OFFICE OF POLICY AND LEGAL ANALYSIS

<u>LD 1126</u>	An Act To Update the Voter Registration Process (Rep. Pierce)			
From:	Janet Stocco, Legislative Analyst			
То:	Veterans and Legal Affairs Committee			
Date:	April 9, 2021 **Corrected bill analysis, see highlighting in Attachment I on p. 5-6			

SUMMARY

This bill requires the Secretary of State to implement a process for accepting online voter registration applications through the Secretary of State's publicly accessible website beginning January 1, 2023.

Contents of online application: Under §A-10 of the bill (pages 3-4), an individual submitting an online voter registration application must disclose and attest to the truth of the following information:

- 1. Legal name—including at least the individual's first and last name;
- 2. Date of birth;
- 3. Current residence address and mailing address;
- 4. Most recent address at which the individual was registered to vote and name under which the individual was registered, if different from the individual's current name;
- 5. Either of the following:
 - a. The individual's current, valid Maine driver's license or nondriver ID card number—the individual must be informed that disclosure of this number constitutes consent to use of the individual's signature on the driver's license or nondriver ID card; or
 - b. If the individual does not have a driver's license or nondriver ID card, the last 4 digits of the applicant's social security number—if this option is selected, the applicant must also submit an electronic image of the applicant's signature.
- 6. Answers to the following questions, required by §303(b)(4) of the federal <u>Help America Vote</u> <u>Act (HAVA)</u> of 2002, P.L. No. 107-252:
 - a. "Are you a citizen of the United States of America?"
 - b. "Will you be 18 years of age on or before election day?"
- 7. Whether the applicant wishes to enroll in a party, and if so which party, or to be unenrolled.

Deadline for registering: Online voter registration applications must be received by midnight on the 21st day before election day (bill §A-3). After that time, the person must register to vote in person.

Written acknowledgment form: Under §A-2 of the bill, the Secretary of State's office must submit received online voter registration applications to the appropriate registrar's office daily. At least 18 days before the election, the registrar must mail the acknowledgement notice required by §122(2) to the applicant by non-forwardable mail; if this notice is returned as undeliverable within 15 days after it is sent, the application must be rejected. If the notice is not returned as undeliverable, the applicant must be designated as active in the central voter registration system.

Other required functionalities of online voter registration application: The Secretary of State must permit registered voters to perform the following activities via the online voter registration application:

- 1. <u>Change the voter's name or address</u> except that under current law, <u>§129(3)</u>, on election day the voter may only notify the registrar of the changed name or address in person (bill §A-4);
- 2. <u>Enroll in a party if the voter is currently unenrolled</u>—except that as provided in current law, <u>§142</u>, on election day an unenrolled voter may only enroll in a party in person (bill §A-6);
- 3. <u>Change the voter's party enrollment</u>—under current law, <u>§144(3) & (4)</u>, unless the voter also concurrently changes the voter's residence to a new municipality, the voter may not vote in the new party's caucus or primary for 15 days after submitting the application (bill §A-7 & §A-8);
- 4. <u>Withdraw the voter's party enrollment</u>—but, under current law, <u>§145(2)</u>, the voter may not enroll in a different party for 15 days after withdrawing from a party (bill §A-9).

Required rulemaking. Section A-12 directs the Secretary of State to adopt routine technical rules that:

- 1. Require an online voter registration applicant to (a) disclose a current Maine driver's license number or nondriver ID card and consent to use of the applicant's signature on that card for voting purposes or (b) disclose the last 4 digits of the applicant's social security number and submit an electronic image of the applicant's signature.
- 2. Establish a process for (a) verifying that the online applicant's driver's license or nondriver ID card number and the applicant's name and date of birth match the information in the BMV database and, if a match is found, (b) transmitting an electronic image of the applicant's signature on the driver's license or nondriver ID card to the central voter registration system.
- 3. Establish a process for matching the last 4 digits of the online applicant's social security number and the applicant's name and date of birth with U.S. Social Security Administration information.
- 4. Establish a process for transmitting applications and electronic signatures to registrars of voters.
- 5. Establish procedures to ensure the accuracy and security of online voter applicants.
- 6. Establish processes for voters to change their names or addresses and change their party enrollment status through the online voter registration application.

Third-party submissions: The Secretary of State may adopt rules establishing a process for 3rd-party organizations to submit online voter registration applications (bill § A-12). Under Part B of the bill, the Secretary of State must submit a report by June 30, 2022 to the VLA Committee on the feasibility of and progress made toward implementing a system for 3rd-party organizations to submit these applications.

ADDITIONAL INFORMATION:

A. Voter registration requirements under current law and the bill. The bill does not repeal the laws governing the processes for in-person voter registration and registration by mail. *Attachment I to this bill analysis* compares those methods to the online voter registration system proposed in LD 1126. In addition, the Secretary of State's instructions for registering to vote using the voter-registration card are available at the following link: <u>https://www.maine.gov/sos/cec/elec/upcoming/voterregguidelines.doc</u>.

B. Other States.

According to research conducted by NCSL, 38 States and the District of Columbia offer online voter registration for new voter registration applications. In addition, residents of 2 counties in Missouri may

register to vote online and, in Oklahoma, although new voter registration applications may not be submitted online, registered voters may update their registrations online. *See Attachment II*.

AMENDMENTS PROPOSED / ISSUES RAISED AT PUBLIC HEARING

Bill sponsor - Proposed Amendment (posted online <u>here</u>). At the public hearing, the bill sponsor proposed amending the bill in the following ways:

- 1. To correct, throughout the bill, duplicative language referring to the "online voter registration application *available on the Secretary of State's publicly accessible website*" by removing the italicized phrase because, as "online voter registration application" is defined in Section A-1 of the bill, the online application must be available on the Secretary of State's publicly accessible website.
- 2. To clarify in §A-12 (p. 5, line 9) that registered voters may update their names or addresses by using the online voter registration application, not merely through the Secretary of State's website.
- 3. Remove the requirement that the Secretary of State adopt rules requiring online voter registration applicants to disclose either (a) a driver's license or nondriver's ID number or (b) the last 4 digits of their social security number to register to vote online. Instead, make this a statutory requirement.
- 4. Strike Part B, which requires the Secretary of State to conduct a study and report on the feasibility of allowing 3rd-party organizations to collect and to submit online voter registration applications.
- 5. Change the effective date of the bill from January 1, 2023 to November 1, 2023.

Signatures - Maine Municipal Association and Maine Town & City Clerks' Association. These entities request that, both in the bill and as it is implemented, municipal clerks be ensured ready access to the voter's signature, which the clerk will use to verify petition signatures and compare signatures on absentee ballot applications and return envelopes. The Association also observed that the bill does not require registrars to print out or maintain paper files for online voter registration applications, which files could serve as a backup to CVR (electronic) records.

Privacy, security and accessibility concerns. A Maine resident submitted testimony expressing concerns regarding: (1) the security of online voter registration records and potential safety risks if address information is released regarding survivors of domestic violence, sexual assault, stalking and trafficking; (2) potential breaches of online voter registration data, which could be sold to companies for marketing purposes; and (3) whether the online voter registration system will be truly accessible to Mainers with disabilities and Mainers who live in rural parts of the state without reliable internet access.

REQUESTS FOR INFORMATION

To Secretary of State

• How would a voter's signature be transmitted from his or her driver's license or nondriver identification card to the municipality for voter registration purposes?

<u>Answer:</u> Data captured in the online voter registration would be transmitted directly into the central voter registration system, which would be linked on the back end within the Department of the Secretary of State to the driver's license system. The signature and all other voter information would be stored in the central voter registration system and accessible to municipal clerks in the same way that they currently access all voter registration data specific to their municipality through the central voter registration system.

• Do you anticipate adopting specific requirements for ensuring that the electronic image of the voterregistration applicant's signature (in cases where the applicant does not have a driver's license or nondriver identification card) is a sufficiently high-quality image to be used by municipal clerks?

<u>Answer:</u> Yes, we think this is best developed in rule making based on the technology procurement for the system. We recommend that the committee align any statutory requirements for the signature with the requirements in the automatic voter registration bill passed in the 129th Legislature. The language in the AVR law specifies: "Signature of applicant collected in a way that ensures the quality and integrity of the signature."

Analyst Note: The language quoted by the Secretary of State is retained in LD 1126 (p.3, ln. 27-28).

• How would a municipal clerk verify an electronic signature or verify the contents of an online voter registration application?

<u>Answer:</u> When entering a new paper record into CVR, where the Maine DL or ID number is provided, clerks may search the Bureau of Motor Vehicles data for verification that the voter name and address in the BMV match the voter registration information. However, our intent is that the data will come from Department of Secretary of State with the verification already done within the central voter registration system, communicating with the BMV's driver license system, so that the clerk knows that has been verified.

• Are you aware of best practices and procedures for online voter registration generally, and electronic voter registration signature collection specifically, that have been employed in other states?

<u>Answer:</u> Yes, the Secretary of State has been in contact with Secretaries of State from around the country including Colorado, New Jersey, Michigan and Vermont. Enclosed is a link to Brennan Center recommendations around signature collection. We will work with other Secretaries to leverage their knowledge in development of our system. NCSL compiles this data. <u>https://www.brennancenter.org/sites/default/files/analysis/Electronic Registration Signature Capture.pdf</u>

To Will Sedlack, Maine Conservation Voters

• How should Maine ensure that an electronic image of a voter's signature is high quality? Should it specify dots-per-inch or the size of the image? Should cell phone camera images be sufficient?

TECHNICAL ISSUES

1. Sec. A-9 of the bill (top of p.3) amends <u>21-A M.R.S. §145</u> to allow a voter to withdraw from a party using the online voter registration system. Under current law, if a voter withdraws from a party, the voter may not enroll in a new party for 15 days. If this limitation is meant to apply to voters who withdraw from a party using the online voter registration application, then the following conforming amendment should be made to §145(2): "A voter may not enroll in a different party but may enroll in the same party within 15 days after filing a written-request for withdrawal from a party."

FISCAL IMPACT

Not yet determined.

	Current law - in person	Current law - by mail	LD 1126 - online
Registration Deadline	Election day (<u>§121-A</u>)	Close of business 21 days before election $(\$121-A)$	Midnight 21 days before election ($\S121-A$)
Application	Legal name	Same as in-person	Same as in-person
contents	Residence address	Same as in-person	Same as in-person
<u>§152</u>	Mailing address	Same as in-person	Same as in-person
	Date of birth	Same as in-person	Same as in-person
	Most recent registration address and name	Same as in-person	Same as in-person
	Applicant's signature; beginning 1/22/22, must be collected in a way that ensures the quality and integrity of the signature	Same as in-person	Same as in-person
	Choice of party or unenrolled status	Same as in-person	Same as in-person
	One of the following:	Same as in-person	One of the following:
	• Driver's license or nondriver ID number;		• Driver's license or nondriver ID number; or
	• If neither, last 4 digits of SSN; or		• If neither, last 4 digits of
	• If none of above, may write "none"		SSN. No option to write "none."
	HAVA questions:	Same as in-person	Same as in-person
	• "Are you a citizen of the United States of America?"		
	• "Will you be 18 years of age on or before election day?"		
	Applicant must attest to the truth of the information provided in the application	Same as in-person	Same as in-person
Proof of identity - required by	Options to prove identity (§112-A): ➤ government-issued photo ID	Per <u>HAVA</u> , a voter who registers by mail for the first time in a State must submit:	Options to prove identity (bill §A-10 and A-12):
<u>§121(1st ¶)</u>	 government-issued non-photo ID (ex: birth certificate, SSN card) 	 a current, valid photo ID a current utility bill, bank statement, government check, paycheck, or 	Driver's license or non- driver ID number or last 4

Attachment I: Voter registration requirements under current law and LD 1126

	Current law - in person	Current law - by mail	LD 1126 - online
	 official document showing name and address of voter - for example, a government document or check, utility bill, bank statement, paycheck Driver's license or non-driver ID number or last 4 digits of SSN verified through CVR system 	 government document that shows the name and address of the voter; or > the person's driver's license or non-driver ID number or last 4 digits of SSN verified through CVR system If proof of identity is not included, the person must either present one of the first 2 items listed above the first time the person votes or cast a challenged ballot. See DOJ FAQ - Question #11. 	digits of SSN verified through CVR system.
Proof of residency - required by <u>§121(1st)</u>	 <u>Registrar may consider (§112)</u>: > location of dwelling voter currently occupies, receipt of public benefit based on residency, vehicle registration location; > residence address where mail received or listed on current: income tax return, hunting or fishing license, driver's license or nondriver ID card; > Voter's sworn statement of intention to reside at particular place, §121(1); or > Any other objective facts tending to indicate a person's place of residency. 	 A voter who submits a first-time mail-in voter registration is instructed to provide: a copy of a Maine Driver's License or other valid photo ID, a current utility bill, a bank statement, a paycheck stub or other government document that shows the voter's current name and address. (Emphasis added.) If not included, proof of residency must still be established under §112 & §121. If the notice of acknowledgment sent by the registrar under §122(2) to applicant's address by non-forwardable mail is not returned as undeliverable within 15 days, this constitutes an "objective fact[] tending to indicate" the person's place of residence. If the notice is returned as undeliverable, the person must show proof of identity and residency when voting the first time or cast a challenged ballot. 	Under current law (not amended in the bill), proof of residency must be established under $\$112$ & \$121. If the notice of acknowledgment sent by the registrar under $\$122(2)$ to applicant's address by non-forwardable mail is not returned as undeliverable within 15 days, this constitutes an "objective fact[] tending to indicate" the person's place of residence. If the notice is returned as undeliverable, the person must show proof of identity and residency when voting the first time or cast a challenged ballot.

Attachment I: Voter registration requirements under current law and LD 1126

Attachment II: NCSL Information on Online Voter Registration

Online Voter Registration

10/22/2020

Our organization does not run elections and cannot provide legal advice. If you are a voter looking for assistance, please contact your local election official. You can find your local election official's website and contact information by using this database from the <u>US Vote Foundation</u>.

Overview

As of October 2020, a total of 40 states and D.C. offer online registration, and one other state (Oklahoma) has passed legislation and is currently phasing in implementation of their online registration. See the <u>table</u> below for details.

Online voter registration systems supplement the traditional paper-based process, by which new voters fill out a paper form that is submitted to election officials, who confirm the registration is valid and enter the information from the paper application into the registration system.

Online voter registration follows essentially the same process, but instead of filling out a paper application, the voter fills out a form via an Internet site, and that paperless form is submitted electronically to election officials. In most states the application is reviewed electronically; if the request is confirmed to be valid, the new registration is added to the state's voter registration list.

That validation step is done by comparing the information on the online registration form against the information provided by the same individual when he or she received a driver's license or other stateissued identification card. The signature already on record with the state becomes the signature on record for voting. When the information does not match, the application is sent to officials for further review or action.

In most states, online voter registration systems work for people who have state-issued driver's licenses or identification cards, although a few states provide online access for other potential voters as well. In all states, paper registration forms are available for anyone, including those who cannot register online.

Arizona was the innovator in paperless voter registration, having implemented its system in 2002.

Washington followed with authorizing legislation in 2007 and implementation in 2008. Since then, more and more states have gone live with online voter registration. While most states have enacted specific legislation to authorize online voter registration, some have made online voter registration available without enabling legislation. See the <u>table</u> below for details.

View the Nov. 12, 2013, webinar <u>Online Voter Registration: The Bipartisan Trend in Elections</u> for details about online voter registration, including history, implementation and security. The Pew Charitable Trusts has two reports of note: <u>Online Voter Registration: Trends in Development</u> <u>and Implementation</u>, released in May 2015, and <u>Understanding Online Voter Registration</u>, released in June 2013.

Costs (and Savings) With Online Voter Registration

According to the 2010 report, <u>Online Voter Registration: Case Studies in Arizona and Washington</u>, Arizona experienced a reduction in per-registration costs from 83 cents per paper registration to 3 cents per online registration. Other states have also experienced significant cost savings in processing registrations.

Attachment II: NCSL Information on Online Voter Registration

Implementation costs have in some cases been absorbed within existing budgets, been paid for with Help America Vote Act funds or have required one-time appropriations, ranging from \$250,000 to \$1.8 million for more elaborate systems in larger states. See The Pew Charitable Trusts report <u>Understanding Online Voter Registration</u> for more detailed cost information.

For more background on online voter registration, see the April 2014 issue of NCSL's elections newsletter, <u>The Canvass</u>, or contact <u>NCSL's elections team</u>.

Security

Several approaches can and are used to ensure system security and prevent fraud or breaches by hackers.

- The registrant provides his or her driver's license number or the last four digits of a Social Security number, information that others will not have.
- Systems often include "captcha" boxes, where registrants must decode images that a computer cannot decode, to prevent hacking by programmers.
- Data is encrypted and data logs highlight unusual activity that can be investigated.
- Multi-screen systems, that offer just one question on a screen, are harder to hack.

Read this <u>interview</u> with cybersecurity expert, J. Alex Halderman, as he talks about security for online registration.

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States with Online Voter Registration				
State	Enacted	Bill Number	Implemented	Website
Alabama	n/a	No legislation required	2016	Alabama Votes
Alaska	n/a	No legislation required	2015	Alaska Online Voter Registration
Arizona	n/a	No legislation required	2002	EZ Voter Registration
California	2011	SB 397	2012	<u>California Online Voter</u> <u>Registration</u>
Colorado	2009	HB 1160	2010	Go Vote Colorado
Connecticut	2012	HB 5024	2014	Connecticut Online Voter Registration
Delaware	n/a	No legislation required	2014	I Vote Delaware
D.C.	n/a	No legislation required	2015	D.C. Voter Registration Form
Florida	2015	SB 228	2017	Register to Vote Florida
Georgia	2012	SB 92	2014	Georgia Online Voter Registration
Hawaii	2012	HB 1755	2015	Hawaii Online Voter Registration
Idaho	2016	SB 1297	2017	Idaho Votes
Illinois	2013	HB 2418	2014	Illinois Online Voter Registration
Indiana	2009	HB 1346	2010	Indiana Online Voter Registration
Iowa	n/a	No legislation required	2016	Iowa Online Voter Registration
Kansas	n/a	No legislation required	2009	Kansas Online Voter Registration

		States with Onli	ne Voter Registrat	tion
State	Enacted	Bill Number	Implemented	Website
Kentucky	n/a	No legislation required	2016	Kentucky Online Voter Registration
Louisiana	2009	HB 520	2010	Geaux Vote
Maryland	2011	HB 740	2012	Maryland Online Voter Registration
Massachusetts	2014	HB 3788	2015	Massachusetts Online Voter Registration
Michigan	2018	SB 425	2019	Michigan Online Voter Registration
Minnesota (a)	2014	HF 2096	2013	MN Votes
Missouri <u>(b)</u>	n/a	No legislation required	2014	Vote Missouri
Nebraska	2014	LB 661	2015	<u>Nebraska Online Voter</u> <u>Registration</u>
Nevada	2011	AB 82	2012	Nevada Online Voter Registration
New Jersey	2020	SB 589	2020	<u>New Jersey Online Voter</u> <u>Registration</u>
New Mexico	2015	SB 643	2016	<u>New Mexico Online Voter</u> <u>Registration</u>
New York (c)	2019	AB 2005 (2019)	2011 (no legislation at the time)	New York Electronic Voter Registration
North Carolina	n/a	No legislation required	2020	North Carolina Voter Registration Application
Ohio	2016	SB 63	2017	Ohio Online Voter Registration
Oklahoma <u>(d)</u>	2015	SB 313	2018 (Phase I)	Oklahoma Voter Registration Information Online
Oregon	2009	HB 2386	2010	<u>OreStar</u>
Pennsylvania	2002	SB 607	2015	PA Online Voter Registration
Rhode Island	2016	SB 2513	2017	RI Online Voter Registration
South Carolina	2012	HB 4945	2012	S.C. Online Voter Registration
Tennessee	2016	SB1626/HB1472	2017	<u>GoVoteTN</u>
Utah	2009	SB 25	2010	Utah Online Voter Registration
Vermont	n/a	No legislation required	2015	<u>Vermont Online Voter</u> <u>Registration</u>
Virginia	2013	HB 2341	2013	Virginia Voter Registration
Washington	2007	HB 1528	2008	<u>MyVote</u>

Attachment II: NCSL Information on Online Voter Registration

States with Online Voter Registration				
State	Enacted	Bill Number	Implemented	Website
West Virginia	2013	SB 477	2015	West Virginia Online Voter Registration
Wisconsin	2016	SB 295	2017	MyVote Wisconsin

(a) Minnesota in 2013 made online voter registration available without enabling legislation but the legislature in 2014 authorized the state's system.

(b) In Missouri, residents of Columbia or Boone County can register to vote online and electronically provide a signature using a mobile device, tablet computer or touchscreen computer, but not a standard desktop computer. The state reviews the information and prints out the registration form, which it sends to the person's local elections office for verification.

(c) New York first established an online voter registration system in 2011, but the registration system at the time was not fully paperless. Voters could submit a voter registration application online, through a system run by the Department of Motor Vehicles, but paper was exchanged between the motor vehicle system and the statewide database. In 2019 AB 2005 was enacted, requiring an electronic voter registration transmittal system and creating a fully online voter registration system.

(d) In Oklahoma, the first phase of implementation allows previously registered voters to update their address of residence (if it is in the same county as their previous address), mailing address or party affiliation online. Voters who are not registered must complete and submit a paper registration form.

Additional Resources

- Article from NCSL's elections newsletter, The Canvass: <u>Online Voter Registration Grows in</u> 2014
- NCSL's Blog, Then and Now: Growth of Online Voter Registration
- NCSL's Nov. 12, 2013 webinar, Online Voter Registration: The Bipartisan Trend in Elections.
- NCSL's State Legislatures magazine article <u>"No Lines Online"</u> addresses the cost savings and security concerns of implementing online voter registration.
- <u>Data Visualization of State Online Voter Registration Systems</u>, from the Pew Charitables Trusts, contains a variety of details on state voter registration systems currently in place, including how they were developed, features that they contain and how registrations are processed.
- <u>NCSL's video Q&A with The Pew Charitable Trusts' David Becker</u> on improving voter registration and maintaining voter lists
- <u>Online Voter Registration: Trends in Development and Implementation</u>, from The Pew Charitable Trusts, released in May 2015.
- <u>Understanding Online Voter Registration</u>, from The Pew Charitable Trusts, which reported in June 2013 on the 13 states that had online registration at that time.
- The U.S. Election Assistance Commission (EAC)'s <u>Checklist for Securing Voter Registration</u> <u>Data</u>.
- <u>The Presidential Commission on Election Administration's report</u> from January 2014 included the recommendation that states adopt online voter registration (see page 23 of the report).
- NCSL's <u>interview with Tammy Patrick</u> from Maricopa County on Arizona's experience with online voter registration.
- The Wisconsin Government Accountability Board's report <u>Cost-Benefit Analysis of</u> <u>Implementing an Online Voter Registration System in Wisconsin</u>
- Contact <u>NCSL's elections staff</u> at 303-364-7700 for more background materials