

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON ELECTIONS
Marc Berman, Chair
AB 1137 (Mullin) – As Amended March 25, 2021

SUBJECT: Elections: voter registration agencies.

SUMMARY: Requires the Secretary of State (SOS) to report to the Legislature on designated voter registration agencies that have, pursuant to existing law, an established process and infrastructure that allows a person who applies online for services to electronically submit a voter preference form and an affidavit of voter registration, as specified, and to report on the feasibility of voter registration agencies establishing a process and infrastructure to implement automated voter registration, as specified. Specifically, **this bill:**

- 1) Requires the SOS, no later than July 1, 2022, to report to the Legislature regarding all of the following:
 - a) The voter registration agencies that have implemented a process and infrastructure pursuant to existing law that allows a person who applies online for service or assistance, or submits a recertification, renewal, or change of address form relating to the service or assistance online, to electronically submit a voter preference form and an affidavit of voter registration.
 - b) For a voter registration agency that has implemented a process and infrastructure pursuant existing law, information on the process and infrastructure, including all of the following:
 - i) Any security procedures to protect the information submitted online by an applicant.
 - ii) Any procedures to ensure that an applicant who is not eligible to register to vote is not registered to vote.
 - iii) Any steps taken by the voter registration agency pursuant to existing law that ensure that the information entered into an applicant's electronic application will be automatically transferred to the electronic affidavit of voter registration if the applicant indicates that the applicant would like to register to vote.
 - c) The feasibility of each voter registration agency establishing a process and infrastructure to implement automated voter registration securely while protecting noncitizens from mistaken registration.
- 2) Requires a voter registration agency to provide the SOS all information that the SOS identifies as necessary to complete the report required by this bill.
- 3) Requires the report to be submitted in accordance with existing law and provides for the provisions of this bill to be repealed on July 1, 2026.

EXISTING LAW:

- 1) Provides that a person entitled to register to vote shall be 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.
- 2) Requires, pursuant to the National Voter Registration Act (NVRA) of 1993, each state to offer voter registration services at motor vehicle agency offices, offices that provide public assistance, offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, Armed Forces recruitment offices, and other state and local offices within the state designated as NVRA voter registration agencies.
- 3) Permits the designation of state and local offices as NVRA voter registration agencies, to include state and local government offices such as public libraries, public schools, offices of city and county clerks, fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described above that provide services to persons with disabilities and federal and nongovernmental offices, with the agreement of such offices.
- 4) Requires the Department of Motor Vehicles (DMV) to provide the opportunity to register to vote to individuals who apply for, renew, or change an address for a driver's license or personal identification card issued by the DMV.
- 5) Provides that the SOS is the chief state elections official responsible for coordination of the state's responsibilities under the NVRA.
- 6) Requires all NVRA designated voter registration agencies to provide the opportunity to register to vote to persons applying for the agency's assistance or services, seeking recertification or renewal of those services, and changing address for the assistance or services.
- 7) Requires NVRA designated voter registration agencies to distribute voter registration forms and NVRA voter preference forms, assist in filling out the voter registration form, accept and transmit completed voter registration forms to county elections officials, and accept and retain completed preference forms on file for two years.
- 8) Requires NVRA designated agencies to provide to each individual the same degree of assistance in completing the voter registration application form as is provided by the office in completing its own agency forms, unless the applicant declines to register to vote or declines such assistance. Requires voter registration services to be provided whether the transaction is conducted in person or remotely via the internet, the telephone, or by mail.
- 9) Requires a voter registration agency that allows a person to apply online for service or assistance, or submit a recertification, renewal, or change of address form relating to the service or assistance online, to implement a process and infrastructure that allows a person to electronically submit a voter preference form and an affidavit of voter registration, as specified.

- 10) Requires a person that indicates on their electronic voter preference form that they would like to register to vote, to be informed that they may register to vote through one of the following options, if applicable:
- a) Submitting an affidavit of voter registration electronically on the SOS's Internet Web site pursuant to existing law;
 - b) Completing an affidavit of voter registration electronically on the SOS's Internet Web site, printing a hard copy of the completed affidavit, and mailing or delivering the hard copy of the completed affidavit to the SOS or the appropriate county elections official pursuant to existing law;
 - c) Obtaining a voter registration card on a county's Internet Web site and printing, completing, signing, and returning the card to the county's elections official pursuant to existing law; or,
 - d) Requesting a voter registration card to be mailed to the person pursuant to existing law and completing, signing, and returning the card as instructed.
- 11) Requires a voter registration agency to take steps to ensure that the information entered into a person's electronic application for service or assistance, or their electronic recertification, renewal, or change of address form relating to the service or assistance, be automatically transferred to the electronic affidavit of voter registration if the person indicates that they would like to register to vote.
- 12) Requires the SOS to take steps to ensure that the electronic affidavit of voter registration is available in all languages required by the federal Voting Rights Act.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

- 1) **Purpose of the bill:** According to the author:

AB 1137 was introduced with the goal of identifying potential next steps for expanding automatic voter registration efforts in California. The bill would require the Secretary of State's office to conduct a study on existing programs and infrastructure for voter registration efforts, including automatic voter registration, as well as identify other state agencies that have the capacity to incorporate an automatic voter registration program into their existing operations.

Programs for automatic voter registration hold immense promise for boosting voter registration rates and promoting civic participation. By reviewing the state's current voter registration efforts and identifying potential agencies to expand such efforts is the first step in augmenting automatic voter registration in California.

- 2) **National Voter Registration Act:** In 1993, the federal government enacted the NVRA, commonly referred to as the "motor voter" law, to make it easier for Americans to register to

vote and to remain registered to vote. In addition to other methods of voter registration states offer, the NVRA requires states to provide the opportunity to apply to register to vote for federal elections through various methods. Section 5 of the NVRA requires states to offer voter registration opportunities at motor vehicle agencies. Additionally, Section 6 of the NVRA requires states to provide voter registration opportunities by mail-in application. Finally, Section 7 of the NVRA requires states to offer voter registration opportunities at all offices that provide public assistance or state-funded programs primarily engaged in providing services to persons with disabilities. Armed Forces recruitment offices must also provide voter registration services. Moreover, Section 7 of the NVRA requires a state to designate "other offices" within the state as voter registration agencies. According to the US Department of Justice NVRA guidelines, a state is free to determine which other agencies or offices should be designated, according to its needs and preferences, but it must make additional designations.

- 3) **Designated National Voter Registration Agencies & Previous Legislation:** In 2012, the Legislature approved and Governor Brown signed SB 35 (Padilla), Chapter 505, Statutes of 2012, which expanded the list of public assistance agencies required by the NVRA to provide voter registration opportunities and codified various other provisions of the NVRA. Specifically, SB 35 required a voter registration agency that allows a person to apply online for services or assistance, or to submit a recertification, renewal, or change of address form relating to the service or assistance online, to implement a process and infrastructure that allows an applicant to electronically submit a voter preference form and an affidavit of voter registration electronically on the SOS's Internet Web site in accordance with online voter registration provisions of law.

In California, the following state and local offices are designated voter registration agencies:

- **DMV**
- **Public Assistance Agencies:**
 - California Student Aid Commission
 - County offices that administer General Assistance/General Relief Programs
 - Covered California:
 - California's Health Benefit Exchange and certified enrollment entities, county social services offices, certified insurance agents
 - Department of Health Care Services and county social services offices:
 - Medi-Cal Program
 - Department of Public Health and community-based agencies under contract with DPH:
 - Women, Infants, and Children Nutrition Program (WIC)

- Department of Social Services and county social services offices:
 - California Work Opportunity and Responsibility to Kids (CalWORKS)
 - CalFresh Program
 - In-Home Supportive Services Program
- Private entities under contract with Public Assistance Agencies to provide NVRA-related services
- **State-Funded Agencies Primarily Serving Persons with Disabilities**
 - Department of Developmental Services (DDS) and community-based agencies under contract with DDS:
 - Regional Centers
 - Department of Rehabilitation (DOR) and community-based agencies under contract with DOR:
 - Vocational Rehabilitation Services
 - Independent Living Centers
 - Department of Social Services (DSS) and community-based agencies under contract with DSS:
 - Office of Deaf Access (to provide services to the deaf)
 - Department of Social Services (DSS):
 - Office of Services to the Blind, Assistance Dog Special Allowance Program
 - University of California Offices for Students with Disabilities
 - California State University Offices for Students with Disabilities
 - California Community Colleges Offices for Students with Disabilities
 - Private entities under contract with Disability Service Agencies to provide NVRA related services
- **State and County Mental Health Providers**
- **Armed Forces Recruitment Offices**

- **Other Agencies Designated by the State Under NVRA**

- Franchise Tax Board district offices
- California Department of Tax and Fee Administration offices
- Private entities under contract with these agencies to provide NVRA-related services

- 4) **New Motor Voter and Previous Legislation:** The NVRA requires states to provide individuals with the opportunity to register to vote at the same time that they apply for or renew a driver's license at the DMV. One of the provisions of the NVRA prohibits the voter registration portion of a driver's license application from requiring any information that duplicates information required in the driver's license portion of the form, other than a second signature or a statement attesting to the person's eligibility to register to vote.

In the years following the enactment of the NVRA, California was not fully in compliance with the NVRA's prohibition on requiring duplicate information. Rather, a separate voter registration form was attached to the driver's license form, which requires the affiant to fill in duplicate information. This dual form policy was the result of a settlement in a lawsuit to force the State of California to comply with NVRA when former Governor Pete Wilson refused to implement it unless federal funding was provided (NVRA did not provide the states with any direct funding or any mechanism for reimbursement of costs associated with implementation).

In 2015, a non-compliance letter was sent to the SOS from the ACLU Foundation of San Diego and Imperial Counties, Dēmos, Morrison & Forester LLP, and Project Vote stating that California is engaging in continuous and ongoing violations of the NVRA due to the state's dual form policy. The letter also stated that it constituted a formal notice of the senders' intent to initiate litigation at the end of the statutory 90-day waiting period should California fail to remedy the violations of the NVRA, as specified.

In response to the non-compliance letter the Legislature approved and Governor Brown signed into law AB 1461 (Gonzalez), Chapter 729, Statutes of 2014, also known as New Motor Voter (NMV), which provided for every person who has a driver's license or state identification card and who is eligible to register to vote to be automatically registered to vote at the DMV, unless that person opts out. Under the NMV program, a DMV customer who attests to their eligibility and does not opt out is automatically registered to vote. The implementation of AB 1461 was contingent upon the implementation of the federally required statewide voter registration database (also known as VoteCal), the appropriation of funds from the Legislature necessary for the SOS and the DMV to implement AB 1461, and the adoption of regulations required by AB 1461, as specified. New Motor Voter became operative in 2018.

- 5) **Implementation Date:** As mentioned above, there are a significant number of designated voter registration agencies throughout California. This bill requires the SOS to report to the Legislature certain information on systems established by a voter registration agencies that allow a person who applies online for service to also electronically submit a voter preference form and affidavit of voter registration, and to report on the feasibility of those systems to

securely and automatically register an applicant to vote, as specified. This bill requires the report to be submitted by July 1, 2022. The report deadline may be challenging to meet. If this bill is signed into law, it will become operative on January 1, 2022, giving the SOS just six months to compile the report while simultaneously preparing for the June 2022 statewide gubernatorial primary.

- 6) **Clarifying Author's Amendment:** After the committee's deadline for pre-committee author's amendments, the author requested a technical amendment to clarify the intent of the bill. The clarifying amendment is as follows:

On page 3, starting in line 15, amend this bill as follows:

(3) The feasibility of each voter registration agency establishing a process and infrastructure ~~to implement automated voter registration securely~~ that securely and automatically registers an applicant to vote unless the applicant affirmatively declines to be registered while protecting noncitizens from mistaken registration.

- 7) **Arguments in Support:** In support of this bill, the Brennan Center for Justice at New York University writes:

This legislation seeks to expand automated voter registration beyond the Department of Motor Vehicles (DMV), while prioritizing protections for non-citizens who are not eligible to vote, data security, and reaching populations who continue to be underrepresented in the electorate including Black and Indigenous people, people of color, and young people.

In 2015, California became the second state in the country to enact automated voter registration (AVR). Now, nineteen states and the District of Columbia have adopted the policy, and twelve states and D.C. have it up and running. AVR makes two simple, powerful changes to the voter registration system:

- First, AVR shifts voter registration from an “opt-in” to an “opt-out” approach. When eligible citizens give information to a government agency—for example, to get a driver's license or apply for public services—they are automatically signed up to vote unless they specifically decline.
- Second, AVR requires that voter registration information be electronically transferred to election officials, instead of using paper forms and snail mail. This change significantly increases the accuracy of the rolls and drives down the costs of keeping them updated.

The policy has spread across the country because it works. In a 2019 first-of-its-kind study, the Brennan Center found that AVR substantially increased registration numbers everywhere it has been implemented. California experienced a 26.8 [percent] increase over estimated voter registration without AVR...

Like most states, California implemented AVR first at the DMV, for many practical reasons including longstanding practice of registering voters at the

DMV. For AVR to reach its full potential, however, and to reach a more diverse populace, California must implement AVR at other state agencies that currently register Californians to vote. AB 1137 seeks to do just that.

The bill also wisely contemplates an expansion of AVR that is carefully designed to avoid problems with implementation like those experienced in the implementation of the New Motor Voter Program. The state must incorporate robust protections for noncitizens to prevent inadvertent registrations are incorporated into the system. Such safeguards include providing everyone the opportunity to opt out of registration, processes that filter individuals out of the AVR system when the government has evidence of ineligibility, and statutory protections for people who are registered inadvertently through no fault of their own. This begins with a thorough examination of agency capabilities and must end with a thoughtful implementation process.

- 8) **Related Legislation:** SB 583 (Newman), requires the DMV to transmit specified information to the SOS with respect to a person who, when submitting an application for a driver's license or identification card, provides documentation demonstrating United States citizenship and that the person is of an eligible age to register or preregister to vote, among other requirements and requires the SOS, upon receipt of this information, to register or preregister the person to vote, as specified. SB 583 is scheduled to be heard in the Senate Elections & Constitutional Amendments Committee on April 12, 2021.

AB 796 (Berman), codifies voter registration information transmittal timelines from the NVRA into the California NMV program, as specified, and codifies into state law various provisions from a legal settlement agreement regarding the transmission of voter registration information, as specified. AB 796 is scheduled to be heard in this committee today.

- 9) **Previous Legislation:** SB 361 (Padilla) of 2013, would have required the DMV, the California community colleges, the California State Universities, and voter registration agencies as designated by the NVRA to allow customers, students, and clients, respectively, to submit voter registration forms electronically to the SOS, as specified. SB 361 was held on the Assembly Appropriations Committee's suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union California Action
Brennan Center for Justice at New York University
California League of Conservation Voters

Opposition

None on file.

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