

Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON ELECTIONS  
Marc Berman, Chair  
SB 583 (Newman) – As Amended June 14, 2021

**SENATE VOTE:** 31-9

**SUBJECT:** Elections: Voter registration: California New Motor Voter Program.

**SUMMARY:** Creates a new back-end automated voter registration (AVR) system for registering voters at the California Department of Motor Vehicles (DMV), as specified. Specifically, **this bill:**

- 1) Modifies the California New Motor Voter (NMV) program and requires the DMV to electronically provide to the Secretary of State (SOS) the records of each person who is *not* currently registered to vote in California, whose information is not subject to transmission to the SOS pursuant to the provisions of this bill, and who submits an application for a driver's license or state identification card, or provides the DMV with a change of address, instead of requiring the DMV to provide the SOS with the records of *each* person who submits an application for a driver's license or state identification card, or provides the DMV with a change of address, as specified. Prohibits a person from being offered the opportunity to attest that the person meets all voter eligibility requirements if at the time of the transaction with the DMV, the person provides a document that demonstrates the person is not a United States (US) citizen, and prohibits the DMV from electronically providing records of that person to the SOS.
- 2) Requires the DMV, in consultation with the SOS, to establish a schedule and method for the DMV to electronically provide records to the SOS, as specified below:
  - a) Requires that this method of electronic transfer of records apply to an individual who meets all of the following conditions:
    - i) The person is *not* currently registered to vote in California;
    - ii) The person submits an application for a driver's license or identification card or notifies the DMV of a change of address pursuant to existing law; and,
    - iii) In the course of the person's transaction with the DMV, the person provides documentation demonstrating US citizenship and that the person is of an eligible age to register or preregister to vote.
  - b) Requires the DMV, for each person who meets the conditions described above, to provide to the SOS, in a manner and method to be determined by the DMV in consultation with the SOS, the following information about the person:
    - i) Name.

- ii) Date of birth.
  - iii) Either or both of the following, as contained in the DMV's records:
    - (1) Residence address.
    - (2) Mailing address.
  - iv) Digitized signature, in accordance with existing law.
  - v) Telephone number, if available.
  - vi) Email address, if available.
  - vii) Language preference, including the language in which the person conducted the transaction with the DMV.
  - viii) Other information specified in regulations implementing the provisions of this bill.
- c) Requires that this method of electronic transfer of records apply to an individual who meets all of the following conditions:
- i) The person *is* currently registered to vote in California;
  - ii) The person submits an application for a driver's license or identification card, or notifies the DMV of a change of address pursuant to existing law; and,
  - iii) The person provides information indicating a different name or address from that contained in the person's voter registration record.
- d) Requires the DMV, for a person who meets the conditions of c) above, to provide to the SOS, in a manner and method to be determined by the DMV in consultation with the SOS, a notice of a person's changed name or address.
- e) Prohibits the DMV from electronically providing records pursuant to these provisions if those records contain a home address designated as confidential pursuant to existing law.
- f) Provides that these provisions shall not be construed to amend the substantive qualifications for voter registration in California or to require documentary proof of citizenship for voter registration.
- g) Provides that these provisions 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.
- h) Requires the SOS and DMV to jointly develop a process by which the 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 information from the statewide voter registration database to determine whether the person is already registered to vote in the state and, if so, whether the person is registered at the address and under the name the person provided to the DMV. Permits the SOS to satisfy this requirement by providing a copy of the statewide voter registration database to the DMV on a daily basis.

- 3) Requires the county elections official, when a person whose information was transmitted by the DMV pursuant to the provisions of this bill becomes registered or preregistered to vote, to send to the person's address, by nonforwardable mail, a notice that the person has been registered or preregistered to vote, as applicable. Requires the notice to include a postage paid preaddressed return form by which the person may decline to be registered or preregistered, designate a party preference, select a language preference, or opt to be a permanent vote by mail (PVBM) voter. Permits the notice to be combined with a specified notice required under federal law. Requires the notice to do all of the following:
  - a) Offer the person the opportunity to provide a party preference, state that doing so may be required in order to vote in that party's presidential primary election, and state that the person may also provide a party preference via the state's online voter registration system.
  - b) Offer the person the opportunity to choose to become a PVBM voter.
  - c) Offer the person the opportunity to select a language preference.
  - d) Include an explanation of the eligibility requirements to register or preregister to vote, and a statement that, if the person is not eligible, the person should decline to register or preregister using the preaddressed return form.
  - e) State the penalties for providing false information.
  - f) Include a statement that, if the person declines to register or preregister to vote, the fact that the person has declined will remain confidential and will be used only for election administration purposes.
  - g) Include a statement that, if the person does not decline to be registered or preregistered to vote, the office at which the person was registered or preregistered will remain confidential and will be used only for election administration purposes.
  - h) Provide information regarding how a person can obtain assistance and additional information about the notice.
- 4) Requires the county elections official, if the notice described above is returned as undeliverable, to send the person a residency confirmation notice pursuant to existing law.
- 5) Provides that all of the following apply in the event that a person returns the return form:
  - a) Requires the person's party preference, if the person indicates a party preference, to be changed and marked as effective as of the date the form is received.

- b) Requires the person to be added to the list of PVBM voters if the person chooses to become a PVBM voter.
  - c) Requires the language preference, if the person selects a language preference, to be retained as part of the person's registration information.
  - d) Requires the person's registration or preregistration, if the person declines to be registered to vote, to be canceled, and provides that the person shall be deemed to have never registered or preregistered to vote. Prohibits information related to the person's declining to be registered or preregistered to vote to from being used for any purpose other than the administration of elections.
  - e) Provides that if the person is registered or preregistered to vote and thereafter returns the form indicating that the person declines to be registered or preregistered to vote, but before returning the form the person votes in an election, the person's declining to register or preregister to vote on the return form shall have no force and effect.
  - f) Provides that if a person returns a form but does not select or indicate any new information on the form, the form is of no force and effect.
- 6) Requires, if the SOS receives from the DMV an updated name or address information for a person who is currently registered to vote, all of the following to occur:
- a) Requires the SOS to use the new information to update the voter's registration information and to have the voter's registration status updated to active.
  - b) Requires the county elections official to send to the person's address, by forwardable mail, notice of the change and a postage paid preaddressed return form by which the person may verify or correct the information. Requires the notice to provide information regarding how a person can obtain assistance and additional information about the notice.
  - c) Requires the county elections officials, if the person returns the form indicating that the update to the registration information was in error, to immediately correct the information in the statewide voter registration database.
  - d) Requires the SOS to prescribe the form of the notices sent by the elections official in accordance with the provisions of this bill when an individual registers or preregisters to vote or updates their information.
  - e) Requires the SOS to ensure, for each county that is required to provide language assistance to citizens of language minorities pursuant to state and federal law, that each notice of change be translated into all qualifying minority languages for the county, be made publicly available, and provided to the county for its use.
  - f) Requires the SOS to ensure, for each county that is required to provide language assistance to citizens of language minorities pursuant to state and federal law, that each notice of change provided to a person by the county contain, at a minimum, the following information translated into all qualifying minority languages for the county:

- i) Information regarding how a person can obtain assistance in the person's minority language and additional information about the notice.
  - ii) With respect to the notice that is sent when an individual becomes registered or preregistered to vote, a statement that the person has been registered or preregistered to vote, as applicable, and an explanation of the eligibility requirements to register or preregister to vote, and a statement that, if the person is not eligible, the person should decline to register or preregister to vote.
  - iii) With respect to the notice that is sent when an individual's name or address is updated, a statement that the person's voter registration information or status has changed.
- g) Requires the SOS to promulgate regulations to ensure compliance by counties with these provisions.
- 7) Requires the 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 bill 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. Requires the SOS or the DMV, if it becomes known to the SOS or the DMV that either the SOS or the DMV, or both, committed an error resulting in the registration or preregistration of an ineligible person pursuant to the provisions of this bill, and unless there is clear and convincing evidence that the person has violated existing law, to do both of the following:
- a) Immediately contact the person to inform the person of the erroneous registration or preregistration.
  - b) Provide the person a letter asserting that the SOS or DMV, or both, was responsible for the erroneous registration or preregistration. Requires a copy of this letter to be maintained permanently in the person's file with the DMV and be accessible to the person upon request.
- 8) Requires a voter registration agency, as defined under current law, 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 the SOS or the SOS's designee, at the earliest practicable time, to assess which voter registration agencies, in the regular course of business and substantially in accordance with the procedures set forth in this bill that apply to the DMV, to collect sufficient information from applicants to confirm eligibility for registration or to update information for an existing registration, or both.
- 9) Requires the SOS, when the SOS or the SOS's designee determines that during the regular course of business a voter registration agency collects the necessary information either to confirm eligibility for voter registration or to update information for an existing registration, or both, to establish a schedule by which the 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.

- a) Requires the SOS and county elections official, when the voter registration agency provides, and the SOS and the county elections official process, the electronic record, to do so substantially in accordance with the procedures and requirements set forth in this bill that apply to the DMV, subject to any modifications necessary to comply with federal law.
- b) Permits the SOS, notwithstanding any other law, to develop procedures for processing electronic records received from an agency without an image of the applicant's signature.
- c) Provides that these provisions shall not 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.

10) Requires this bill to become operative on the earlier of the following:

- a) January 1, 2025; or,
- b) Five days after the date the SOS certifies that the information technology infrastructure to substantially implement this bill is functional.

Permits the SOS, notwithstanding the operative dates above, to perform administrative actions necessary to implement this act commencing January 1, 2022.

**EXISTING LAW:**

- 1) Requires, pursuant to the National Voter Registration Act (NVRA), 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.
- 2) Requires the 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.
- 3) Requires a driver's license or identification application to be used as an application for voter registration, unless the applicant fails to sign the application.
- 4) Requires change of address information received by the DMV to be used for the purpose of updating voter registration records, unless the registrant chooses otherwise.
- 5) Provides that a person entitled to register to vote shall be a US citizen, a resident of California, not in prison for the conviction of a felony, and at least 18 years of age at the time of the next election.
- 6) Requires the SOS and the DMV to establish and implement the California NMV program for the purpose of increasing opportunities for voter registration for qualified voters.

- 7) Requires the DMV, in consultation with the SOS, to establish a schedule and method for the DMV to electronically provide to the SOS the records of each person who submits an application for a driver's license or state identification card, or provides the DMV with a change of address, as specified. Prohibits the DMV 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 US is authorized under federal law.
- 8) Provides that the information transmitted to the SOS constitutes a completed affidavit of registration, and requires the SOS to register the person to vote or preregister the person to vote, unless the person affirmatively declines to be registered or preregistered to vote, the person's records do not reflect they attested to meeting all voter eligibility or preregistration eligibility requirements, the SOS determines the person is ineligible to vote, or other specified conditions exist.
- 9) Prohibits the DMV from electronically providing records that contain a home address designated as confidential pursuant existing law.
- 10) Requires the SOS to adopt regulations, including regulations addressing both of the following:
  - a) A process for canceling the registration or preregistration of a person who is ineligible to vote, but became registered or preregistered under the California NVM program in the absence of any violation by that person.
  - b) An education and outreach campaign informing voters about the California NVM program that the SOS will conduct, as specified.
- 11) Provides that 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 what is currently permitted by existing law, is a misdemeanor, as specified.
- 12) Requires the SOS to establish procedures to protect the confidentiality of the information acquired from the DMV, as specified, and requires the SOS to account for any disclosures, including those due to security breaches, in accordance with existing law.
- 13) Requires a voter's party preference, if a person who is registered to vote does not provide a party preference, to be designated as "Unknown" and requires the voter to be treated as a "No Party Preference" (NPP) voter.
- 14) Permits a person registered to vote to cancel their voter registration at any time by any current method.
- 15) Requires a person's registration, if a person who is ineligible to vote becomes registered to vote through the California NMV program in the absence of willful voter registration fraud, to be presumed to have been effected with official authorization and to have not been the fault of that person.

16) Provides that if a person who is ineligible to vote becomes registered to vote and votes or attempts to vote in an election held after the effective date of the person's registration, that person shall be presumed to have acted with official authorization and shall not be guilty of fraudulently voting or attempting to vote unless that person willfully votes or attempts to vote knowing that the person is not entitled to vote.

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- DMV indicates that it would incur one-time and ongoing costs in the millions of dollars annually to modify its current workflow and establish new connectivity with SOS (special fund).
- SOS would incur first-year costs of \$694,000, and \$439,000 annually thereafter, to implement its provisions of the bill (General Fund).
- By imposing new duties on county elections officials with respect to voter registration, 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 (General Fund). The magnitude of these costs is unknown.

**COMMENTS:**

1) **Purpose of the Bill:** According to the author:

SB 583, the Secure Voter Verification and Enrollment Act, will simultaneously streamline and secure California's voter registration system. Under this bill, the DMV and other qualifying agencies will rely on previously established data collection procedures to more effectively and efficiently verify voter registration eligibility. Under the provisions of SB 583, an unregistered eligible adult who is verified as a citizen during an agency transaction will automatically be added to voter registration rolls, while existing registrants will automatically have their address or name updated based on information provided during an agency transaction. By relying on information that is already being presented, verified, and recorded in the normal course of an agency transaction, California can create more accurate and complete voter rolls; reduce human errors; and maximize safeguards for non-citizens interacting with these agencies.

The legislation builds on California's New Motor Voter system and recent compliance upgrades resulting from the mandatory transition to the federal government's REAL ID system to streamline new registrations and registration updates at state agencies. By utilizing existing procedures, the state will be able to seamlessly and accurately register millions of additional voters and update millions of additional registrations. This change will improve the state's ability to audit transactions and data transfers, while also saving election personnel, agency officials, and voters' time and money.

The upgrades in processes provided for by SB 583 will automatically screen people into and out of registration, without the need for questions regarding



citizenship, thereby decreasing the likelihood of non-citizens inadvertently being added to the rolls or otherwise erroneously asserting citizenship. Already being used by Colorado, Oregon, and Alaska, and approved in several other states, back-end AVR systems have been proven as the most efficient, effective, and secure system for registering new voters and updating existing registrations at the DMV and other state agencies.

- 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, 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.
- 3) **NVRA and California New Motor Voter Program:** As mentioned above, 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 required 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 California NMV program, which provides 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 a 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. The California NMV program became operative in April 2018.

- 4) **New Motor Voter Implementation Complications:** Since the launch of the NMV program 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. According to news reports, this error 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 the DMV, 4,600 individuals did not complete a voter registration affidavit, but had their information sent to the SOS. The DMV also indicated that none of the applicants were undocumented immigrants. 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 the 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. The DMV indicated that none of the processing errors were the fault of the customer and none were undocumented immigrants.

Prior to the November 2018 election, the DMV did not timely transmit 589 voter records to the SOS prior to the close of registration. Of the 589 records, 329 were registering to vote and 260 were trying to change their address. According to the SOS, the number of affected individuals resulting from this error would not have changed any of the results certified by the SOS.

- 5) **Lawsuits and Extended Settlement Agreements:** Despite early positive results from the NVM program, there continued to be challenges with modernizing the voter registration process at the DMV and with bringing California in compliance with the NVRA. Consequently, a lawsuit was filed, *League of Women Voters v. Annis*, which was settled in 2018. The settlement agreement initially remained in effect for an eight-month period, which began on April 30, 2018, and included the following terms:

- Ensure the driver's license renewal-by-mail (RBM) serves as an application for voter registration, and does not require individuals to provide information for voter registration purposes that duplicates the information already provided on the renewal form or that is otherwise in the DMV's possession;
- Develop, procure, and launch any technology and hardware needed to scan and transmit to the SOS all the information required by NMV program;

- Ensure the voter registration information is transmitted, pursuant to the NVRA, to the SOS not later than 10 days after the date it is received by DMV; and,
- Require the SOS to provide monthly NVRA reports posted on its website, as specified.

According to court documents, however, violations to the initial settlement agreement led to delays in registrations for thousands of voters. Specifically, court documents state the DMV failed to transmit complete voter registration applications received with RBM forms to the SOS within the time period required by the settlement agreement, and the DMV did not accept and timely transmit complete voter registration information received as part of an RBM application unless the application also included the correct payment of the fees for the driver's license or identification card. Consequently, the settlement agreement was updated in February 2019 and extended to 2020 and new terms were added, including the following:

- Investigate the scope and cause of delays in transmitting voter registration information from the DMV to the SOS, as specified.
- Require the SOS to send a letter to all persons whose voter registration records were affected by delays of the transmittal of voter registration information, as specified.
- Require the DMV and SOS to provide plaintiffs with monthly data showing the processing times for voter registration applications transmitted to the SOS from the DMV and a monthly written report describing any delayed voter registration transmissions, along with the DMV's and SOS's plan to address those delays;
- Require the DMV and the SOS to provide training to their employees on the NVRA's requirements for timely transmission of voter registration applications;
- Require the DMV and SOS to appoint management-level NVRA Coordinators to monitor their respective compliance with the NVRA; and,
- Require the SOS to update the NVRA Manual, as specified.

Earlier this year, the settlement agreement was extended again and will expire in early 2022.

- 6) **Department of Finance (DOF) & Independent Assessment of New Motor Voter Program:** In September of 2018, at the request of Governor Brown, the DOF initiated a performance audit of the DMV Information Technology and Customer Service Functions. That audit did not include an assessment of any activities related to the NMV program. To complement the performance audit, DOF contracted for an independent technical assessment of the NMV program. This assessment was performed by Ernst and Young, LLP and included fieldwork at both the DMV and the SOS offices and technical assessments, including a review of file transfers that resulted from administrative processing errors, as specified.

Many of the recommendations from the Ernst and Young report mirror those identified in the DOF's audit report and the DMV has already addressed or was in the process of addressing

the recommendations. Some of these processes included maintaining a Quality Assurance process to ensure the timely release of records to SOS, ensuring legal and compliance resources were assigned to the program, and establishing data governance policies including data retention and data sharing. Moreover, the assessment found that when there were differences in data transfer, those differences were expected and did not jeopardize voter registration through the California NMV program.

Additionally, the DMV and the SOS formed a workgroup to address ongoing voter registration record collection, processing and delivery activities. The workgroup proactively collaborated to improve the voter registration program and met weekly to discuss production-related questions, issues, customer records, and any other stakeholder concerns.

- 7) **California's Voter Registration Statistics:** According to the SOS's February 2021 registration report, of California's estimated 25.17 million eligible voters, more than 22.15 million are registered voters, which means that over 88% of eligible voters are registered to vote. This is the highest percentage of eligible citizens registered to vote in California since at least 1940.
- 8) **DMV New Motor Voter Registration Statistics:** According to DMV NMV voter registration transaction data from the SOS's office, since NMV launched in April of 2018, there have been over 25.9 million NMV transactions. Out of that, over 13.2 million were new or updated voter registrations and over 7.7 million opted out of registering to vote because they were already registered.
- 9) **Automatic Voter Registration:** AVR streamlines the process for registering to vote. According to the Brennan Center, AVR makes two simple, yet transformative, changes to voter registration. First, AVR makes voter registration "opt-out" instead of "opt-in"—eligible citizens who interact with government agencies are registered to vote or have their existing registration information updated, unless they affirmatively decline. Second, those agencies transfer voter registration information electronically to election officials instead of using paper registration forms. These reforms increase registration rates, clean up the voter rolls, and save states money. Opt-out and electronic transfer are the two necessary components of AVR, but states policies vary in the details.

According to the summary briefs from the California Civic Engagement Project with the University of Southern California, approximately 18 states (including Washington D.C.) have implemented AVR, and another three have adopted AVR into law with implementation pending. There are two main kinds of AVR systems: front-end and back-end. In a front-end AVR system, a voter registration option is provided at the government agency (such as DMV) and allows the customer to opt out at that point as a part of the transaction. For example, in applying for or renewing a driver's license, registrants are informed of voting eligibility requirements and given the opportunity to decline register—often by checking a box on a paper or electronic form—indicating their desire not to be registered to vote. Unless they decline, their information is electronically transferred to election officials and added to the voter rolls.

In a back-end AVR system voter registration is no longer initiated at the government agency. Instead, the state establishes whether a resident is eligible to vote based on information provided when a person signs up for the government program, after which the state contacts

that person after the fact to offer the chance to opt out. In this instance, an individual's information is automatically transferred to election officials who use the information already on hand to confirm potential registrant's eligibility and a mailer or a postcard is sent to the individual informing them that they will be automatically registered to vote unless they return the mailer indicating they wish to decline to register, or opt out.

A majority of states that have adopted an AVR system (including California) have a front-end system. A handful of states (Alaska, Oregon, Nevada, and Colorado) have implemented a back-end AVR system.

This bill significantly modifies the NMV program and requires the creation of a new back-end AVR. An individual's current voter registration status (registered or not registered) would partly determine whether the individual moves through the NMV program (front-end AVR) or the new back-end AVR system. For example, if an individual is not registered to vote and provides documentation that neither demonstrates they are a citizen nor demonstrates that they are not a citizen, they would move through the NMV program. However, if an individual is not registered to vote and is able to provide documentation demonstrating their eligibility, they would move through the new back-end AVR system, as specified. Moreover, under the provisions of the bill, if an individual is registered to vote and they are updating their information (such as their address or name), they would automatically move through the back-end AVR system, as specified.

This would result in a significant change in how AVR works in California. The NMV program has only been operative for a little over three years. What is the justification for significantly modifying the NMV program and creating a brand new back-end AVR system, instead of continuing to refine and improve the current AVR system in California?

- 10) **Voter Registration Information:** Under the California NMV program, an individual is asked whether they would like to register to vote during the course of their transaction at the DMV. If an individual chooses to register to voter they are required to attest to their eligibility under penalty of perjury and subsequently answer voter registration questions, such a choosing a party affiliation, choosing to become a PVBM voter, and requesting translated voting materials. This bill significantly changes this process, and instead requires a certain subset of potential voters to be filtered through a new back-end AVR system in which they are not presented with voter registration questions nor are they asked whether or not they want to register to vote during the transaction. Instead, an individual is mailed a notice after the transaction to collect this voter registration information. In light of California's large and diverse eligible voter population, would it be prudent and timely to have this important and valuable voter registration information collected on the back-end when an individual may not be aware of this extra added step?

In order to better understand how many voters in states with a back-end AVR system are proactively responding to voter registration notices, committee staff has requested response rate data for such notices. While the sponsors of this bill have provided data on the percentage of declinations in Colorado and the percentage of party affiliations in Nevada for 2021, the limited data available makes it difficult to evaluate whether voters are responding to the mailers and returning important voter registration information. Without additional data, it is challenging to evaluate the effectiveness of this method to collect voter registration

information.

Furthermore, it is unclear how relevant other states' experiences with back-end AVR will be in understanding how such a system would work in California. For instance, in Colorado, just six counties are required to provide language assistance in languages other than English pursuant to federal law, and none are required to provide assistance to more than one language minority group. By contrast, Los Angeles County is required by state and federal law to provide language assistance in 17 languages other than English. This bill requires any voter registration notice that is mailed to a voter in Los Angeles County who is registered through back-end AVR to be printed in all 17 of those languages, in addition to English. The experience with back-end AVR in Colorado and other states is unlikely to provide much meaningful information about how a voter would respond to receiving a voter registration notice that is printed in 18 different languages.

- 11) **Determination of Citizenship and Eligibility:** This bill requires the DMV to determine citizenship and voter eligibility for a certain subset of individuals that will be filtered through the back-end AVR system, as specified. According to the DMV, while they make note of the authenticity of credentials presented to them, they do not determine citizenship nor do they have a system to do so. Additionally, the DMV does not have the infrastructure in place to determine an individual's voter eligibility.

Moreover, this bill does not specify how and when the DMV will make these determinations. Will the DMV make these determinations in real time? Furthermore, this bill does not contain quality assurance checks, audit requirements, or training requirements.

- 12) **Documentation:** Except for individuals who receive driver's licenses pursuant to AB 60, as described below, every applicant in California for a state identification card or driver's license is required to provide proof of legal presence in the United States. In order for a person to prove legal presence, an applicant is required to provide the original or a certified copy of one of over 20 different documents to the DMV. Of those documents, some (such as a United States passport) are documents that are available only to citizens, while others (such as a permanent resident card) would be issued only to individuals who were not citizens at the time the document is issued. Other acceptable documents (such as a United States military identification card) could be issued to citizens or non-citizens. According to the DMV, DMV records contain information about the document that individuals used to establish legal presence in the country.

Once a person has provided documentation of their legal presence in the US, that person typically is not required to provide proof of legal presence again during subsequent transactions with the DMV. As a result, it is plausible for a person's citizenship status to change and for the DMV to have no record. For example, if a person used a permanent resident card to prove their legal presence when obtaining a driver's license, then subsequently became a citizen of the US, it is unlikely that the DMV would have any information to indicate that the person had become a citizen. When that person renews their driver's license, the DMV already has documented proof of that person's legal presence from the initial transaction. As a result, the DMV typically would not request the person to provide proof of legal presence again, so it is unlikely that the DMV would ever receive information about the change in the person's citizenship status.

13) **AB 60 Licensees:** AB 60 (Alejo), Chapter 524, Statutes of 2013, requires the DMV to issue an original driver's license to an applicant who is unable to submit satisfactory proof of legal presence in the US. Driver's license applicants under AB 60 must meet all other qualifications for licensure and must provide satisfactory proof of identity and California residency. The DMV began accepting applications for licenses under AB 60 on January 2, 2015.

Because the AB 60 licensing process was specifically established for individuals who are unable to submit satisfactory proof of legal presence in the US, the California NMV program expressly prohibits the DMV from transmitting information to the SOS about individuals who applied for or received a driver's license pursuant to AB 60.

14) **Arguments in Support:** In support Coalition for Humane Immigrant Rights (CHIRLA) writes:

Adopting a back-end, opt-out AVR system would stop leaks in the information pipeline. During the DMV transaction under California's current system, customers are asked if they would like to register to vote or update registration information. Roughly half of customers say no, including millions of eligible voters, for a multitude of reasons:

- They incorrectly believe they are registered or that their registration is up to date;
- They are in a rush to leave the DMV to deal with family or work responsibilities;
- They are confused (in the case of individuals with low English proficiency) or unsure of their rights (in the case of formerly incarcerated individuals); or
- They trust themselves to register or make the update later and then never do.

By contrast, in a back-end, opt-out system, an unregistered adult who provides proof of U.S. citizenship (such as a passport) during a DMV transaction will automatically have their information passed to the Secretary of State, including any language preference expressed during the DMV transaction. The person will not need to affirmatively request registration or answer a citizenship question—their citizenship documents provide the necessary attestation of citizenship. The Secretary of State will then register the person, who will have the chance to decline registration, choose party affiliation, or choose to vote by mail (in non-Voters' Choice Act counties) either through a prepaid postcard or online.

Upgrading California's current system can also better prevent human error, which can have catastrophic consequences for ineligible individuals. Our current system relies on user input, requiring customers of state agencies like the DMV to affirmatively state whether they are a U.S. citizen during a potentially stressful transaction—often after filling out a complex form and spending hours in line. This poses legal dangers to non-citizens who have limited English proficiency, don't understand the question, or are simply inattentive can falsely declare

citizenship out of confusion or fear. Making a false claim of citizenship (and subsequent unlawful voting) can result in deportation, denial of a naturalization application, or criminal prosecution.

In contrast, back-end AVR significantly improves protections for non-citizens by relying on verified documents to establish citizenship or non-citizenship, automatically filtering people in and out of registration appropriately. The back-end AVR system filters out DMV customers who provide documents establishing foreign citizenship (like a green card) or applicants for an AB 60 license (used by undocumented immigrants). These DMV customers are not offered the chance to attest to citizenship or register to vote, and do not have any information passed to election officials.

By relying on verified documents already being presented in the course of the DMV transaction, back-end AVR makes human error much less likely. In addition, in the event of a computer error in a back-end system, the non-citizen has not made a false claim of citizenship, significantly reducing the threat of immigration and criminal law consequences.

15) **Arguments in Opposition:** In opposition, the Brennan Center for Justice at New York University writes, in part:

**SB 583 unnecessarily complicates a system that is working.**

SB 583 would keep this front-end AVR system in place. However, it would exclude some DMV applicants from this system. First, applicants that provide documentary proof of citizenship at the DMV, would be routed instead into a “back-end” system of AVR. These applicants will not be presented with voter registration eligibility criteria nor advised that they will be registered to vote while at the DMV. Instead, county officials will provide them notice after the fact—on the “backend” of the transaction—by mail. They will be registered to vote unless they opt out by returning a postage prepaid form to the county. The back-end notice will also request party preference and language preference. Second, SB 583 will exclude DMV applicants that provide documentary proof that they are not citizens from registration altogether. Finally, SB 583 will exclude from the existing front-end system DMV applicants that the DMV determines, from the information provided to it, are already registered.

By creating these additional filters, and routing applicants into varying workflows at the DMV, SB 583 is ostensibly aimed at increasing registrations and protecting non-citizens from inadvertent registrations. However, the Brennan Center is concerned that it will not accomplish either of these goals and may in fact undermine them. Moreover, it will unnecessarily complicate the existing process at excessive cost and at the risk of creating errors that could deny eligible applicants the opportunity to register to vote.

**SB 583 imposes costs and creates risk without clear benefit.**

First, there is no evidence that this back-end system will be more effective. Back-end AVR systems, like front-end systems, have proven effective at increasing registrations in the few jurisdictions that have implemented them. But the



Brennan Center is not aware of any evidence that such systems are more effective at achieving this goal, or that they reach populations that are not reached by front-end systems...

Second, it is not clear how many, if any, ineligible applicants will be excluded from AVR by this citizenship documentary filter that are not already excluded under the New Motor Voter Program. Applicants that do not repeatedly affirm their citizenship at the DMV are already excluded from voter registration under the New Motor Voter Program. Moreover, many DMV transactions do not require applicants to provide documentation demonstrating U.S. citizenship or its absence. The Brennan Center is not aware of any ineligible citizen that has answered the citizenship question incorrectly or failed to opt out of registration under the New Motor Voter Program...

### **Conclusion**

California has made significant progress since its New Motor Voter Program debuted and both the Secretary of State and the Department of Motor Vehicles continue their efforts to help it achieve its full potential. That success is the result of literally years of incremental improvements brought about through advocacy and litigation—and is still being monitored for compliance as part of a settlement agreement. The Brennan Center fully supports the oversight and transparency mechanisms that will make the New Motor Voter Program even more safe and effective that are encompassed in AB 796. Regrettably, the changes proposed by SB 583 create costs and risks without providing any clear benefit. The Brennan Center recommends improving on the New Motor Voter Program to reach eligible, but unregistered populations by expanding AVR into agencies that are more likely to serve those populations.

16) **Related Legislation:** AB 1137 (Mullin), which is pending in the Senate Rules Committee, requires the SOS to report to the Legislature on designated voter registration agencies that have, pursuant to existing law, an established system that allows a person who applies online for services to electronically submit a voter preference form and an affidavit of voter registration, as specified. AB 1137 passed out of this committee on a 6-1 vote.

AB 796 (Berman), which is pending in the Senate Elections & Constitutional Amendments Committee, codifies voter registration information transmittal requirements in the federal NVRA, as specified. AB 796 additionally codifies into state law various provisions from a legal settlement regarding the transmission of voter registration information, and requires the SOS to establish a taskforce to evaluate the California NMV program, as specified. AB 796 passed out of this committee on a 5-1 vote.

17) **Double Referral:** This bill has been double-referred to the Assembly Transportation Committee.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

AAPIs for Civic Empowerment - Education Fund

AFSCME, AFL-CIO  
Advancement Project California  
AHRI for Justice  
Alianza Coachella Valley  
Alliance San Diego  
Asian Americans Advancing Justice – California (if amended) (prior version)  
Bay Rising  
California Calls  
California Labor Federation  
California Native Vote Project  
Center for Secure and Modern Elections  
Coalition for Humane Immigrant Rights  
Inland Empire Immigrant Youth Collective  
Inland Empire United  
LA Voice  
NextGen California  
Orange County Asian and Pacific Islander Community Alliance  
Orange County Civic Engagement Table  
Orange County Congregation Community Organization  
Orange County Environmental Justice  
Orange County Voter Information Project  
PICO California  
Rainbow Pride Youth Alliance  
Reach Out  
Resilience Orange County  
SBX Youth & Family Services  
SEIU California  
South Bay Youth Changemakers  
VietRISE

**Opposition**

ACLU California Action  
Brennan Center for Justice at New York University  
League of Women Voters of California  
NALEO Educational Fund

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