

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 361

Introduced by Senator Padilla

February 20, 2013

An act to amend Sections 2403, 3017, and 14310 of, and to add Sections 2169, 2228, and 12106.5 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 361, as amended, Padilla. Elections: voter registration.

(1) Existing law specifies various duties of the Secretary of State with regard to the electoral process.

This bill would place additional requirements on the Secretary of State to provide the capability for a voter to check the status of the voter's registration, find the location of the voter's polling place, check the status of a vote by mail ballot, and check the status of a voter's provisional ballot on the Secretary of State's Internet Web site, as specified.

(2) Existing law provides for voter residency confirmation procedures based on change-of-address information, as specified, in cases where the voter has moved to a new address within the same county or to another county.

This bill would, for the purpose of maintaining accurate voter registration records, authorize the Secretary of State to enter into agreements with other states to share voter information or data pertaining to voters who have permanently moved to other states.

(3) Existing law, the federal National Voter Registration Act of 1993, requires each state to establish procedures to register voters by application in person at certain federal, state, or nongovernmental

agencies designated by state law as voter registration agencies. Existing law requires voter registration agencies, with each application for service or assistance and with each recertification, renewal, or change of address form relating to the service or assistance, to perform specified tasks related to voter registration.

This bill would require a voter registration agency to provide the Secretary of State with information or data pertaining to an applicant's address for the purpose of maintaining accurate voter registration records. By requiring local agencies to perform additional duties, this bill would impose a state-mandated local program.

(4) *This bill would become operative when the Secretary of State certifies that the state has a statewide voter registration database that complies with the requirements of the federal Help America Vote Act of 2002.*

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2169 is added to the Elections Code,
2 following Section 2168, to read:

3 2169. The Secretary of State shall provide on his or her Internet
4 Web site the capability for a voter to check the status of the voter's
5 registration.

6 SEC. 2. Section 2228 is added to the Elections Code, to read:

7 2228. Notwithstanding any other law and for the purpose of
8 maintaining accurate voter registration records, the Secretary of
9 State may enter into agreements with other states to share
10 information or data pertaining to voters who have permanently
11 moved to other states as described in Section 2022 or 2023.

12 SEC. 3. Section 2403 of the Elections Code is amended to read:

13 2403. (a) A voter registration agency shall comply with the
14 applicable duties and responsibilities of a voter registration agency

1 set forth in the federal National Voter Registration Act of 1993
2 (42 U.S.C. Sec. 1973gg et seq.).

3 (b) A voter registration agency, with each application for service
4 or assistance and with each recertification, renewal, or change of
5 address form relating to the service or assistance, and in accordance
6 with the federal National Voter Registration Act of 1993 (42 U.S.C.
7 Sec. 1973gg et seq.), shall do all of the following:

8 (1) Provide the applicant with all of the following:

9 (A) A voter preference form.

10 (B) A voter registration card, unless the applicant, in writing,
11 declines to register to vote.

12 (C) Assistance in completing the voter registration card, unless
13 the applicant refuses the assistance.

14 (2) Notwithstanding any other law, provide the Secretary of
15 State with information or data pertaining to the applicant's address
16 for the purpose of maintaining accurate voter registration records.

17 (c) For purposes of paragraph (1) of subdivision (b), an
18 applicant's failure to respond to the question of whether he or she
19 would like to register to vote does not constitute a declination to
20 register.

21 SEC. 4. Section 3017 of the Elections Code is amended to read:

22 3017. (a) All vote by mail ballots cast under this division shall
23 be voted on or before the day of the election. After marking the
24 ballot, the vote by mail voter shall do either of the following: (1)
25 return the ballot by mail or in person to the elections official from
26 whom it came or (2) return the ballot in person to a member of a
27 precinct board at a polling place within the jurisdiction. However,
28 a vote by mail voter who is unable to return the ballot may
29 designate his or her spouse, child, parent, grandparent, grandchild,
30 brother, sister, or a person residing in the same household as the
31 vote by mail voter to return the ballot to the elections official from
32 whom it came or to the precinct board at a polling place within
33 the jurisdiction. The ballot must, however, be received by either
34 the elections official from whom it came or the precinct board
35 before the close of the polls on election day.

36 (b) The elections official shall establish procedures to ensure
37 the secrecy of a ballot returned to a precinct polling place and the
38 security, confidentiality, and integrity of any personal information
39 collected, stored, or otherwise used pursuant to this section.

1 (c) (1) On or before March 1, 2008, the elections official shall
2 establish procedures to track and confirm the receipt of voted vote
3 by mail ballots and to make this information available by means
4 of online access using the county's elections division Internet Web
5 site. If the county does not have an elections division Internet Web
6 site, the elections official shall establish a toll-free telephone
7 number that may be used to confirm the date a voted vote by mail
8 ballot was received.

9 (2) The Secretary of State shall provide on his or her Internet
10 Web site the capability for a vote by mail voter to check the status
11 of the voter's vote by mail ballot to discover whether the ballot
12 was counted and, if not, the reason why it was not counted.

13 (d) The provisions of this section are mandatory, not directory,
14 and a ballot shall not be counted if it is not delivered in compliance
15 with this section.

16 (e) Notwithstanding subdivision (a), a vote by mail voter's ballot
17 shall not be returned by a paid or volunteer worker of a general
18 purpose committee, controlled committee, independent expenditure
19 committee, political party, candidate's campaign committee, or
20 any other group or organization at whose behest the individual
21 designated to return the ballot is performing a service. However,
22 this subdivision does not apply to a candidate or a candidate's
23 spouse.

24 SEC. 5. Section 12106.5 is added to the Elections Code, to
25 read:

26 12106.5. The Secretary of State shall provide on his or her
27 Internet Web site the capability for a voter to find the location of
28 his or her polling place.

29 SEC. 6. Section 14310 of the Elections Code, as amended by
30 Section 1 of Chapter 611 of the Statutes of 2009, is amended to
31 read:

32 14310. (a) At all elections, a voter claiming to be properly
33 registered, but whose qualification or entitlement to vote cannot
34 be immediately established upon examination of the index of
35 registration for the precinct or upon examination of the records on
36 file with the county elections official, shall be entitled to vote a
37 provisional ballot as follows:

38 (1) An elections official shall advise the voter of the voter's
39 right to cast a provisional ballot.

1 (2) The voter shall be provided a provisional ballot, written
2 instructions regarding the process and procedures for casting the
3 provisional ballot, and a written affirmation regarding the voter's
4 registration and eligibility to vote. The written instructions shall
5 include the information set forth in subdivisions (c) and (d).

6 (3) The voter shall be required to execute, in the presence of an
7 elections official, the written affirmation stating that the voter is
8 eligible to vote and registered in the county where the voter desires
9 to vote.

10 (b) Once voted, the voter's ballot shall be sealed in a provisional
11 ballot envelope, and the ballot in its envelope shall be deposited
12 in the ballot box. All provisional ballots voted shall remain sealed
13 in their envelopes for return to the elections official in accordance
14 with the elections official's instructions. The provisional ballot
15 envelopes specified in this subdivision shall be a color different
16 than the color of, but printed substantially similar to, the envelopes
17 used for vote by mail ballots, and shall be completed in the same
18 manner as vote by mail envelopes.

19 (c) (1) During the official canvass, the elections official shall
20 examine the records with respect to all provisional ballots cast.
21 Using the procedures that apply to the comparison of signatures
22 on vote by mail ballots, the elections official shall compare the
23 signature on each provisional ballot envelope with the signature
24 on the voter's affidavit of registration. If the signatures do not
25 compare or the provisional ballot envelope is not signed, the ballot
26 shall be rejected. A variation of the signature caused by the
27 substitution of initials for the first or middle name, or both, shall
28 not invalidate the ballot.

29 (2) Provisional ballots shall not be included in any semiofficial
30 or official canvass, except upon: (A) the elections official's
31 establishing prior to the completion of the official canvass, from
32 the records in his or her office, the claimant's right to vote; or (B)
33 the order of a superior court in the county of the voter's residence.
34 A voter may seek the court order specified in this paragraph
35 regarding his or her own ballot at any time prior to completion of
36 the official canvass. Any judicial action or appeal shall have
37 priority over all other civil matters. No fee shall be charged to the
38 claimant by the clerk of the court for services rendered in an action
39 under this section.

1 (3) The provisional ballot of a voter who is otherwise entitled
2 to vote shall not be rejected because the voter did not cast his or
3 her ballot in the precinct to which he or she was assigned by the
4 elections official.

5 (A) If the ballot cast by the voter contains the same candidates
6 and measures on which the voter would have been entitled to vote
7 in his or her assigned precinct, the elections official shall count
8 the votes for the entire ballot.

9 (B) If the ballot cast by the voter contains candidates or
10 measures on which the voter would not have been entitled to vote
11 in his or her assigned precinct, the elections official shall count
12 only the votes for the candidates and measures on which the voter
13 was entitled to vote in his or her assigned precinct.

14 (d) (1) The Secretary of State shall establish a free access
15 system on his or her Internet Web site that allows any voter who
16 casts a provisional ballot to discover whether the voter's
17 provisional ballot was counted and, if not, the reason why it was
18 not counted.

19 (2) The requirements of paragraph (1) shall not be satisfied by
20 providing hyperlinks, or otherwise referring voters, to the free
21 access systems established by county elections officials.

22 (e) The Secretary of State may adopt appropriate regulations
23 for purposes of ensuring the uniform application of this section.

24 (f) This section shall apply to any vote by mail voter described
25 by Section 3015 who is unable to surrender his or her unvoted vote
26 by mail voter's ballot.

27 (g) Any existing supply of envelopes marked "special challenged
28 ballot" may be used until the supply is exhausted.

29 SEC. 7. Section 14310 of the Elections Code, as amended by
30 Section 3 of Chapter 497 of the Statutes of 2012, is amended to
31 read:

32 14310. (a) At all elections, a voter claiming to be properly
33 registered, but whose qualification or entitlement to vote cannot
34 be immediately established upon examination of the index of
35 registration for the precinct or upon examination of the records on
36 file with the county elections official, shall be entitled to vote a
37 provisional ballot as follows:

38 (1) An elections official shall advise the voter of the voter's
39 right to cast a provisional ballot.

1 (2) The voter shall be provided a provisional ballot, written
2 instructions regarding the process and procedures for casting the
3 ballot, and a written affirmation regarding the voter's registration
4 and eligibility to vote. The written instructions shall include the
5 information set forth in subdivisions (c) and (d).

6 (3) The voter shall be required to execute, in the presence of an
7 elections official, the written affirmation stating that the voter is
8 eligible to vote and registered in the county where the voter desires
9 to vote.

10 (b) Once voted, the voter's ballot shall be sealed in a provisional
11 ballot envelope, and the ballot in its envelope shall be deposited
12 in the ballot box. All provisional ballots voted shall remain sealed
13 in their envelopes for return to the elections official in accordance
14 with the elections official's instructions. The provisional ballot
15 envelopes specified in this subdivision shall be of a color different
16 than the color of, but printed substantially similar to, the envelopes
17 used for vote by mail ballots, and shall be completed in the same
18 manner as vote by mail envelopes.

19 (c) (1) During the official canvass, the elections official shall
20 examine the records with respect to all provisional ballots cast.
21 Using the procedures that apply to the comparison of signatures
22 on vote by mail ballots, the elections official shall compare the
23 signature on each provisional ballot envelope with the signature
24 on the voter's affidavit of registration. If the signatures do not
25 compare or the provisional ballot envelope is not signed, the ballot
26 shall be rejected. A variation of the signature caused by the
27 substitution of initials for the first or middle name, or both, shall
28 not invalidate the ballot.

29 (2) (A) Provisional ballots shall not be included in any
30 semiofficial or official canvass, except under one or more of the
31 following conditions:

32 (i) The elections official establishes prior to the completion of
33 the official canvass, from the records in his or her office, the
34 claimant's right to vote.

35 (ii) The provisional ballot has been cast and included in the
36 canvass pursuant to Article 4.5 (commencing with Section 2170)
37 of Chapter 2 of Division 2.

38 (iii) Upon the order of a superior court in the county of the
39 voter's residence.

1 (B) A voter may seek the court order specified in this paragraph
2 regarding his or her own ballot at any time prior to completion of
3 the official canvass. Any judicial action or appeal shall have
4 priority over all other civil matters. No fee shall be charged to the
5 claimant by the clerk of the court for services rendered in an action
6 under this section.

7 (3) The provisional ballot of a voter who is otherwise entitled
8 to vote shall not be rejected because the voter did not cast his or
9 her ballot in the precinct to which he or she was assigned by the
10 elections official.

11 (A) If the ballot cast by the voter contains the same candidates
12 and measures on which the voter would have been entitled to vote
13 in his or her assigned precinct, the elections official shall count
14 the votes for the entire ballot.

15 (B) If the ballot cast by the voter contains candidates or
16 measures on which the voter would not have been entitled to vote
17 in his or her assigned precinct, the elections official shall count
18 only the votes for the candidates and measures on which the voter
19 was entitled to vote in his or her assigned precinct.

20 (d) (1) The Secretary of State shall establish a free access
21 system on his or her Internet Web site that allows any voter who
22 casts a provisional ballot to discover whether the voter's
23 provisional ballot was counted and, if not, the reason why it was
24 not counted.

25 (2) The requirements of paragraph (1) shall not be satisfied by
26 providing hyperlinks, or otherwise referring voters, to the free
27 access systems established by county elections officials.

28 (e) The Secretary of State may adopt appropriate regulations
29 for purposes of ensuring the uniform application of this section.

30 (f) This section shall apply to any vote by mail voter described
31 by Section 3015 who is unable to surrender his or her unvoted vote
32 by mail voter's ballot.

33 (g) Any existing supply of envelopes marked "special challenged
34 ballot" may be used until the supply is exhausted.

35 SEC. 8. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code.

1 *SEC. 9. Sections 1 to 8, inclusive, of this bill shall become*
2 *operative only if the Secretary of State certifies that the state has*
3 *a statewide voter registration database that complies with the*
4 *requirements of the federal Help America Vote Act of 2002 (42*
5 *U.S.C. Sec. 15301 et seq.).*

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