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AMENDED IN ASSEMBLY MARCH 20, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1436

Introduced by Assembly Member Feuer
(Coauthors: Assembly Members Alejo, Ammiano, Fong, Hill, Lara,
Ma, Portantino, Solorio, Wieckowski, and Williams)
(Coauthors: Senators De León, Padilla, and Yee)

January 4, 2012

An act to amend Sections 2107, 14310, and 18001 of, and to add Article 4.5 (commencing with Section 2170) to Chapter 2 of Division 2 of, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1436, as amended, Feuer. Voter registration.

Existing law establishes procedures regarding the registration of voters. Under existing law, a person may not be registered to vote except by affidavit of registration, and a voter may not vote in an election unless his or her affidavit of registration is executed and received by the county elections official on or before the 15th day prior to the election. Existing law permits any registered voter to vote by a vote by mail ballot, and further permits any voter using a vote by mail ballot to vote the ballot at the office of the elections official beginning 29 days

before the election. Existing law requires that the affidavit of registration show facts necessary to establish the affiant as an elector, as specified, and provides that if the affiant has not been issued a current and valid driver's license or social security number, he or she shall be provided a unique identification number for voter registration purposes.

This bill would establish conditional voter registration, using an affidavit of registration, whereby a person would be permitted to register to vote after the 15th day prior to an election or on election day, and cast a provisional ballot to be counted if the conditional voter registration is deemed effective. This bill would provide that a conditional voter registration shall be deemed effective if the county elections official is able to determine before or during the canvass period for the election that the registrant is eligible to register to vote and that the registrant has provided information that matches specified state or federal databases. The bill would provide that if the information provided by the registrant cannot be verified by matching the information to those specified state or federal databases and the registrant is otherwise eligible to vote, the registrant shall be issued a unique identification number pursuant to the above-referenced provisions and the conditional voter registration shall be deemed effective. *The bill would establish specific criminal and civil penalties for the commission of fraud in the execution of a conditional voter registration pursuant to these provisions.*

The bill would require the county elections official to offer conditional voter registration and provisional voting at its permanent offices, and would permit the official to offer this registration and voting at satellite offices on election day, in accordance with specified procedures. The bill would also require the county elections official to cancel, as specified, duplicate voter registrations that may arise due to conditional voter registration.

The above provisions of the bill would become operative on January 1 of the year following the year in which 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.

Existing law provides that upon conviction for a crime pertaining to an election for which no fine is prescribed, the court may impose, in addition to any prescribed imprisonment, a fine on the offender of not more than \$1,000 for a misdemeanor or \$10,000 for a felony.

This bill would increase the amount of that fine for a felony to \$25,000.

By creating *a new crime and* new duties for local elections officials, the bill would impose a state-mandated local program.

~~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.~~

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 2107 of the Elections Code is amended
- 2 to read:
- 3 2107. (a) Except as provided in subdivision (b) and Article
- 4 4.5 (commencing with Section 2170), the county elections official
- 5 shall accept affidavits of registration at all times except during the
- 6 14 days immediately preceding any election, when registration
- 7 shall cease for that election as to electors residing in the territory
- 8 within which the election is held. Transfers of registration for an
- 9 election may be made from one precinct to another precinct in the
- 10 same county at any time registration is in progress in the precinct
- 11 to which the elector seeks to transfer.
- 12 (b) The county elections official shall accept an affidavit of
- 13 registration executed as part of a voter registration card in the
- 14 forthcoming election if the affidavit is executed on or before the
- 15 15th day prior to the election, and if any of the following apply:

1 (1) A mailed affidavit is postmarked on or before the 15th day
2 prior to the election and received by mail by the county elections
3 official before the close of the polls on election day.

4 (2) The affidavit is submitted to the Department of Motor
5 Vehicles or accepted by any other public agency designated as a
6 voter registration agency pursuant to the federal National Voter
7 Registration Act of 1993 (42 U.S.C. Sec. 1973gg) on or before the
8 15th day prior to the election.

9 (3) The affidavit is delivered to the county elections official by
10 means other than those described in paragraphs (1) and (2) on or
11 before the 15th day prior to the election.

12 SEC. 2. Article 4.5 (commencing with Section 2170) is added
13 to Chapter 2 of Division 2 of the Elections Code, to read:

14
15 Article 4.5. Conditional Voter Registration
16

17 2170. (a) "Conditional voter registration" means a properly
18 executed affidavit of registration, which is delivered by the
19 registrant to a county elections official during the 14 days
20 immediately preceding an election or on election day and which
21 may be deemed effective pursuant to this article after the elections
22 official processes the affidavit, determines the registrant's
23 eligibility to register, and validates the registrant's information,
24 as specified in subdivision (c).

25 (b) In addition to other methods of voter registration provided
26 by this code, an elector who is otherwise qualified to register to
27 vote under this code and Section 2 of Article II of the California
28 Constitution may complete a conditional voter registration and
29 cast a provisional ballot during the 14 days immediately preceding
30 an election or on election day pursuant to this article.

31 (c) (1) A conditional voter registration shall be deemed effective
32 if the county elections official is able to determine before or during
33 the canvass period for the election that the registrant is eligible to
34 register to vote and that the information provided by the registrant
35 on the registration affidavit matches information contained in a
36 database maintained by the California Department of Motor
37 Vehicles or the federal Social Security Administration.

38 (2) If the information provided by the registrant on the
39 registration affidavit cannot be verified pursuant to paragraph (1)
40 but the registrant is otherwise eligible to vote, the registrant shall

1 be issued a unique identification number pursuant to Section 2150
2 and the conditional voter registration shall be deemed effective.

3 (d) The county elections official shall offer conditional voter
4 registration and provisional voting pursuant to this article, in
5 accordance with the following procedures:

6 (1) The elections official shall provide conditional voter
7 registration and provisional voting pursuant to this article at all
8 permanent offices of the county elections official in the county.

9 (2) The elections official shall advise registrants that a
10 conditional voter registration will be effective only if the registrant
11 is determined to be eligible to register to vote for the election and
12 the information provided by the registrant on the registration
13 affidavit is verified pursuant to subdivision (c).

14 (3) The elections official shall conduct the receipt and handling
15 of each conditional voter registration and offer and receive a
16 corresponding provisional ballot in a manner that protects the
17 secrecy of the ballot and allows the elections official to process
18 the registration, to determine the registrant's eligibility to register,
19 and to validate the registrant's information before counting or
20 rejecting the corresponding provisional ballot.

21 (4) After receiving a conditional voter registration, the elections
22 official shall process the registration, determine the registrant's
23 eligibility to register, and attempt to validate the information.

24 (5) If a conditional registration is deemed effective, the elections
25 official shall include the corresponding provisional ballot in the
26 official canvass.

27 (e) The county elections official may offer conditional voter
28 registration and provisional voting pursuant to this article on
29 election day at satellite offices of the county elections office, in
30 accordance with the procedures specified in paragraphs (2) to (5),
31 inclusive, of subdivision (d).

32 2171. (a) A conditional voter registration accepted under this
33 article shall include the information required by Article 4
34 (commencing with Section 2150).

35 (b) A conditional voter registration accepted under this article
36 shall be processed in accordance with general voter registration
37 procedures provided in this chapter and established by regulations
38 adopted by the Secretary of State.

1 (c) A provisional ballot cast under this article shall be subject
2 to the requirements for provisional voting in Article 5 (commencing
3 with Section 14310) of Chapter 3 of Division 14.

4 2172. (a) The elections official shall cancel any duplicate voter
5 registrations that may exist as a result of a conditional registration
6 deemed effective and shall cancel the duplicate registrations in
7 accordance with Chapter 3 (commencing with Section 2200).

8 (b) If it appears that a registrant may have committed fraud
9 within the meaning of Section 18560, the elections official shall
10 immediately notify in writing both the district attorney and the
11 Secretary of State.

12 2173. (a) *Notwithstanding any other law, a person who*
13 *commits fraud in the execution of a conditional voter registration*
14 *pursuant to this article shall be punishable by imprisonment in*
15 *the county jail for up to one year, or a fine up to twenty-five*
16 *thousand dollars (\$25,000), or by both that fine and imprisonment.*

17 (b) *In addition to the criminal penalties prescribed in*
18 *subdivision (a), a person who commits fraud in the execution of a*
19 *conditional voter registration pursuant to this article shall be*
20 *subject to a civil fine of an amount up to twenty-five thousand*
21 *dollars (\$25,000). An action for a civil penalty under this*
22 *subdivision may be brought by the Secretary of State or any public*
23 *prosecutor with jurisdiction.*

24 (c) *Nothing in this section shall preclude the prosecution of a*
25 *person under any other applicable provision of law.*

26 SEC. 3. Section 14310 of the Elections Code is amended to
27 read:

28 14310. (a) At all elections, a voter claiming to be properly
29 registered, but whose qualification or entitlement to vote cannot
30 be immediately established upon examination of the index of
31 registration for the precinct or upon examination of the records on
32 file with the county elections official, shall be entitled to vote a
33 provisional ballot as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The Secretary of State shall establish a free access system that any voter who casts a provisional ballot may access to discover whether the voter's provisional ballot was counted and, if not, the reason why it was not counted.

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

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

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

SEC. 4. Section 18001 of the Elections Code is amended to read:

18001. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or up to twenty-five thousand dollars (\$25,000) in cases of felonies, in addition to the imprisonment prescribed.

SEC. 5. ~~If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because,

1 *in that regard, this act creates a new crime or infraction, eliminates*
2 *a crime or infraction, or changes the penalty for a crime or*
3 *infraction, within the meaning of Section 17556 of the Government*
4 *Code, or changes the definition of a crime within the meaning of*
5 *Section 6 of Article XIII B of the California Constitution.*

6 *However, if the Commission on State Mandates determines that*
7 *this act contains other costs mandated by the state, reimbursement*
8 *to local agencies and school districts for those costs shall be made*
9 *pursuant to Part 7 (commencing with Section 17500) of Division*
10 *4 of Title 2 of the Government Code.*

11 SEC. 6. Sections 1 to 3, inclusive, of this bill shall become
12 operative on January 1 of the year following the year in which the
13 Secretary of State certifies that the state has a statewide voter
14 registration database that complies with the requirements of the
15 federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et
16 seq.).