Bill No: SB 846   **Hearing Date:** 4/25/2023
Author: Limón
Version: 2/17/2023
Urgency: No   **Fiscal:** Yes
Consultant: Jacob O'Connor

SUBJECT: Voter registration: California New Motor Voter Program

DIGEST: This bill would create a back-end automated voter registration system for registering voters via the California New Motor Voter Program at the California Department of Motor Vehicles that will be implemented January 1, 2026.

ANALYSIS:

Existing federal law:

1) Pursuant to the National Voter Registration Act, requires each state's driver's license application submitted to their motor vehicle authority serve as a simultaneous voter registration application unless the applicant fails to sign the voter registration application. (52 U.S. Code § 20504)

Existing state law:

1) Provides that a person is entitled to register to vote who is a United States citizen, a resident of California, not imprisoned for the conviction of a felony, and at least 18 years of age at the time of the next election. (Elections Code (Elec) §2101)

2) Requires the Secretary of State (SOS) and the Department of Motor Vehicles (DMV) to establish the California New Motor Voter Program (CNMVP) for the purpose of increasing opportunities for voter registration by any person who is qualified to vote. (Elec §2263)

3) Requires the DMV, in consultation with the SOS, to establish a schedule and method to electronically provide to the SOS the following information associated with each person who applies for, renews, or changes an address for a driver's license or identification card issued by the DMV: (Elec §2265)

  a) Name;

  b) Date of birth;

  c) The residence and/or mailing address in the DMV's records;

  d) Language preference;

  e) Political party preference;

  f) Whether the person chooses to become a permanent vote by mail voter;

  g) Whether the person affirmatively declined to become registered to vote;

  h) An attestation by the applicant that they meet all voter eligibility requirements, including United States citizenship; and

  i) Other specified information

4) Provides that the DMV shall not electronically provide records of a person unable to submit satisfactory proof that the person's presence in the United States is authorized under federal law or that contain a home address designated as confidential.

5) Requires the SOS to establish procedures to protect the confidentiality of the information acquired from the DMV and requires the SOS to account for any disclosures, including those due to security breaches. (Elec §2266)

6) Provides that the records of a person who registers to vote pursuant to the CNMVP shall constitute a completed affidavit of registration and the SOS shall register or preregister the person to vote, unless any of the following conditions is satisfied: (Elec §2267)

  a) The person's records reflect that person affirmatively declined to become registered to vote during a transaction with the DMV;

  b) The person's records do not reflect that person has attested to meeting all voter eligibility requirements; or

  c) The SOS otherwise determines that the person is ineligible to vote.

7) States that if a person who is ineligible to vote becomes registered or preregistered to vote through the CNMVP and votes or attempts to vote they shall be presumed to have acted with official authorization and shall not be guilty of fraudulently attempting to vote unless that person willfully attempted to vote knowing that they were not entitled to do so. (Elec §2271)

This bill:

1) Requires the DMV to not offer an individual the opportunity to attest that they meet voter eligibility requirement or to transfer their record to the SOS if, at the time of transaction with the DMV, the person provides a document demonstrating that they are not a United States citizen.

2) Requires the SOS and the DMV to jointly develop a process by which the DMV, upon obtaining a person's specified identifying information may use information from the statewide voter registration database to determine whether that person is already registered to vote in the state.

3) Requires the DMV to provide the SOS information about any person not currently registered to vote in California who submits a driver's license application and has, during their transaction with the DMV, provided documentation demonstrating United States citizenship and that they are of an eligible age to register or preregister to vote. This information includes:

    a) Name;

    b) Date of birth;

    c) Residence address and/or mailing address;

    d) Digitized signature, as specified;

    e) The language in which the person conducted the transaction; and

    f) Other information, as specified.

4) Requires the DMV to provide to the SOS information regarding any person who is currently registered to vote in California and who submits a driver's license application. This information includes:

    a) Name;

b) Address, and

c) Any additional information required by the SOS for maintaining information for the person's voter registration.

5) Requires the DMV, in consultation with the SOS, to establish a schedule and method for the DMV to electronically provide the SOS these records.

6) Requires the SOS and DMV to develop procedures to ensure that identifying information submitted by an applicant as part of a DMV transaction is sufficiently evaluated to determine whether the applicant is eligible to register to vote and to protect against future erroneous registrations or preregistrations.

7) Provides that these records constitute a completed affidavit of registration and requires the SOS to register or preregister that person to vote unless the SOS determines that person to be ineligible.

8) Requires that when a person is registered to vote pursuant to this program the appropriate county elections official shall send to that person by mail a notice of registration. This notice shall:

a) Include a postage-paid preaddressed return form;

b) Offer the person the opportunity to decline registration;

c) Offer the person the opportunity to provide party preference and to select a language preference;

d) Explain the eligibility of requirements to register to vote and a statement that if ineligible, the person should decline using the form;

e) State the penalties for providing false information; and

f) Provide information regarding how a person can obtain assistance and additional information about the notice.

9) Requires that if a person returns a form for the notice their information will be appropriately updated. If the person declines registration their registration shall be canceled and the person shall be deemed to have never registered unless that person has already voted, whereupon the form shall have no force or effect.

10) Requires that when the SOS receives information from this program on a person who has already voted, the SOS shall use this new information to update the voter's registration record. Then the appropriate county elections official shall send to that person by mail notice of any change with a postage-paid preaddressed return form by which the person can verify or correct the information.

11) Requires the SOS to prescribe the form of these notices and ensure that notices shall be translated into all qualifying minority languages for a county and that all notices in a county contain a basic description of the subject of the notice in all qualifying minority languages in the county.

12) Requires that in the event the SOS or DMV become aware of an error resulting in registration of an ineligible person they shall immediately contact that person to inform them and provide a letter asserting that the SOS or DMV was responsible for the erroneous registration or preregistration and keep a copy of this letter in the person's file with the DMV.

13) Maintains the current CNMVP for individuals who are not currently registered to vote in California and whose information is not subject to transmission to the SOS under this bill because they do not conduct their transaction with the DMV using documentation that proves citizenship.

14) Expands the definition of "voter registration agency" to include entities designated by the SOS.

15) Requires voter registration agencies to annually provide the SOS information describing each designated office under the agency's supervision, the services they provide, and a designated voter registration contact for that office.

16) Requires the SOS or their designee to assess which voter registration agencies collect sufficient information from applicants to confirm eligibility for registration or to update information for an existing registration. If the agency collects such information the SOS shall establish a schedule for that agency to prospectively provide the SOS electronic records regarding individuals eligible to vote or with updated voter registration information, as specified.

17) Requires that the statewide voter registration database to include a notation describing if that person was registered pursuant to the old CNMVP or the new method established by this bill.

18) Changes the maximum imprisonment penalty for the willful, unauthorized disclosure, obtaining, or use of information from the DMV from one year to 364 days.

19) Requires this bill become operative on January 1, 2026 or five days after the date the SOS certifies that the information technology infrastructure to implement the provisions of this bill is functional. Provides that the SOS may perform administrative actions to implement this bill commencing January 1, 2024.

COMMENTS:

1) *Purpose of bill.* According to the author, "SB 846 builds on California's existing Partial Automatic Voter Registration (AVR) system to further streamline voter registration. Utilizing procedures that are largely already in place at the DMV, this bill moves to a Secure AVR system. This upgrade will register millions more eligible Californians, bringing people of color, young people, and formerly incarcerated people into the political process. Similarly, this bill will update millions of existing voter registrations, ensuring more voters receive their mail-in ballots at the correct address and can vote without issues. Most importantly, this upgrade will significantly enhance protections for non-citizens by reducing the risk of unintentional registrations at the DMV. Oregon, Colorado, Nevada, Delaware, Massachusetts, Alaska, and Washington, D.C. have all already adopted Secure AVR, and California can join these states at the forefront of AVR."

2) *National Voter Registration Act.* In 1993, the federal government enacted the National Voter Registration Act (NVRA), commonly referred to as the "motor voter" law, to make it easier for Americans to register to vote and maintain their registration. Among other provisions in the NVRA, the DMV provides customers the opportunity to register to vote when completing an application for or a renewal of a driver's license or an identification card and when a change of address transactions takes place. The NVRA also requires states to designate other agencies as "voter registration agencies" and provides an opportunity to register to vote for individuals interacting with the specified agencies. This includes offices that provide public assistance and offices that provide services to individuals with disabilities. In California, the Governor is also able to designate additional voter registration agencies.

3) *California New Motor Voter Program.* In 2015, the Legislature passed and Governor Brown signed AB 1461 (Gonzalez, Chapter 729, Statutes of 2015), which provides for the automatic voter registration of every person who submits

an application for a driver's license or state identification card (DL/ID), or provides DMV with a change of address, and who attests that they meet all voter eligibility requirements, unless that person opts out. In April 2018, California officially launched the CNMVP.

Since 2018, the CNMVP has contributed to a rise of registered voters in California. According to the most recent report of registration from the SOS, there are 21,940,874 registered voters in California out of an estimated 26,876,800 Californians who are eligible to register to vote, meaning that approximately 81.63% of eligible Californians are registered to vote. To compare, in January 2018, there were 18,980,481 registered voters or about 75.69%.

4) *Implementation of the CNMVP has been difficult*. Since the launch of the CNMVP the DMV faced several challenges with transactions and voter registration. In 2018 three different incidents affected the records of approximately 100,000 customers. In perhaps the most dramatic incident, 1,500 customers may have been registered to vote in error when DMV technicians incorrectly processed customer requests at field offices to change voter eligibility responses on driver's license applications.

   In response to issues related to the DMV, in September 2018, Governor Brown directed the Department of Finance to conduct a performance audit of the DMV's information technology and customer service functions resulting in the implementation of a quality assurance process to ensure the timely release of records from DMV to SOS and establishing data governance policies including data retention and sharing.

   Problems with bringing this system into compliance with the NVRA led to a lawsuit by the League of Women Voters, which was settled with provisions regarding the CNMVP. However, this initial settlement was violated leading to registration delays for thousands of voters and causing the settlement to be extended with new terms. Many of these terms were codified into statute by AB 796 (Berman, Chapter 314, Statutes of 2021), in recognition of their efficacy in improving the functioning of the CNMVP.

5) *Creating a back-end automatic voter-registration system.* This bill would create a new process for voter registration under the CNMVP. In the current "front-end" system, DMV customers who attest they are eligible to vote automatically have their information transferred to the SOS, unless they opt-out. SB 846 instead requires DMV to implement a new "back-end" system, whereby DMV customers who provide proof of U.S. citizenship (such as a U.S.

passport or birth certificate) during their transaction automatically have their information transferred to the SOS.

In order to implement this, the DMV will have to check a client's personal information provided during a transaction against a database provided by the SOS of registered voters. If a person is already registered to vote they will not be asked to register at the DMV, but their information shall be sent to the SOS which will check it against their current information and update their records if there is a difference. If they perform an update the SOS will then send a letter to the client alerting them of this and offering them the opportunity to correct the change if the new information is wrong.

If a person is not registered to vote then the DMV will have to assess the documents they used to apply for their license. If those documents prove that they are not a US citizen, they shall not be asked to register and their information will not be provided to the SOS. If their documents neither prove nor disprove their citizenship status, they shall go through the current, front-end, system where they are asked to attest to voter registration questions, offered the opportunity to deny registration, and then their information is then sent to the SOS if they do not deny.

If a person's documents prove that they are citizens, their information shall be transmitted to the SOS for registration. Information provided during the driver's license application will be used to complete their registration, which will not include party preference or language preference. Then the SOS shall mail to a person a notice of their registration which shall offer them the opportunity to deny registration, or provide language and party preference information.

6) *Registration rates and false registrations.* Two major goals of this legislation are too increase voter registration rates in California and protect people from accidently registering to vote illegally. The evidence regarding the efficacy of "back-end" systems in providing these benefits is mixed. A study of Colorado, which transitioned form a "front-end" to a "back-end" system, found this transition resulted in a sudden, large increase in the rate at which DMV patrons registered to vote. However, other research comparing states with "front-end" and "back-end" systems has found little difference in rates. For a full discussion refer to the analysis by the Senate Committee on Elections.

7) *DMV wait times.* DMV implementation of the federal REAL ID Act led to significant wait times and increased workload at DMV field offices as these transaction take longer to process than noncompliant transactions. Since peak

wait times in 2018, DMV has made significant changes to their processes to move transactions that can be done online out of the field offices and cut transaction time at the field offices. It is possible that doing voter registration on the back-end will decrease DMV transaction times, but it is unclear by how much, if at all. Much of DMV's current process has migrated online. DMV customers are encouraged to fill out their DL/ID application, including motor voter questions, online prior to coming to the field office and may be able to skip the field office entirely. In fact, it may be more likely that a back-end system will increase wait times, because under the current driver's license system individuals do not have to specify ahead of time what types of documents they will be using to prove identity. As such, the DMV will not be able to determine how to route them through this new system until they reach the field office and provide their documents. In addition to the time it may take for a DMV staff member to evaluate an identifying document, forms which could have been filled out online will have to be done in-person if a person is then routed through the current CMVP at the field office.

8) *Complexity and implementation concerns.* The DMV has a poor history of implementing automatic voter registration programs. This new back-end system seems substantially more complicated than the current system. It requires several additional transfers of information between the DMV, SOS, and client/voter. Each of these steps represents a new potential point of failure. Given the difficulty the DMV had in implementing the current system, it seems plausible they will face similar difficulty in implementing this system, leading to further confusion and potential lawsuits.

9) *Slow your (voter) rolls?* The DMV is currently undergoing a modernization of its underlying IT system, which creates a layer of complexity for any additional IT projects the DMV might take on, including creating a back-end voter registration system. This process is expected to be completed in 2027, but this bill is to be implemented in 2027.

Additionally, an analysis of other state's automatic voter systems indicated that coordination is key to the success of an automated system. While coordination does occur in California, a deeper analysis may be needed to determine the feasibility for developing a new process, the cost, and whether each entity (DMV, SOS, and counties) possess the technological infrastructure needed to perform the bill's required tasks effectively. A delay to 2027 may allow time for these groups to meet and coordinate in addition to allowing for the IT modernization to be completed. As this bill moves through the process, the author may wish to consider amending the bill to delay implementation and

establish a working group of the DMV, SOS, and county election officials to prepare a plan to successfully implement this new program.

1) *Double Referral.* This bill was double-referred to the Senate Committee on Elections and Constitutional Amendments where it was heard on March 21, 2023 and was passed on a 6-1 vote.

RELATED LEGISLATION:

AB 796 (Berman, Chapter 314, Statutes of 2021) – Made various changes to the timing and transfer of voter information data from the DMV to SOS to align with the settlement of the lawsuit with the League of Women Voters.

SB 57 (Bates, 2020) – Would have changed the CNMVP from an opt-out to an opt-in program. *This bill failed passage in the Senate Elections Committee.*

SB 511 (Moorlach, 2019) – Would have required the establishment of a committee including representatives of the SOS, DMV, and counties, for the purpose of facilitating the sharing of information necessary to implement CNMVP. *This bill failed passage in the Senate Committee on Transportation.*

AB 1461 (Gonzalez, Chapter 729, Statutes of 2015) – 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. A prior version of AB 1461 included a back-end registration model similar to SB 583 (Newman, 2021). However, the bill was amended to the front-end opt-out system that was subsequently chaptered.

FISCAL EFFECT: Appropriation: No   Fiscal Com.: Yes   Local: Yes

Unknown

POSITIONS: (Communicated to the committee before noon on Wednesday, April 19, 2023.)

SUPPORT:

AAPIs For Civic Empowerment - Education Fund
ACCE Action
Ahri for Justice
Alliance San Diego
Asian American Senior Citizens Service Center
Asian Immigrant Women Advocates

Asian Pacific Environmental Network
Bay Rising
Black Alliance for Just Immigration
California Black Power Network
California Calls
California Grassroots Democracy Coalition
California Healthy Nail Salon Collaborative
California Immigrant Policy Center
California Native Vote Project
Californians United for a Responsible Budget
Campaign Legal Center
Catalyst California
Center for Secure and Modern Elections
Central Coast Alliance United for a Sustainable Economy (CAUSE)
Chinese Progressive Association
Chispa
Coalition for Humane Immigrant Rights (CHIRLA)
Communities for a New California Education Fund
Communities United for Restorative Youth Justice (CURYJ)
Community Coalition
Congregations Organized for Prophetic Engagement (COPE)
Courage California
Ella Baker Center for Human Rights
Empowering Pacific Islander Communities (EPIC)
Filipino Advocates for Justice
Greater Sacramento Urban League
Hmong Innovating Politics
Homeboy Industries
Initiate Justice
Inland Empire United
InnerCity Struggle
Institute for Responsive Government
Jakara Movement
Khmer Girls in Action
Los Angeles Alliance for a New Economy
Mi Familia Vota
National Union of Healthcare Workers
NextGen California
Oakland Rising
OC Action
OCA-Asian Pacific American Advocates: East Bay Chapter (OCA-East Bay)
OCA National

OCA San Mateo Chapter
Orange County Congregation Community Organization (OCCCO)
Orange County Asian & Pacific Islander Community Alliance (OCAPICA)
Orange County Environmental Justice
Orange County Voter Information Project
Partnership for the Advancement of New Americans - PANA
PICO California
Pilipino Workers Center
PowerCA Action
Resilience Orange County
Safe Return Project
San Diego Pride
San Francisco Rising
SEIU CA State Council
South Bay Youth Changemakers
Strategic Concepts in Organizing and Policy Education (SCOPE)
UC Student Association (UCSA)
Vietnamese Rainbow of Orange County
Votevets
Working Partnerships USA

OPPOSITION:

ACLU California Action
League of Women Voters of California
Naleo Educational Fund

ARGUMENTS IN SUPPORT: According to AAPI FORCE-EF, the sponsors of
the bill, "Because of our experience and expertise in engaging voters year round,
we recognize the importance of the reforms that SB 846 would promote for a truly
authentic and representative democracy in California. SB 846 would establish a
secure automatic voter registration (SAVR) system in California to help register
millions of additional eligible voters, create more accurate voter rolls, and
strengthen protections for non-citizen Californians."

"We believe wholeheartedly in the promise of a SAVR system. Substantial
evidence shows that Secure AVR significantly increases registration rates. In a
2022 Stanford study, Professors Rodden and Grimmer study how registration rates
at the DMV surged exactly when Colorado shifted from Partial AVR (California's
current system) to Secure AVR. Colorado went from a Partial AVR system with a
65% declination rate to a Secure AVR system where only 1% of people who

receive the post-transaction mailer decline. This before-and-after study of DMV registration rates in a single state is the best way to isolate and study the impact of the change.”

“The SAVR improvement to the current system would ensure that California’s electorate actually reflects the diversity of our state. Asian American, Black and Latinx voters are all underrepresented among registered voters, and SB 846 would help eliminate voter registration as a barrier to civic participation among California’s marginalized communities and voters of color. The evidence of this for Asian American voter participation is particularly poignant in Oregon, which has implemented a SAVR system. A study from USC by Eric McGhee and Mindy Romero found that Asian Americans were 6% more likely than other Oregonians to use back-end AVR for registration. By contrast, Asian Americans were actually slightly less likely than other Californians to use partial AVR for registration. This difference suggests that if California adopted back-end AVR, Asian Americans would be more likely to use it, and would be registered in greater numbers than under the current system…”

“Recognizing the number of immigrants and non-citizens who call California home, SB 846 takes significant steps to prevent inadvertent registration by non-citizens, protecting the integrity of our elections and giving non-citizens added peace of mind. With more streamlined and efficient ways to register and update existing registrations, California’s voter rolls will be more accurate and inclusive than ever, a key benefit that election administrators and grassroots democracy organizations alike will support.”

ARGUMENTS IN OPPOSITION: According to a coalition letter from the registered opposition, “Although we very much share the goals of increasing California’s voter registration rate and protecting ineligible individuals from accidental registration, we believe that the approach proposed by SB 846 has significant potential to increase voter confusion, incorrectly deny eligible voters registration opportunities, create erroneous registrations, and strip important voter preference information from registration records…

“The signatories to this letter receive detailed voter registration processing data from the DMV and regularly consult with the Secretary of State and the DMV on the effective implementation of the New Motor Voter Program. Despite the information and insights that this access has provided us, we have not seen any evidence that the current system results in the accidental registration of a significant number of ineligible people…

"Although SB 846 would replace this self-attestation system with one in which the DMV determines customers' level of access to voter registration opportunities, it provides no guidance for how the DMV would make such an important determination. The bill language does not specify whether voter eligibility would be decided by individual DMV field office technicians – which would likely create significant risk of erroneous, arbitrary, or unfair decisions – or by some software that the DMV would need to develop…

"In addition to potentially increasing the risk of both erroneous registrations and the accompanying legal consequences of such registrations for ineligible people, SB 846 could also deteriorate the quality of California's voter registration records and make it harder for some voters to participate in future elections. SB 846's back-end model would remove all voter registration questions and information from certain DMV transactions and automatically register to vote any customer the DMV has deemed eligible unless the customer completes and returns an opt-out postcard mailed to them after their DMV transaction. We know that many people do not receive or do not notice these sorts of postcards…

"A significant majority of states that have adopted AVR policies use a front-end opt-out model, and studies have indicated that the rare states that have chosen to adopt the back-end opt-out model do "not produce higher registration rates than states that chose a front-end opt-out model." Instead of placing false hopes in a back-end Motor Voter registration system, California should focus its resources on more effective, evidence-based approaches to increasing voter registration and closing turnout disparities."

-- END --