to make reasonable efforts to recruit elections officials who are fluent in a language if three percent or more of the voting age residents in the precinct are fluent in that language and lack sufficient skill in English to vote without assistance. Additionally, existing law requires each precinct board to post a copy of the ballot in a language other than English at the polling place if the SOS determines that the number of residents of voting age in the precinct who are members of a single language minority and who lack sufficient skills in English to vote without assistance equals three percent or more of the voting age residents in the precinct.

Although these two standards are similar, they are not identical, which can lead to confusion and inconsistent application. This bill would provide a single standard by requiring the county elections official to make reasonable efforts to recruit elections officials who are fluent in a language for a precinct whenever the SOS determines that the precinct must post a copy of the ballot in that language.

- 5) Arguments in Support: The Asian & Pacific Islander American Health Forum, writes:

In our work we have found that when institutions and organizations provide support for limited English proficient populations, these individuals have more control over their health decisions, which in turn improve their quality of life. Addressing this issue in the civic engagement arena is an important step for these communities as it will truly help the democratic process. Increased compliance with voting rights laws would mitigate barriers and facilitate the ability of limited English proficient and first time voters to participate in California's democracy.

- 6) 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.
- 7) Previous Legislation: AB 299 (Eng) of 2011, which was substantially similar to this bill, was not heard in Assembly Elections and Redistricting Committee.

AB 614 (Eng) of 2007, which was substantially similar to this bill, was vetoed by Governor Schwarzenegger. In his veto message, the Governor wrote, "current law requires elected officials to provide language assistance to voters with limited English proficiency. This bill would require local elected officials to report on their compliance with current law on a standard form to be developed by the Secretary of State. Such a report would be of limited value and would place an unnecessary strain on the state's limited resources."

REGISTERED SUPPORT / OPPOSITION:

Support

Chinese American Citizens Alliance (sponsor)
American Civil Liberties Union of California
AnewAmerica Community Corporation
Asian Americans for Civil Rights and Equality
Asian Law Alliance
Asian Law Caucus
Asian Pacific American Legal Center
Asian & Pacific Islander American Health Forum
Asian & Pacific Islander California Action Network
California Common Cause
Chinese American Citizens Alliance – National
Chinese American Council of Sacramento
Coalition for Humane Immigrant Rights of Los Angeles
Greenlining Institute
Japanese American Citizens League
J-Sei
Lao Iu Mien Culture Association, Inc.
Mental Health America of Northern California
Merced Lao Family Community, Inc.
Mexican American Legal Defense and Educational Fund
Self-Help for the Elderly
Southern California Council of Chinese Schools
Tongan Community Service Center
One individual

Opposition

None on file.

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