

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Coto Analyst: Deborah Barrett Bill Number: AB 2371
 Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: February 21, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Voter Registration

SUMMARY

This bill would provide that unless specifically declined, filing of an income tax return or applying for a California Drivers License or Identification Card would register an individual to vote.

This bill would make changes in the Elections and Motor Vehicle Codes regarding voter registration that do not impact this department and are not discussed in this analysis.

PURPOSE OF THE BILL

According to the author’s office, the purpose of this bill is to increase civic participation.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2009, and operative as of that date. It would apply to tax return forms prepared by Franchise Tax Board (FTB) on or after that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

The Help America Vote Act (2002 42 U.S.C. Sec. 15301) (HAVA) requires states to develop a uniform, centralized, and interactive computerized statewide voter registration list defined, maintained, and administered at the State level. HAVA requires the statewide list be coordinated with other agency databases within the state and requires regular maintenance of the statewide list including removing ineligible voters and duplicate names. HAVA mandates that all states and localities upgrade many aspects of their election procedures, including their voting machines, registration processes, and poll worker training.

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A person must meet the following qualifications to register to vote in California:

- Be a United States citizen,
- Be a resident of California, not in prison or on parole for the conviction of a felony, and
- Be at least 18 years of age at the time of the next election.

A person must file an affidavit of registration to be registered to vote. A properly executed registration is effective upon receipt of the affidavit by the county elections official if received on or before the 15th day prior to an election.

FTB is required to include a voter registration card with the personal income tax filing forms that are mailed annually to California taxpayers.

Under state law, FTB is granted discretion to make tax forms as simple as possible for taxpayers to use to report their income and compute their tax liability. Third party software vendors prepare and provide taxpayers with commercial products to file returns online or by paper. FTB approves the forms created by those vendors, but does not control what functions the various tax preparation software can perform.

Existing state law prohibits the disclosure of any taxpayer return and return information, except as specifically authorized by the taxpayer or by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multistate Tax Commission for tax administration purposes only. Unauthorized disclosure of state tax returns and return information is a misdemeanor and improper disclosure of federal tax returns and return information is a felony.

Return information is defined to include, among other things, any data received by, recorded by, prepared by, furnished to, or collected by FTB.

THIS BILL

This bill would allow qualified persons not already registered to vote to register by filing a personal income tax form. This registration method would apply for persons with no party affiliation and would allow persons to decline to be registered. Additionally, if the person filing a tax return is not over 18 years of age, but will be by the next election, he or she would be registered automatically upon his or her birthday.

This bill would require FTB to include the following on the personal income tax filing forms:

- A method to request information that would establish whether the taxpayer satisfied the requirements to be registered to vote.
- A statement that, if the requirements are satisfied, the taxpayer shall be registered to vote unless the taxpayer declines to be registered to vote.
- A method by which the taxpayer may decline to be registered to vote.
- Any other information required by state or federal law for a person to be registered to vote.

FTB would be required to forward a duplicate of the form that registers a person to vote to the county in which the person named on the form resides.

The county election official would examine the document and if it is determined that the document indicates the person satisfies the requirements to be registered to vote, the document would be treated as a completed affidavit of registration by the county election official. The document must be received by FTB no later than 15 days before the next election to be effective. The document would be effective for purposes of verifying signatures on petitions, initiatives, referendums, absentee voter applications, or other election papers.

To further compliance of the bill's requirements, the bill would direct FTB to confer with the Secretary of State.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill would require "tax filing forms" to be revised to include voter registration related information. Because FTB produces hundreds of forms that could be included in the term "tax filing forms," it is recommended that the language be changed to refer to "state income tax returns" to make it clear which forms that author intends to be revised.

The bill would require FTB to provide the election officials of each county with a copy of the tax return for tax filers who opt to register to vote on their tax return. Providing confidential taxpayer information to the counties for purposes other than tax administration would be a violation of disclosure laws contained within Revenue and Taxation Code (R&TC). If the voter registration information collected through the tax return could be placed on a separate schedule, the schedule could be separated from the return and only the relevant voter registration information would be disclosed to the county election officials.

Approximately 60% of California residents now file tax returns electronically and this percentage increases each year. Because electronic returns do not contain signatures that can be used for voter signature verification purposes, it is not clear how the author intends to use the electronically filed income tax return as a practical voter registration alternative.

Although FTB approves the versions of income tax returns used by tax preparation software companies, FTB lacks authority to dictate to software vendors that their software contain options to provide certain information relating to voter registration. Accordingly, FTB cannot ensure that tax preparation software will incorporate the changes to the tax returns this bill would require.

Significant revisions to state income tax returns and tax return filing processes would be required by this bill. FTB would need to collect additional data on the taxpayer and spouse, and any dependents that may be eligible to register to vote. The changes required to the personal income tax return to collect this data would result in a three or more page return, creating significant costs to the department as detailed in the Fiscal Costs discussion below.

This bill would provide that registration is effective if received by FTB 15 days before an election. Ordinary processing time experienced by FTB during peak processing could result in registration information reaching county elections officials more than 15 days after receipt by FTB—and after a scheduled election.

This bill would require FTB to send duplicate copies of more than 15 million returns to 58 different county elections officials. In the case of married filing joint returns with dependents, one return could be sent to several different counties. Under this bill, taxpayers who are already registered to vote would be subject to disclosure of their returns although the county elections officials have no use for that information.

Electronically filed returns are stored in a proprietary electronic format. Providing reproductions of approximately 10 million electronically filed tax returns would require that the stored electronic data be converted into a viewable format and printed to accommodate the varying technology capabilities of all 58 county elections offices.

Voter registration data that would be required to be on a state tax return is not necessary for administering the income tax code. However, a return that lacked voter registration data would be an incomplete return, and would create both significant processing delays for FTB and significant burdens for taxpayers to reconcile the returns that are invalid for reasons not related to the primary purpose of a tax return--namely reporting income and tax owed to the state.

LEGISLATIVE HISTORY

SB 448 (Poochigan, Stats. 2003, Ch. 412) required the FTB to include a voter registration card with the personal income tax booklets that are mailed to taxpayers annually.

SB 86 (Murray, 1999/2000) would have required FTB to provide voter registration information provided by the Secretary of State (SOS) to taxpayers by either including an insert prepared by SOS containing voter registration information in the pamphlet or instructions that accompanies PIT returns; or providing space for the voter registration information in the pamphlet of instructions that accompanies PIT returns. Governor Gray Davis vetoed this bill. The full veto message can be found in Appendix A.

AB 1273 (Frusetta, 1999/2000) would have required FTB to include two voter registration cards with the blank forms provided for filing personal income tax returns in even-numbered years prior to the March primary election. This bill was held in the Elections and Redistricting Committee.

OTHER STATES' INFORMATION

A review of the personal income tax booklets for *Illinois*, *Massachusetts*, *Michigan*, and *New York* found no references to voter registration information. *Minnesota* provides a voter registration application in its state income tax booklets. *Florida* has no personal income tax; therefore voter registration information is not applicable. These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

Significant processing changes would be required by this bill, including the capturing of data specific to this bill's requirements not already captured, modifying existing systems, and developing secure data exchange processes with 58 different county elections officials.

The present forms have limited space available for additional lines. The additional lines required by this bill would increase the forms from two to three or more pages. The department estimates it could incur costs in excess of \$2 million to revise the forms and instructions, printing, systems changes, processing, and storage. The department is unable to identify the extent of this bill's impact until the implementation concerns identified above are resolved. Actual costs will be developed as the bill moves through the Legislative process.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

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APPENDIX A to AB 2371
Veto Messages From Prior Legislation

BILL NUMBER: SB 86
VETOED DATE: 10/08/1999

October 8, 1999

To the Members of the Senate:

I am returning Senate Bill No. 86 without my signature.

Senate Bill No. 86 would require various educational institutions, state agencies, and local government agencies to make voter registration forms available to newly admitted students and the public. This bill would also delete the requirement that applicants for permanent absentee voter status have physical impairments.

This bill would impose numerous mandates on state and local agencies, as well as colleges and universities. While I support efforts to increase voter participation, this bill places significant burdens on agencies and educational institutions that are unequipped to meet the requirements set forth by this legislation.

This bill inappropriately imposes state mandated costs on agencies and educational institutions. The 1999-00 Budget Act did not allocate funding for voter registration purposes, and I continue to believe that it is not necessary to provide funding for an activity that could easily be undertaken by student and civic groups.

Finally, Senate Bill 86 contains language that would require individuals to sign an affidavit acknowledging receipt of a voter registration brochure upon applying for a marriage license. This requirement inappropriately bind the marriage application process with voter registration outreach efforts.

For these reasons I cannot support this bill.

Sincerely,

GRAY DAVIS