

SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND  
CONSTITUTIONAL AMENDMENTS  
Senator Loni Hancock, Chair

BILL NO: SB 370  
4/21/09  
AUTHOR: RUNNER  
Darren Chesin  
AMENDED: 4/1/09  
FISCAL: YES

HEARING DATE:

ANALYSIS BY:

SUBJECT

Elections: voting

DESCRIPTION

Overview

This bill would make four distinct and substantive changes to the conduct of elections in California, each of which is discussed in greater detail below. In brief, this bill would:

Provide that a person on probation for the conviction of a felony is not eligible to register to vote.

Require that the identification (return) envelope for a vote by mail (VBM) ballot include the last four digits of the voter's California driver's license or identification card number or, if unavailable, the last four digits of the voter's social security number and would require this information be verified before counting the ballot.

Provide that a VBM ballot of uniformed services voters or their spouses or dependents must be cast by Election Day but may be received by elections officials up to 21 days after the election.

Require a person who desires to vote at the polls on Election Day to show specified proof of identification and would require the Department of Motor Vehicles (DMV) to waive the fee for an identification card requested for satisfying this requirement.

Felony Probation and Voter Eligibility

The California Constitution provides that a United States citizen 18 years of age and a resident in this state may vote and that the Legislature shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.

Existing statutory law similarly provides that a person is eligible to register to vote in California if he or she is a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the next election.

Existing law generally allows persons who are subject to a felony sentence by a court to be released on "probation"

which means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.

Existing law prohibits probation, unless in the interest of justice stated in the record, for persons who are convicted of specified crimes, which include various weapons violations, crimes where great bodily injury occurs, and specified second violations. Various other statutes prohibit or restrict probation for other specified crimes.

This bill would additionally provide that a person on probation for conviction of a felony is also ineligible to register to vote in California and, commencing in 2011, would require county elections officials to cancel the voter registration for these probationers upon notice from the clerk of the superior court.

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Vote By Mail Ballot Envelopes

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Existing law provides that a person wishing to register to vote who has a valid California driver's license or identification card must include the license or identification card number on the affidavit of voter registration. If the person does not have a valid driver's license or identification card then he or she must provide the last four digits of his or her social security number. If the person has not been issued a social security number, the state must assign the applicant a unique number that will serve to identify the applicant for voter registration purposes.

Existing law requires that the identification envelope for returning a VBM ballot contain specified information, including the voter's signature, which must be verified before the ballot can be counted.

This bill would additionally require that a VBM return envelope must include the last four digits of the voter's California driver's license or identification card number or, if unavailable, the last four digits of the voter's social security number and a security flap to conceal the voter's information during mailing. As with the signature, the four-digit number would have to be verified by the elections official before the ballot could be counted.

Armed Forces Vote by Mail Ballots

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Existing law defines "special absentee voter" as an elector who is any of the following:

- A member of the armed forces of the United States or any auxiliary branch thereof;
- A citizen of the United States temporarily living outside the territorial limits of the United States or the District of Columbia;
- Serving on a merchant vessel documented under the laws of the United States; or,
- A spouse or dependent of a member of the armed forces or any auxiliary branch thereof.

Existing law permits a special absentee voter who is temporarily living outside of the United States to return his or her ballot by facsimile transmission. Special absentee ballots can be requested and provided as early as

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60 days prior to an election (normal VBM ballots cannot be requested or provided until 29 days prior to an election)

Existing law requires all VBM ballots, including special absentee voter ballots, to be received by the elections official no later than 8 p.m. on Election Day.

This bill would instead provide that the VBM ballot of a member of the United States Armed Forces who is an "absent uniformed services voter" and which is postmarked or signed and dated by election day may be received by the elections official up to 21 days after an election. As defined in this bill by a cross reference to federal law, an "absent uniformed services voter" means a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote.

#### Voter Identification

Existing law requires a voter at the polls to announce his or her name and address to a precinct officer. When the precinct officer finds the voter's name in the roster, the voter is required to write his or her name and residence address on the roster and is provided a ballot.

Existing law 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.

Existing law 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.

Existing law 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

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exceeding one year.

Existing federal law, pursuant to the Help America Vote Act of 2002 (42 U.S.C. 15301, et seq.) requires a voter who registers to vote 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.

This bill instead requires that prior to receiving a ballot at the polls, all voters must present photo identification issued by either the United States, the State of California or an Indian tribe recognized by the United States government. The name of the individual on the identification must conform to the name in the individual's voter registration record. The identification must include an expiration date which has either not expired at the time of voting or expired less than two years prior to the election.

This bill provides that a voter who is unable or refuses to present proof of his or her identity may vote a provisional ballot.

This bill would also require the DMV to waive the fee for an original or replacement identification card requested for satisfying this voter identification requirement.

#### BACKGROUND

Felon Voter Eligibility in Other States . According to the National Conference of State Legislatures (NCSL) and ProCon.org, individuals with felony convictions are barred from voting as follows:

30 states bar convicted felons who are in prison, on parole or on probation from voting (this bill would include California in this category).  
5 states (including California) bar convicted felons who are in prison or on parole from voting.  
13 states and the District of Columbia bar convicted felons who are in prison from voting.  
2 states (Maine and Vermont) do not bar convicted felons

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from voting even while they are in prison.

Voting By Fax . In September 2003, then Secretary of State (SOS) Kevin Shelley issued a directive to all county elections officials requiring the counties to accept absentee ballots returned by fax for the October 7, 2003 statewide recall election. In issuing this directive, the SOS specifically noted that the compressed schedule for preparing for the election made it difficult to get ballots to overseas voters in time for those ballots to be cast and returned by mail by Election Day. This directive marked the first time in state history that any California voters were allowed to cast a ballot by fax.

The following year, the Legislature approved and the Governor signed AB 2941 (Bates), Chapter 821 of 2004, which permits special absentee voters who are temporarily living outside the United States to return their ballots by facsimile transmission. AB 2941 was modeled after the procedures adopted by the SOS for the 2003 recall election for handling absentee ballots returned by fax. AB 2941 was intended to accommodate voters who, due to potential delays in international mail delivery and structural barriers present in combat areas, may not be able to receive, vote, and return an absentee ballot in the 60-day period provided for overseas absentee voters. AB 223 (S. Runner), Chapter 359 of 2007, extended the provisions of AB 2941 that allow certain absentee ballots to be returned by fax to include military voters who are called for military service in the last seven days before an election. Any voter in this situation would be allowed to apply for an absentee ballot by fax, and would be allowed to return that absentee ballot by fax as well.

Voter Identification . The Help America Vote Act of 2002 (HAVA) required states to adopt certain voter identification requirements. Specifically, first time voters who register by mail and didn't include verification with their registration form must provide photo identification, or a copy of a utility bill, bank statement, government check, paycheck, or other government document showing the name and address of the applicant when they go to vote.

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According to the National Conference of State Legislatures (NCSL), 22 states have broader voter identification requirements than what HAVA mandates. All voters in these states are asked to show identification prior to voting - five of these states (Florida, Georgia, Hawaii, Indiana, and Louisiana) specify that voters must show a photo identification, while the other 17 states accept additional

forms of identification that don't necessarily include a photo.

COMMENTS

1. According to the author : There is no way to verify that a person casting a ballot at the polling place is actually the voter they claim to be. Voter identification requirements reduce the ability of individuals to cast ballots in another voter's name. Some military voters do not have enough time to receive and return their vote by mail ballots before the polls close on Election Day unless these military voters sacrifice their right to a secret ballot to the Registrar of voters. While California law currently requires incarcerated and paroled felons to repay their debt to society by completing their sentences in order to regain their ability to vote, there is a loophole that allows probationers to vote even from the first day of their sentence and even if serving probation while being held in county jail. The criteria to determine the validity of a vote by mail ballot is too weak to be effective in protecting voters against someone else casting a vote by mail ballot in their name. Adding a requirement of a state driver's license number, state identification card number, or federal Social Security number is a more accurate way to verify a voter's identity since those numbers are more difficult to obtain.

2. Should Persons on Probation Be Prohibited From Voting ?

Probation may be granted by courts if the interest of justice would best be served and the purpose of probation is generally described as rehabilitation. Generally speaking, probation occurs for the conviction of first offenses and less serious felonies. Should the fundamental constitutional right to vote, be denied to individuals that the legal system has determined can be

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safely returned to the community on probation?

3. A Solution in Search of a Problem ? Requiring photo identification for polling place voters only addresses the type of potential fraud whereby an individual claims to be someone they are not and attempts to vote as that person. However, the author has not provided, nor is the Committee otherwise aware of, any evidence that voter fraud of that type has been occurring in California.

4. What About Bob ? This bill provides that the name on the voter's identification must conform to the name in their voter registration record. This requirement could therefore disenfranchise otherwise qualified voters whose voter registration records do not reflect a recent name change due to marriage or other reason. It could also similarly disenfranchise persons whose identification contains their legal name (e.g., Robert, James, Catherine, Elizabeth, etc.) but who registered to vote under a commonly used nickname (e.g., Bob, Jimmy, Cathy, Betty, etc.).

5. Free State ID Cards . According to the Department of Motor Vehicles, it is difficult to estimate how many identification cards they would now have to issue at no fee under this bill, but if 50% of the cards issued in fiscal year 2007-08 qualified, the revenue loss would be \$15.6 million.

6. In-State Military but not Overseas Spouses ? Under this bill, it is unclear how the elections official would be able to differentiate between VBM ballots that are eligible to be received after Election Day and those that are not, especially since it does not require these military voters to be overseas in order to qualify. Furthermore, this bill only applies to members of a uniformed service on active duty and, unlike the current definition of "special absentee voter" would not apply to

a civilian voter temporarily living overseas, a voter serving on a merchant vessel documented under the laws of the United States, or a spouse or dependent of a member of the armed forces.

7.How Late is Too Late ? Requiring elections officials to

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accept VBM ballots up to 21 days after the election could jeopardize the ability of elections officials to certify the election by the current 28-day deadline. Any jurisdiction using an instant-runoff (IRV) or ranked choice (RCV) election system would be additionally impacted. Currently, the City and County of San Francisco elects its local candidates via RCV while the cities of Berkeley, Oakland, and San Leandro are expected to start using a RCV system in 2010.

8.Clean Up . Section 4 of this bill appears to be superfluous in light of the most recent amendments.

9.Prior and Related Legislation . The portion of this bill related to the eligibility to vote of persons on probation for the conviction of a felony is similar to AB 677 (Conroy) of 1996 which died on the Senate Appropriations Committee suspense file. This provision is also found in SB 631 (Walters) which is also pending before this committee as well as AB 1308 (Hagman) and AB 1415 (Adams) which are pending in the Assembly Committee on Elections and Redistricting.

The portion of this bill relating to voter identification is similar to numerous previous bills including SB 173 (Harman) of 2007 which failed passage in this committee. This provision is also found in SB 465 (Huff) which is also pending before this committee as well as AB 1356 (Berryhill), AB 1399 (Anderson) and AB 1415 (Adams) which are pending in the Assembly Committee on Elections and Redistricting.

The portion of this bill related to military VBM ballots is similar to SB 582 (Dutton) which is also pending before this committee as well as AB 1367 (Fletcher) and AB 1415 (Adams) which are pending in the Assembly Committee on Elections and Redistricting.

The portion of this bill related to information on VBM ballot envelopes is similar to AB 1424 (Knight) and AB 1415 (Adams) which are pending in the Assembly Committee on Elections and Redistricting.

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POSITIONS

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Sponsor: Author

Support: None received

Oppose: All of Us or None  
American Civil Liberties Union  
Asian Americans for Civil Rights and Equality  
California Coalition for Women Prisoners  
California Immigrant Policy Center  
Drug Policy Alliance Network  
Equal Justice Society  
Free Battered Women  
Families to Amend California's Three Strikes

Justice Now  
Lawyers' Committee for Civil Rights of the San  
Francisco Bay Area  
Legal Services for Prisoners with Children  
National Employment Law Project  
Ordain Training Center

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