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Elections

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Elections

Elections; voter registration

Elections Code §§202, 207, 209, 210, 211, 212, 214, 224, 226, 282, 313, 316, 318, 319, 320, 321, 321.7, 323, 324, 422, 423, 424, 14241, 14243, 14244, 14244.5, 14405, 17203, 17406, (repealed); §§201.5, 202, 220.5, 224, 224.5, 255, 313, 314.5, 316, 321, 321.7, 321.9, 324, 325, 422, 456.65, 14215.5, 14241, 14243 (new); §§200, 203, 203.5, 208, 213, 213.1, 215, 216, 218, 225, 250, 251, 252, 254, 280, 284, 287, 310, 311, 312, 314, 321.5, 322, 381, 383, 386, 387, 421, 456, 457, 14002, 14202, 14240, 14419, 14622, 14662, 17236, 18237 (amended).

AB 822 (Keysor); STATS 1975, Ch 704
(*Effective July 1, 1976*)

Chapter 704 has enacted the Moscone-Keysor Voter Registration Act of 1975 to provide for registration by mail in an effort to further the legislative intent of maintaining voter registration in California at the highest possible level [CAL. ELECTIONS CODE §202]. Formerly, voter registration was accomplished by having the elector complete an affidavit of registration under oath before a county clerk or deputy registrar pursuant to Section 200. Now a person who wishes to register may complete a multipart voter registration card (§321), which may be mailed or delivered in person to the county clerk or his or her deputy (§200). Instead of executing an affidavit under oath, the affiant must fill out and sign the registration card, certifying, under penalty of perjury, that the information is true (§200). The information required on the voter registration card pursuant to Section 310 is, however, essentially the same as that formerly required on the affidavit of registration. One important difference is that the affiant is now required only to state whether he or she is currently imprisoned or on parole for conviction of a felony, rather than whether such affiant has ever been convicted of a felony as was formerly required. This change seems to have been made to bring the registration requirements into conformity with Article 2, Section 3 of the California Constitution, which was recently amended to extend voting rights to ex-felons who are no longer imprisoned or on parole [CAL. CONST. art. 2, §3 (1974)]. Sections which delineated various methods of proving citizenship have been repealed, and Section 208 has been amended to provide that the affiant's signature on the reg-

istration card indicating United States citizenship is sufficient. The new registration card procedure is also to be used by absent voters (§213), voters registering in a county other than the county of residence (§213.1), and war voters (§§250, 251, 255). Section 321.9 has been added to require the county clerk to distribute registration cards at several convenient locations throughout the county, and to provide sufficient quantities of registration cards to any citizens or organizations who wish to distribute them. Section 313 has been added by Chapter 704 to make it a misdemeanor for any person to willfully interfere with the prompt transfer of a completed affidavit of registration to the county clerk.

Chapter 704 has also made several changes in the time and notice provisions for registration. Section 224 formerly provided that an elector who moved to a new address within the county could send a letter to the county clerk notifying him or her of that fact. The elector would then be sent a change of address card. If the card was returned to the county clerk not less than 54 days before the election, the new address would be recorded on the elector's affidavit of registration and would be effective for that election. Any requests postmarked less than 54 days prior to an election would not be effective for that election. This section has been repealed and a new Section 224 has been added which requires the voter to execute a *new* registration card. The county clerk must cancel the old registration for any election occurring at least 29 days after receipt of a letter indicating a change of address. Section 224.5 has been added to provide a similar procedure for a voter who has moved to a new address outside the county. Section 314, which requires that the information on the registration card be complete, has been amended to place an affirmative duty upon the county clerks to attempt to contact the affiant to obtain missing or illegible information if the affiant's telephone number or address is legibly stated on the registration card. This section also requires the county clerk to notify each registrant as to whether his or her registration was received in time to be effective for the next election. Section 321.5 has been amended to require the county clerk to determine whether an affiant who has indicated on the registration card that he or she might be disqualified to vote because of a felony conviction is in fact disqualified and to notify such person of acceptance or rejection within 10 days of receipt of the individual's registration card. Formerly, the county clerk was only required to make such determination upon request of the registrant.

Before the enactment of Chapter 704, Sections 383 and 386 provided that the registration of an elector who did not vote at the last general

election was to be cancelled with the effective date of cancellation being the day that a notice of cancellation (§387) was mailed to the voter. If the voter responded to such notice within 60 days, indicating that he or she still resided at the same address, the registration would be reinstated. This was interpreted to mean that if the registration was cancelled after the close of registration for an election but reinstated prior to the election the voter could vote at that election [41 OPS. ATT'Y GEN. 9 (1963)]. However, if cancellation occurred before the close of registration, the registration had to be reinstated prior to the close of registration in order to be effective for the upcoming election [*Id.*]. As amended by Chapter 704, Section 386 now provides that cancellation shall not occur until 30-days *after* the mailing of notice pursuant to Section 387. This cancellation will be avoided if the voter responds to such notice within the 30 day period. If the voter still resides at the same address or at a different address within the county and indicates this on the card attached to the notice form, his or her registration will not be cancelled. However, if the voter has moved to another county, he or she must re-register. No provision is made for reinstatement of registration once such registration has been cancelled. Furthermore, Section 456.65 has been added to require the county clerk to provide a list of voters who have been mailed notices of cancellation pursuant to Section 387 to county central committees upon request.

Section 14240 has been amended to reduce the number of reasons for which an elector may be challenged at the polls by a member of the precinct board. Such a challenge on the ground that the elector has not been a resident of the state for one year has been eliminated. This change is in apparent response to the Supreme Court's ruling that the one year *state* residence requirement of Tennessee was unconstitutional as violative of equal protection in that such a requirement created a discriminatory classification (new residents) which was not necessary to promote a compelling state interest [*Dunn v. Blumstein*, 405 U.S. 330, 347 (1972)]. In *Dunn v. Blumstein*, the Supreme Court further held that Tennessee's 90-day *county* residence requirement was unconstitutional as violative of equal protection, and indicated that a period of 30 days should be ample for the state to complete its administrative tasks [*Id.* at 348]. In *Young v. Gness* [7 Cal. 3d 18, 496 P.2d 445, 101 Cal. Rptr. 533 (1972)] the California Supreme Court held that California's 90-day county residence requirement could not be distinguished from the 90-day period invalidated in *Dunn* and was therefore unconstitutional [*Id.* at 23, 496 P.2d at 448-49, 101 Cal. Rptr. 537]. The court in *Young* agreed with the Supreme Court in *Dunn* that a 30-day

residence requirement was ample and struck down California's requirement of 54 day's residence in the precinct [*Id.* at 27, 496 P.2d at 451-52, 101 Cal. Rptr. at 539-40]. In apparent response to the court's ruling in *Young*, Chapter 704 has eliminated the challenge on the ground that the elector has not been a resident of the county for 90 days, and has eliminated the 54-day requirement from the challenge that the elector is not a resident of the precinct.

Challenges on the ground that the person has been convicted of embezzlement or misappropriation of public funds have been eliminated, and the challenge on the ground that the person has been convicted of a felony has been amended to reflect the recent amendment to the California Constitution which struck from the California Constitution references to the disqualification of electors who have been convicted of infamous crimes, and substituted the provision that the legislature shall provide for the disqualification of electors while imprisoned or on parole for the conviction of a felony [CAL. CONST. art. 2, §3 (1974)]. The only other challenges now permitted are that the person is not the same person whose name appears on the register, is not a United States' citizen, or has already voted that day. Sections 14243, 14244, and 14244.5, which delineated the form of oath which a person challenged on state, county, or precinct residency grounds was required to take, have been replaced by a new Section 14243 which requires a person challenged on the ground of nonresidence in the precinct to swear under oath as to whether or not he or she is a resident of the precinct. If the answer is "yes," no other questions may be asked.

Chapter 704 requires the Secretary of State to adopt regulations requiring the counties to implement programs to identify nonregistered but qualified electors and to register them. If any county fails to establish a program which meets the minimum standards promulgated by the Secretary of State, the Secretary of State must design a program for that county and report the violation to the Attorney General for appropriate action (§202). Furthermore, several procedural changes have also been made by Chapter 704. The preservation period for canceled affidavits has been shortened from ten to four years (§421), and a duplicate file of affidavits of registration no longer must be maintained (§287). Formerly, Section 422 required county clerks to maintain affidavits of registration alphabetically by precinct; now registration records may be maintained in *any* orderly arrangement, but a county wide alphabetical index must be maintained. Precinct rosters and registers will now be in the form of printed index sheets rather than in the form of books of affidavits as formerly required (§§457, 14215.5).

Elections; Democratic presidential primary

Elections Code Chapter 1.5 (commencing with §6300), Article 2.5 (commencing with §10266) (repealed); Chapter 1.5 (commencing with §6300) (new).

SB 288 (Alquist); STATS 1975, Ch 1111

Prior to 1974, presidential primary ballots for the major political parties in California listed only those candidates who petitioned to appear on the election ballot. In that year the legislature enacted the Alquist Open Presidential Primary Act [CAL. ELECTIONS CODE §6300 *et seq.*] to establish a new procedure for Democratic presidential primaries in response to a revision of Article 2, Section 4 of the California Constitution affecting all major political parties, which was adopted by the electorate as Proposition 4 on June 8, 1972. The new Democratic procedure replaced the previous "winner-take-all" system with a scheme of delegate allocation directly proportionate to the results of the popular vote. Chapter 1111 has repealed this election procedure, substituting a substantially similar presidential primary procedure which reinstates the single ballot format (listing only presidential candidates and chairpersons of uncommitted delegations) as was used prior to the legislative revisions of 1974.

Elections Code Section 10268 formerly required the presidential primary ballot to be divided into two parts. One portion listed the candidates for president who had been selected by the Secretary of State based on their general recognition nationally or unselected candidates who qualified for placement on the ballot with nominating petitions signed by one percent of the registered Democratic voters. A selected candidate who did not desire to be placed on the ballot would file an affidavit with the Secretary of State stating that he or she was not a candidate for president. The other portion listed the candidates for delegate to the national convention who were pledged to one candidate or who were uncommitted. The former, the "presidential preference" portion of the ballot, was advisory only and had no effect on the delegate selection portion. Chapter 1111 has retained the procedures for selecting or qualifying candidates for the ballot, but directs the Secretary of State to include as a criteria for selecting generally recognized candidates the fact of an individual's authorization for funding under the Federal Elections Campaign Act. Also, the double ballot format has been deleted by removing the delegate names from the ballot and listing only the names of presidential candidates and chairpersons of delegations expressing no presidential preference, as provided in Section 10265. Thus, delegates

will not be elected by direct vote but will be selected through party procedures outlined in the new Alquist Open Presidential Primary Act [CAL. ELECTIONS CODE §6300 *et seq.*].

Prior to the enactment of Chapter 1111, each selected and unselected candidate, and each group proposing an uncommitted delegation, would appoint a steering committee to select 75 percent of the delegate candidates. After the primary election, those delegates elected by popular vote would meet to select the remaining 25 percent of the delegates in proportion to the vote their delegation received at the polls. Section 6325 has been added to provide for a caucus of interested Democrats in each congressional district on the second Sunday in April of a presidential election year to recommend delegates to the national convention (§6329). Each caucus shall recommend ten delegates listed in the order of the popular vote each received, from those individuals who filed affidavits of candidacy pursuant to Section 6328. However, the presidential preference or steering committee of each group retains the right to reject and replace individual delegates nominated by the caucus (§6329).

Uncommitted delegations may qualify for the ballot by filing petitions signed by one percent of the registered Democrats in a congressional district. If an uncommitted delegation does not qualify, an uncommitted space shall be included on the ballot (§6360). In the event that the uncommitted designation receives 15 percent of the vote at the primary election, and thereby qualifies for at least one delegate under the provisions of Section 6365.1(b), a designee of the Democratic State Central Committee chairperson shall convene an uncommitted caucus in each applicable congressional district for the purpose of electing delegates shortly after the primary (§6365.1).

Article 10 (commencing with §6365 of the Elections Code) provides the procedure for selecting 75 percent of the convention delegates proportionately from the individual congressional districts, the remaining 25 percent at-large, and all alternate delegates. Within two weeks after the primary election, the Secretary of State, in consultation with the Democratic party, shall announce the number of delegates each candidate or uncommitted delegation earned based on the vote in each congressional district (§6365.1). On the third Saturday following the primary, the steering committees of the candidates and uncommitted delegations will meet with their congressional district delegate nominees. The steering committees will designate 75 percent of the congressional district delegates from those names previously submitted to the Secretary of State as potential delegates. Under Section 6365.1(b), a candidate

or uncommitted delegation which receives 15 percent of the vote in any congressional district shall receive one delegate before any other candidate receives additional delegates based on the unused portion of the candidate's or delegation's vote. In the event of a tie, the candidate with the highest statewide popular vote will receive a delegate. Any candidate or delegate failing to win ten percent of the congressional district vote will not receive a delegate.

The remaining 25 percent of the California delegation to the Democratic national convention shall be apportioned to each candidate or uncommitted delegation to reflect the statewide popular vote pursuant to Section 6365.2. The already-selected congressional district delegates will then meet in separate caucuses to select these at-large delegates. The candidate retains the right to approve all delegates and alternates pledged to his or her candidacy.

Elections; Republican presidential primary

Elections Code Chapter 1 (commencing with §6000) (repealed);
Chapter 1 (commencing with §6000) (new).
AB 427 (Murphy); STATS 1975, Ch 1048

Chapter 1048 establishes the procedures for presidential primaries of the Republican Party and of qualified political parties for which no other provisions of the Code apply, as mandated by Article 2, Section 4 of the California Constitution. Prior to the enactment of Chapter 1048, only those persons who petitioned to be presidential primary candidates could appear on the ballot. Article 2, Section 4 was adopted by the electorate as Proposition 4 on June 8, 1972, to require open presidential primaries, and to allow the Secretary of State to select "recognized" candidates for president to be placed on the ballot in addition to those candidates who submitted petitions. This presidential primary system is similar to the Oregon primary where the Secretary of State places the names of all nationally prominent candidates on the ballot [ORE. REV. STAT. 249.368]. Procedures for the Democratic presidential primary were enacted in California in 1974 [CAL. ELECTIONS CODE §6300 *et seq.*] and amended in 1975 [See REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION, this volume at 439 (Elections; Democratic presidential primary)]. However, Chapter 1048 retains the "winner-take-all" aspect of the Republican presidential primaries, unlike the Democratic Party system which allocates delegates in proportion to the results of the popular vote.

Elections Code Sections 6010 through 6013 outline two procedures by which the Secretary of State may determine which candidates are to be placed on the primary ballot: selection of candidates based on their general recognition in California or nationwide (§6010), or qualification of unselected candidates who file nominating petitions signed by one percent of the Republican registration (§6013). The list of those candidates who are selected by the Secretary of State must be publicly announced by February 1 preceding the primary and a candidate's name may not be deleted thereafter *unless* he or she files an affidavit to withdraw his or her name earlier than nine weeks before the election. Selected candidates, however, may be added to the list after February 1.

Procedures for selection of delegates are enumerated in Sections 6070 and 6071 and require that 78 percent of the delegation be composed of three delegates selected for each congressional district, with the remainder to be composed of delegates selected at large from throughout the state. Names of persons chosen as delegates must be submitted to the Secretary of State by the candidate no later than 30 days before the presidential primary election for certification. Alternates, limited to one per delegate, are to be appointed by the candidate by congressional districts, with the number per district to be no less than three. Names of alternates also must be submitted to the Secretary of State within 30 days after the primary for certification. Section 6071 provides that each delegate to the convention must be pledged to his or her candidate through the first two ballots, unless the nominee receives less than ten percent of the convention vote. After a delegate is released each delegate may vote as he or she chooses, and no unit voting rule may be adopted by the delegation.

Elections; recall

Elections Code §§27201, 27500 (amended).
AB 1700 (Maddy); STATS 1975, Ch 920

Prior to the enactment of Chapter 920, any elected county or municipal officer, or elected district officer not subject to the provisions of the Uniform District Elections Law [CAL. ELECTIONS CODE §23500 *et seq.*], could be recalled by the voters only after such official had held office for six months (§27201). Additionally, a municipal official could not be the subject of a recall effort if a petition calling for his or her recall had been filed within the preceding six months (§27500).

Chapter 920 has amended Section 27201, which applies to county elective offices, and Section 27500, which applies to city elective offices, to reduce to 90 days the time such an elected official must have held office before a recall may be held. A recall now is allowed after 90 days, rather than six months, unless a notice of intention to circulate a recall petition has been filed against the office holder within the preceding six months. Although these sections do not specifically indicate what procedure is to be followed when such a petition has been filed a logical construction of these sections is that a second petition may be filed only after six months have elapsed since the first petition was filed.

See Generally:

- 1) 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 316 (1975) (recall of elected state officials).