

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Price Analyst: Deborah Barrett Bill Number: AB 106
 Related Bills: See Legislative History Telephone: 845-4301 Introduced Date: January 12, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: FTB Voter Registration

SUMMARY

This bill would allow taxpayers to register to vote by filing a Personal Income Tax filing form with the Franchise Tax Board (FTB) or by applying for a California Drivers License or Identification Card with the Department of Motor Vehicles.

This bill would make changes in the Elections and 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 staff, the purpose of this bill is to promote civil engagement with California residents.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and would be operative on or after that date. By the terms of this bill, FTB and the Secretary of State (SOS) are to confer and develop the form required under this bill's provisions by July 1, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

The Help America Vote Act of 2002 (P.L. 107-252) (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 to 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.

Board Position:	Department Director	Date
_____ S _____ NA _____ NP		
_____ SA _____ O _____ NAR		
_____ N _____ OUA <u> X </u> PENDING	Selvi Stanislaus	02/05/09

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. The completed affidavit of registration is required to include the following:

- Facts to establish the affiant as an elector;
- Name, including middle name or middle initial;
- Designation of Mr., Mrs., or Ms.;
- Place of residence;
- Space to include a telephone number;
- Space to include an e-mail address, and advice that failure to include a telephone number or e-mail address will not result in a person to not be registered;
- Mailing address if different from residence;
- Date of birth;
- State or country of birth;
- Political party affiliation;
- A statement that the affiant is not incarcerated or on parole for a felony conviction;
- Prior registration information if previously registered under different address, name, or political affiliation;
- Space to state ethnicity, race, or both;
- Space for a signature of anyone assisting the affiant to fill out the affidavit;
- Space to apply for permanent vote by mail option; and
- Space for affiant to certify under penalty of perjury with a signature of his or her name and the date of signing.

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 a person to register to vote by properly completing and submitting a Personal Income Tax filing form (form). If the person submitting the form 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. FTB would be required to provide a copy of the form to the county election official in the county where the taxpayer resides.

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

This bill would prohibit any affidavit of registration, other than one provided by the SOS to county elections officials, the national voter registration form, the first page of the application for a new or renewed California driver's license, instruction permit, junior permit, or identification card, or the first page of the form provided by FTB, from being used for a purpose other than for the registration of a voter.

This bill would provide that the first page of the form prepared by FTB to request only the taxpayer provide their full name, place of residence, an indication whether the taxpayer wishes to register to vote, and if so indicated, all the information required to be provided for an affidavit of registration to vote.

The bill would require the form to inform the taxpayer that if the taxpayer wishes to register to vote, they may decline to state a political affiliation but that a person is not entitled to vote the ballot of a political party at the primary election unless one of the following occurs:

- He or she states the name of the party with which they intend to affiliate, or
- The political party by party rule authorizes a person who has declined to state a party affiliation the right to vote the ballot of that political party.

The bill would provide that the first page of the form list all qualified political parties.

This bill would require FTB to transmit to the county elections official for the county in which the taxpayer resides a duplicate of the first page of the form if all of the following are satisfied:

- The taxpayer has indicated on the first page of the form that he or she wishes to be registered to vote.
- The taxpayer has completed the form in its entirety.
- The taxpayer has supplied sufficient information on the form to indicate the he or she satisfies the requirements to be registered to vote.

This bill would require FTB to do the following:

- Comply with the applicable federal and state law relating to privacy and confidentiality of the information collected,
- Collect only the information necessary to implement the provisions of this bill, and
- Not disclose information collected pursuant to the bill's provisions to another agency or person except for purposes directly related to voter registration.

This bill would direct FTB to confer with SOS to develop by no later than July 1, 2010, a form in compliance with the requirements of this bill. The bill would authorize FTB to continue to provide Personal Income Tax filing forms in existence on or before July 1, 2010.

TECHNICAL CONSIDERATION

On page 9, line 14, after "filing", insert "form".

On page 9, line 16, strike "be".]

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 uses an undefined term, "Personal Income Tax filing form". FTB produces many different filing forms relating to personal income tax every year. It is unclear whether the author intends the filing form to be a voter registration only form, or intends for the voter registration information collected pursuant to this bill's provisions be imbedded in the state income tax return itself. Clarification of which form is intended to be used to meet this bill's requirements would assist the department to determine the impact to existing system and filing processes.

It is recommended that the bill be amended to make its requirements applicable only to those returns that contain a signature that can be verified, such as the paper returns, because electronic returns lack signatures that can be used for voter signature verification purposes. Approximately 60% of California residents file personal income tax returns electronically and this percentage increases each year.

Additionally, electronically filed returns are stored in a proprietary electronic format. Providing duplicates of 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. Applying this bill's requirements to only paper returns would avoid this additional significant expense.

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 that is not collected in the course of tax administration. The changes required 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.

It is unclear whether the author intends for only the primary taxpayer on a return to be able to register to vote, or whether multiple taxpayers can be registered on the same filing form in such instances as a joint return or a return containing dependents that are eligible to vote. If taxpayers have residences in different counties, it is unclear how FTB would transmit individual information to different counties without violating disclosure laws. Clarification would assist FTB in implementing this bill's provisions.

This bill directs FTB to transmit the affidavit of registration to county elections officials only when the form is completed in its entirety, but is silent regarding what FTB is to do with incomplete forms. To ensure the security of this sensitive data, it is recommended that FTB forward all voter affidavits of registration to the county election officials or be provided specific direction to destroy any incomplete documents.

Because FTB would have to verify the completeness of the form to transmit it to the county elections officials, FTB would need to develop a new system and processing protocols to verify the completeness of the forms filed by taxpayers because much of the information on the form is not information currently captured in tax return processing. The cost to implement these new protocols is detailed below in the Fiscal Impact discussion.

Additionally, this bill also directs FTB to forward the affidavit of registration when the applicant supplies sufficient information to determine that they meet the requirements for registering to vote, although FTB lacks expertise in this area. To leverage the expertise of the county elections officials, it is recommended that all voter registration documents be transmitted to the applicable county to make that determination rather than vesting FTB with the responsibility.

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 places limitations on the confidentiality, collection, and disclosure of information collected, but is unclear whether the reference to "information collected" includes tax data collected or is referring only to the voter registration data collected. Clarification is needed to assist FTB in implementing this bill.

LEGISLATIVE HISTORY

AB 2371 (Coto 2007/2008) would have allowed an eligible California resident to register to vote through the filing of a state income tax return. This bill was held in the Assembly Appropriations Committee Suspense File.

SB 448 (Poochigian, Stats. 2003, Ch. 412) requires 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 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 provide 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 currently captured, verifying completeness of forms, 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

The provisions of this bill would not impact state income tax revenues.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Deborah Barrett
(916) 845-4301
deborah.barrett@ftb.ca.gov

Revenue Manager
Rebecca Schlusser
(916) 845-5986
rebecca.schlusser@ftb.ca.gov

Asst. Legislative Director
Patrice Gau-Johnson
(916) 845-5521
patrice.gau-johnson@ftb.ca.gov

Appendix A

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