

AMENDED IN SENATE MAY 2, 2024

AMENDED IN SENATE MARCH 18, 2024

SENATE BILL

No. 1174

Introduced by Senator Min
(Coauthor: Senator Newman)

February 14, 2024

An act to add Section 10005 to the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1174, as amended, Min. Elections: voter identification.

Existing law permits the governing body of a city or district to request that the county render specified services to the city or district regarding the conduct of an election.

This bill would prohibit a local government from enacting or enforcing any charter provision, ordinance, or regulation requiring a person to present identification for the purpose of voting or submitting a ballot at any polling place, vote center, or other location where ballots are cast or submitted, as specified.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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

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

1 **SECTION 1.** (a) *The Legislature finds and declares all of the*
2 *following:*

1 (1) Under existing law, a person is entitled to vote in a local,
2 special, or consolidated election who is registered in any one of
3 the precincts which compose the local, special, or consolidated
4 election precinct.

5 (2) California ensures the integrity of its elections by requiring
6 a person to provide a driver's license number, a California
7 identification number, or the last four digits of their social security
8 number to register to vote.

9 (3) The state has taken further steps to ensure election integrity,
10 including signature verification checks, mandatory partial
11 recounts, and ballot tracking.

12 (4) Voter identification laws have historically been used to
13 disenfranchise low-income voters, voters of color, voters with
14 disabilities, and senior voters.

15 (5) Existing law gives the Secretary of State jurisdiction over
16 voter-eligibility functions.

17 (6) Under existing law, local elections officials are responsible
18 for supervising voting at the polls.

19 (7) Voter identification laws place the onus on the voter to prove
20 their identity and right to vote, even after voters have taken the
21 necessary steps to prove their identity and right to vote through
22 the voter registration process.

23 (8) The implementation of voter identification laws in municipal
24 elections conflicts with California's established, well-balanced
25 methods of ensuring election integrity across the state.

26 (b) The Legislature finds and declares that Section 2 of this act
27 adding Section 10005 of the Elections Code addresses a matter of
28 statewide concern rather than a municipal affair as that term is
29 used in Section 5 of Article XI of the California Constitution.
30 Therefore, Section 2 of this act applies to all cities, including
31 charter cities.

32 **SECTION 1.**

33 **SEC. 2.** Section 10005 is added to the Elections Code, to read:

34 10005. A local government shall not enact or enforce any
35 charter provision, ordinance, or regulation requiring a person to
36 present identification for the purpose of voting or submitting a
37 ballot at any polling place, vote center, or other location where
38 ballots are cast or submitted, unless required by state or federal
39 law. For the purpose of this section, "local government" means

1 any charter or general law city, charter or general law county, or
2 any city and county.
3 ~~SEC. 2. The Legislature finds and declares that Section 1 of~~
4 ~~this act adding Section 10005 of the Elections Code addresses a~~
5 ~~matter of statewide concern rather than a municipal affair as that~~
6 ~~term is used in Section 5 of Article XI of the California~~
7 ~~Constitution. Therefore, Section 1 of this act applies to all cities,~~
8 ~~including charter cities.~~

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SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair

2023 - 2024 Regular

Bill No: SB 1174
Author: Min
Version: 3/18/24

Hearing Date: 5/1/24
Fiscal: No
Consultant: Peterson

ELECTIONS: VOTER IDENTIFICATION

Prohibits any local government from enacting or enforcing voter identification requirements unless required by state or federal law.

Background

Charter counties. Counties fall into two types: “general law” and “charter.” General law counties are organized according to the generally applicable laws for county governance established by the Legislature that set the number, appointment, and election procedures for county officials, including the board of supervisors. General law counties must also adhere to state laws which require county employees to perform most county functions and restrict counties’ ability to contract out for services.

Charter counties have greater leeway to determine their own governance structure. Specifically, the California Constitution provides that “county charters ... shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.” If a county adopts its own voter-approved charter, the charter must provide for:

- A board of supervisors with at least five members, elected by districts, from districts, or at large;
- The compensation, terms, and removal of members of the board. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation must be prescribed by the governing body by ordinance;
- An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal;
- The performance of functions required by statute;
- The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling vacancies; and
- Procedures for the governing body, by ordinance, to appoint and govern county officers and employees.

A new charter, or an amendment to an existing charter, may be proposed by the board of supervisors, a charter commission, or an initiative petition.

There are 14 charter counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama.

Most large counties are charter counties: eight of the ten largest counties by population have adopted charters.

Charter cities. The California Constitution allows cities and counties that adopt charters to control their own “municipal affairs,” and makes these laws supreme over “all laws inconsistent therewith.” This municipal affairs doctrine grants charter cities broad authority to enact laws governing local matters. In all other matters, charter cities must follow the general, statewide laws. However, the Constitution does not define “municipal affairs,” so the courts determine whether a topic is a municipal affair or an issue of statewide concern. While it does not provide a definition of municipal affairs, the Constitution does specify certain categories of municipal affairs: regulation of city police forces, conducting city elections, and specifying the terms and compensation for city officers and employees. Over 100 of California’s 483 cities are charter cities.

Conduct of elections. The Elections Code specifies which dates may count as established election dates based on whether the election is on an even- or odd-numbered year. It also requires local elections to be held on an established election date unless a city or county charter specifies a different election date, among other exceptions.

State and federal law lay out voter registration requirements. A first-time voter must provide a California driver’s license number, state identification number, or the last four digits of their social security number when they register to vote. Registering voters certify the information is correct under penalty of perjury and falsifying information is punishable as a felony.

State law gives the Secretary of State the authority to adopt uniform standards for proof of residency, which apply in all instances where voters must prove residency. If a first-time voter does not provide a California driver’s license number, state identification number, or the last four digits of their social security number when they register to vote, they must provide identification before they can vote in an election. The Secretary of State has adopted regulations detailing what proof of residency is acceptable in these instances. That list includes items such as a utility bill, a government check, a bank statement, a document from a government agency, and other items that can be combined with a photo ID such as a passport, employee ID card, military ID card, or other similar document.

If a voter does not provide this information with a mail-in ballot, the elections official must reach out to the voter to request it. If the individual votes in person without the required information, they can cast a provisional ballot which will not be counted until the voter supplies the documents from the list of eligible documents prescribed by the Secretary of State. If a person cannot provide such proof, then the provisional ballot will not be counted.

Huntington Beach Measure A. Huntington Beach is a charter city in Orange County representing around 196,000 residents. Its city charter provides that its elections must be held in accordance with state election laws so far as those laws do not conflict with the charter. In fall 2023, the Huntington Beach City Council proposed Measure A to amend its city charter to allow the city, beginning with 2026 municipal elections, to:

- Verify the eligibility of voters by requiring them to provide identification;
- Provide at least 20 federal Americans with Disabilities Act (ADA) compliant voting locations for in-person voting dispersed throughout the City; and

- Monitor ballot drop boxes in the City.

The measure also provided that in the event of a conflict with state law, the charter prevails.

On September 28, 2023, Attorney General Rob Bonta and Secretary of State Shirley Weber sent a letter to the City of Huntington Beach warning the proposal may conflict with state law.¹ This letter said in part:

“The Elections Code also sets forth a detailed process for resolving questions of voter identity or eligibility at the polls. A voter’s identity or eligibility to vote may only be questioned by election workers on narrow grounds, and only with evidence constituting probable cause to justify such a challenge. A challenged voter need only take a sworn oath of affirmation to remedy the challenge. All doubts are to be resolved in favor of the challenged voter. And any person who illegally casts a ballot is subject to criminal prosecution.

“This framework strikes a careful balance: it guards the ballot box against ineligible and/or fraudulent voters, while at the same time simplifying and facilitating the process of voting so as to avoid suppressing turnout and disenfranchising qualified voters. It also makes clear that the job of local elections officials is to supervise voting at the polls, not to take over voter-eligibility functions performed by the county registrar and the Secretary of State.

“Huntington Beach’s voter ID proposal would destroy this careful balance by placing the onus on the voter to establish their identity and right to vote with some form of identification at the time they cast their ballot. By requiring additional documentation to establish a voter’s identity and eligibility to vote at the time of voting—a higher standard of proof than set out in the Elections Code—Huntington Beach’s proposal conflicts with state law. Indeed, the City’s proposal would arguably constitute ‘mass, indiscriminate, and groundless challenging of voters,’ in violation of Elections Code section 18543.”

Despite the warning, on October 17, 2023, the City Council voted 4-3 to place the measure on the March 2024 ballot. On March 5, 2024, Huntington Beach voters passed Measure A with 54 percent in support. On April 15th, 2024, the Attorney General Rob Bonta and Secretary of State Shirley Weber announced they were filing a lawsuit against the City of Huntington Beach alleging that Measure A “...unlawfully conflicts with and is preempted by state law.”²

The author wants to prohibit local governments from adopting voter identification requirements.

Proposed Law

Senate Bill 1174 prohibits a local government from enacting or enforcing any charter provision, ordinance, or regulation requiring a person to present identification to vote or drop a ballot off at any polling place, vote center, or other location where ballots are cast, unless required by state or

¹ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-secretary-state-weber-warn-city-huntington-beach-proposed>

² <https://oag.ca.gov/news/press-releases/attorney-general-bonta-secretary-state-weber-file-lawsuit-against-huntington>

federal law. The measure defines “local government” to mean any charter or general law city, charter or general law county, or any city and county.

Comments

1. Purpose of the bill. According to the author, “Healthy democracies rely on robust access to the polls. An overwhelming body of evidence proves that voter ID laws only subvert voter turnout and create barriers to law abiding voters. To register to vote in California, voters are already required to provide their driver’s license number, California identification number, or the last four digits of their social security number. The state also conducts signature verification checks, automatically recounts a portion of ballots, and allows voters to track their ballots. Voter ID laws are discriminatory and only make it harder for seniors, people of color, and other vulnerable groups to participate in our democracy. SB 1174 prevents this practice by local jurisdictions and clarifies that local elections cannot mandate voter ID laws.”

2. Home rule. California’s constitutional home rule doctrine is more than 100 years old, and is based on the understanding that charter cities know their own local needs better than the state. The California Constitution gives charter cities the ability to determine how they conduct city elections. City charters may also address other municipal affairs, provided they do not constitute a matter of statewide concern. The City of Huntington Beach submitted Measure A to its voters the majority of whom approved it to require voter identification for municipal elections. Members of the city council that supported the measure cited concerns over voter fraud as the reason the measure was necessary.³ However, the state already requires voters to verify their identity when they vote, and no credible evidence has been provided showing voter fraud exists in the other 482 cities or 58 counties that do not have their own voter ID requirement. This particular charter amendment appears to make Huntington Beach the only city with voter identification requirements for municipal elections. Additionally, the City contracts with Orange County to run its elections. It is unclear whether the County would want to implement procedures to allow for Huntington Beach’s voter ID requirement. Allowing Measure A to move forward could create confusion for voters if they need to provide voter ID for municipal elections, but not for state or federal elections. Finally, according to Attorney General Rob Bonta, “The right to freely cast your vote is the foundation of our democracy and Huntington Beach’s voter ID policy flies in the face of this principle. State election law already contains robust voter ID requirements with strong protections to prevent voter fraud, while ensuring that every eligible voter can cast their ballot without hardship. Imposing unnecessary obstacles to voter participation disproportionately burdens low-income voters, voters of color, young or elderly voters, and people with disabilities.”⁴ While SB 1174 overrides a city charter amendment Huntington Beach voters approved, it ensures the voter registration process remains consistent across California.

3. Same goal, different tracks. Even before the Huntington Beach City Council placed Measure A on the March 2024 ballot, the Attorney General and Secretary of State warned the proposal conflicted with existing law. Fast forward to April 2024, the Attorney General and Secretary of State followed through with their warning and filed a lawsuit against the City. SB 1174 and the court challenge are on parallel tracks until either the Legislature enacts SB 1174, or the courts decide whether state law preempts local voter identification requirements. Enacting SB 1174 may be unnecessary if the courts agree with the Attorney General and Secretary of State that

³ <https://www.ocregister.com/2024/03/11/whats-next-for-huntington-beachs-voter-id-proposal/>

⁴ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-secretary-state-weber-file-lawsuit-against-huntington>

state law preempts these requirements. Should the Legislature weigh in through enacting SB 1174 before the courts have decided whether state law preempts local voter identification requirements?

4. Let's be clear. The home rule doctrine provides that city charter regulation of municipal affairs must cede to the Legislature on issues of statewide concern, and that state law is narrowly tailored to the state's interest. Courts have generally recognized city elections are municipal affairs, so the state's interest would need to be clear. SB 1174 states it constitutes a matter of statewide concern, but does not include any specific language as to why. While courts will ultimately determine if SB 1174 preempts the City of Huntington Beach's charter, the Committee may wish to consider amending the bill to clarify the reasons why the measure addresses a matter of statewide concern.

5. Incoming! The Senate Elections and Constitutional Amendments Committee approved SB 1174 at its April 2 hearing on a vote of 6-1. The Senate Local Government Committee is hearing SB 1174 as the committee of second reference.

Support and Opposition (4/26/24)

Support: ACLU California Action
Afsme CA
California Environmental Voters
California-Hawaii State Conference of The NAACP
Common CAUSE - California
Culver City Democratic Club
Disability Rights California
Indivisible CA Statestrong
League of Women Voters of California
Santa Monica Democratic Club

Opposition: 5 Individuals

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