SB 846 (Limón) - Voter registration: California New Motor Voter Program

Version: February 17, 2023

Urgency: No
Hearing Date: May 8, 2023

Policy Vote: E. & C.A. 6 - 1, TRANS. 12 - 3

Mandate: Yes
Consultant: Robert Ingenito

Bill Summary: SB 846 would create a back-end automated voter registration system for registering voters via the California New Motor Voter Program (CNMVP) at the California Department of Motor Vehicles (DMV), as specified.

Fiscal Impact:

- The Secretary of State (SOS) indicates that it would incur first-year costs of $3.9 million, and $2.7 million annually thereafter, to implement the provisions of the bill (General Fund).

- DMV's administrative costs have yet to be determined, but would likely be, at a minimum, in the millions of dollars annually (special fund).

- By imposing additional requirements on local elections officials, this bill creates a state-mandated local program. To the extent the Commission on State Mandates determines that the provisions of this bill create a new program or impose a higher level of service on local agencies, local agencies could claim reimbursement of those costs. The magnitude is unknown, but potentially significant (General Fund).

- The bill would result in unknown, potentially significant costs to other impacted state agencies, including the University of California, California State University, and the community colleges.

Background: In 1993, the federal government enacted the National Voter Registration Act (NVRA), commonly referred to as Motor Voter, to make it easier for Americans to register to vote and maintain their registration. Among other provisions in the NVRA, DMV provides customers the opportunity to register to vote when completing an application for a driver's license or an identification card, when renewing a driver's license, an identification card, or when a change of address transaction takes place. However, 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.

In 2015, the Legislature enacted AB 1461 (Gonzalez), which provides that every person who submits an application for a driver's license, state identification card, or provides the DMV with a change of address, and who attests that they meet all voter eligibility

requirements, is automatically registered to vote, unless that person opts out, as specified. Specifically, DMV, in consultation with SOS, is required to establish a schedule and method for it to electronically provide to SOS the records of each person who submits an application for a driver's license, state identification card, or provides the DMV with a change of address. The transmission of an individual's record from the DMV to SOS constitutes a completed affidavit of voter registration unless the person affirmatively declines to register or preregister to vote at DMV, the person does not attest to meeting all voter eligibility requirements while at DMV, or SOS determines that the person is not eligible to register to vote. DMV is also prohibited from electronically providing the records of a person who is issued a driver's license pursuant to specified provisions of law because that person is unable to establish satisfactory proof that their presence in the United States is authorized under federal law.

Since the launch of the CNMVP in 2018, the DMV has faced a number of challenges related to DMV transactions and voter registration. In May 2018, a software error potentially affected approximately 77,000 voter records generated at the DMV. This error reportedly resulted in two registration forms for a single voter. In response, county elections officials contacted potentially affected voters and the software error was fixed.

In September 2018, the DMV reported 23,000 registration errors that stemmed from DMV technicians working with multiple screens and registration information being improperly merged. According to DMV, 4,600 individuals did not complete a voter registration affidavit, but had their information sent to SOS. In response, the DMV sent the 23,000 customers a letter notifying them of the problem and the SOS cancelled the 4,600 registrations that it received.

In October 2018, the DMV sent SOS a letter indicating that 1,500 customers may have been registered to vote in error when DMV technicians processed customer requests at field offices to change voter eligibility responses on driver license applications. DMV indicated that none of the processing errors were the fault of the customer and none were undocumented immigrants.

In response to these issues, in September 2018, Governor Brown directed the Department of Finance (DOF) to conduct a performance audit of the DMV's information technology and customer service functions. In January 2019, Governor Newsom ordered an accelerated review of the independent audit of DMV initiated by Governor Brown. This was a performance audit of the DMV's Information Technology and Customer Service Functions and publically released on March 1, 2019.

As part of the assessment, the report found and identified 83,684 records shown as duplicates in the SOS data set because they were sent initially to SOS with a blank "Political Party" field value and later the same records were resent with the corrected value of "No Party Preference" in the same field. However, this action did not have an impact on voter eligibility.

As a result, (DOF) released a five-part assessment of the Motor Voter application on August 9, 2019. The first four assessments were performed against an established set of evaluation criteria to highlight risks and develop recommendations for DMV and SOS (when applicable) in order to improve and ultimately enhance the effectiveness of the

CNMVP. The fifth assessment, the Validation Report, was limited to providing the results of data comparisons and did not include an evaluation of the results.

While there were many recommendations for improvement, the fourth assessment examined the quality assurance of the CNMVP. The objective of this assessment was to review the Motor Voter data transfer processes against established evaluation criteria to highlight risks that, if not addressed, would adversely affect the realization of the intended benefits of the CNMVP and develop recommendations for improvement of the ongoing program's effectiveness. From this assessment, stakeholders received nine recommendations for review and consideration for implementation. These recommendations sought to improve or enhance the overall effectiveness of the CNMVP or the Motor Voter application and many of the recommendations were implemented.

Proposed Law: This bill would, among other things, do the following:

- Keep the current CNMVP for individuals who are not currently registered to vote in California, whose information is not subject to transmission to SOS, and who either submit an application for a driver's license, identification card, or notifies the DMV of a change of address. Provide that if at the time of the transaction with the DMV, the person provides a document that demonstrates the person is not a United States citizen, the person shall not be offered the opportunity to attest that the person meets all voter eligibility requirements and the DMV shall not electronically provide records of that person to the SOS.

- Require the DMV, in consultation with SOS, to establish a schedule and method for the DMV to electronically provide records to SOS, as specified.

- Provide the provisions related to the transfer of records between the DMV and the SOS shall not be construed to amend the substantive qualifications for voter registration in California or to require documentary proof of citizenship for voter registration.

- Provide the provisions related to the transfer of records between the DMV and the SOS shall not be construed to provide a retroactive basis to register individuals to vote or to update voter registration information based on information in the possession of the DMV before the person's transaction.

- Require SOS and DMV to jointly develop a process by which DMV, upon obtaining a person's full name, date of birth, driver's license or state identification number, residence address, and mailing address if different from residence address, may use the information from the statewide voter registration database to determine whether the person is already registered to vote in California. Provide that the SOS may satisfy this requirement by providing a copy of the statewide voter registration database to the DMV on a daily basis.

- Change the maximum imprisonment penalty from one year to 364 days for the willful, unauthorized disclosure of information obtained from the DMV to any person, or the use of any false representation to obtain any of that information or

the use of any of that information for a purpose other than prescribed in existing law, as specified.

- Require county elections officials to send to the person's address of record, by nonforwardable mail, a notice that the person has been registered or preregistered to vote, as applicable, when a person whose information was transmitted by the DMV becomes registered or preregistered to vote, as specified.

- Require SOS and DMV to develop procedures to ensure that a driver's license, identification card, or other identifying information submitted by an applicant pursuant to this chapter is sufficiently evaluated to determine whether the applicant is eligible to register or to preregister to vote and to protect against future erroneous registrations or preregistrations.

- Provide that if it becomes known to the SOS or DMV that either the SOS or DMV, or both, committed an error resulting in the registration or preregistration of an ineligible person, as specified, and unless there is clear and convincing evidence that the person has a specified provision of existing law, the SOS or DMV shall do both of the following: (1) immediately contact the person to inform the person of the erroneous registration or preregistration, and (2) provide the person a letter asserting that the SOS or DMV, or both, was responsible for the erroneous registration or preregistration. Require a copy of this letter be maintained permanently in the person's file with the DMV and be accessible to the person upon request.

- Require voter registration agencies to annually provide to the SOS information describing each designated office under the agency's supervision, the type of services the office provides, and a designated voter registration contact for that office. Requires, at the earliest practicable time, the SOS or their designee to assess which voter registration agencies, in the regular course of business and substantially, collect sufficient information from applicants to confirm eligibility for registration or to update information for an existing registration, or both, as specified.

- Require SOS to assess and, if necessary, establish a schedule by which the voter registration agency shall begin prospectively providing to the SOS electronic records regarding individuals eligible to register to vote or individuals with updated voter registration information, or both if applicable, as specified.

- Provide, notwithstanding any other law, the SOS may develop procedures for processing electronic records received from an agency without an image of the applicant's signature, as specified. Provides these provisions are not to be construed to provide a retroactive basis to register individuals to vote or to update voter registration information based on information previously in the possession of the SOS, the DMV, or another voter registration agency.

- Require this bill become operative on January 1, 2026, or five days after the date the SOS certifies that the information technology infrastructure to substantially implement the provisions of this bill is functional. Provides that the SOS may,

commencing January 1, 2024, perform administrative actions necessary to implement the bill's provisions.

Related Legislation:

- AB 796 (Berman, Chapter 314, Statutes of 2021), among other provisions, made various changes to the timing and transfer of voter information data from the DMV to SOS.

- SB 583 (Newman, 2021), substantially similar to this bill, would have created a back-end automated voter registration system for registering voters at the DMV, as specified. The bill was not considered by the Assembly Committee on Elections.

- AB 1137 (Mullin, 2021) would have required SOS to provide a report to the Legislature regarding the process and infrastructure of existing voter registration agencies, as specified. The bill was amended to address a different policy area.

- SB 57 (Bates, 2020) would have changed the CNMVP from an opt-out to an opt-in program. SB 57 failed passage in the Senate Committee on Elections and Constitutional Amendments.

- 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. SB 511 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 846. However, the bill was amended to the front-end opt-out system that was subsequently chaptered.

Staff Comments: This bill would create a back-end automated voter registration system for most individuals who interact with the DMV. This is similar to a system created in Oregon. In Oregon, if the Department of Transportation has information indicating that an individual is eligible to register to vote and the government has information to verify individuals' eligibility to vote, then the individual is automatically registered to vote. Individuals will have the option to opt-out of being registered, typically through a notice in the mail.

SOS indicates that changes included in this bill would require modifications to its VoteCal System and corresponding changes to County Election Management Systems (EMS). The impact to SOS for these changes would result in increased cost for contractor services to perform, among things, the following:

- VoteCal would need to be able to send current voter registration information to DMV so they could determine if an individual is registered or not in real time and direct their information into the appropriate workflow.

- VoteCal system changes would be needed to handle the two different data sets, integration services between VoteCal and the county EMS would also need to be updated, and system changes would also be required to account for the generation of new notices that are required to be mailed to voters.

- Additional VoteCal system changes would be needed to comply with adding additional automatic voter registration from other Voter Registration Agencies, and the processing of that data.

SOS also anticipates (1) the need for additional staff, (2) increased costs for translation, (3) increased mailing costs, and (4) costs to promulgate regulations. The bill would likely also result in additional workload and reporting costs to other entities, including counties and their social services offices, as well by the University of California, California State University, and the Community Colleges.

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