



Legislative Committees Interim Session
September 23-24, 2019

Automatic Voter Registration Report

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Introduction

This report provides a statutory summary, full and complete list of the infrastructure needed, an update on the progress in preparation for the implementation of Automatic Voter Registration (AVR) and practical considerations of AVR by the West Virginia Secretary of State.

Governing Law

Section eleven, article two, chapter three of the West Virginia Code provides the duties, requirements and procedures for voter registration services offered in conjunction with driver licensing in West Virginia. Agencies tasked with implementation of this section are the West Virginia Secretary of State's Office and the Division of Motor Vehicles.

Pursuant to subsection (n) of the aforementioned Code section:

[T]he Secretary of State shall . . . appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary, during the first interim meetings of such committees occurring after September 1, 2019, to present written reports containing a full and complete list of any infrastructure each agency requires to achieve the purposes of this section.

Section four-a, article two, chapter three of the West Virginia Code provides:

The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state . . . [which] shall serve as the single system for storing and managing the official list of registered voters throughout the state.

With regard to local election officials' duties, subsection (d) of section four, article 2, chapter three of the West Virginia Code provides:

The clerk of the county commission shall be responsible for the administration of voter registration within the county and shall establish procedures and practices which ensure the full implementation of the requirements of federal and state laws and rules relating to voter registration, and which ensure nondiscriminatory practices.

Implementation Efforts

Passage of SB 491 (eff. March 6, 2019) set the implementation date of AVR for July 1, 2021. To ensure full compliance with the National Voter Registration Act (*i.e.* Motor Voter Act), the Secretary of State's Office (WVSOS) consulted with the Legislature, Association of Counties' "AVR Committee," the Statewide Voter Registration System (SVRS) vendor, Division of Motor Vehicles (DMV) and the third-party vendor developing the DMV's new systems. Progress made towards implementation is detailed below.

I. Legislative Assistance

Following conversations with various Legislators and the State Budget Office at the suggestion of Senate Judiciary Committee members, WVSOS requested increased spending authority to dedicate \$1.5 million of existing revenues generated by the Secretary of State Business & Licensing Division to pay for a SVRS upgrade. The current SVRS is version 2.0 and is nearly a decade old; the most recent SVRS available is version 9.0.

On April 2, 2019, the Budget Office communicated that it would move forward with the request. On May 7, 2019, WVSOS requested that the Governor place a supplemental appropriation on the upcoming Special Session Call for consideration. Finally, with the passage of SB 1015 on June 18, 2019, the Legislature approved a supplemental appropriation to cover the cost of the needed SVRS upgrade from version 2.0 to 9.0.

II. County Clerks Association AVR Committee

Immediately following the passage of SB 1015 in June 2019, the West Virginia Association of Counties leadership team led by its President, Linda Huggins (Preston County Clerk), and the Association's Executive Director, Jonathan Adler, formed the "AVR Committee" to serve as a working group to assist WVSOS and DMV with timely and effective implementation of AVR.

The purpose of the AVR Committee is to provide a unified voice for the counties to communicate and assist with decisions that will affect the county registrars. Until now, there has not been a standing committee to act as a formal line of communication between the county clerks and WVSOS or DMV for AVR implementation purposes.

One of the most important roles the AVR committee will play is helping WVSOS design the SVRS system in a way that provides counties the tools to efficiently manage the exponential increase in voter registration volume. For larger counties with ample staff and resources, the volume increase may be manageable. Smaller counties with just one or two people that run the entire office (voter registration, election systems and equipment management, issuance and recordation of deeds, marriages, births and deaths in the county, etc.), this technology is a necessity to ensure all persons are properly and timely registered to vote.

Following the creation of the AVR Committee, WVSOS hosted a demonstration at the Capitol with the State's SVRS vendor to preview version 9.0. The attendees from the AVR Committee

reviewed the new SVRS, asked questions and provided guidance and input on how to make West Virginia's upgrade most beneficial for the implementation of AVR.

In addition to major increases in security, accessibility and usability, SVRS version 9.0 comes with technology that completely removes the majority of the "manual" county-level voter registration processes. Specifically, the current SVRS version requires counties to manually key (*i.e.* type) nearly every voter registration that is provided by the DMV through the Motor Voter process. Although simple, it takes time and is prone to human/clerical error. However, SVRS version 9.0 removes most of the manual-entry requirement and registrars can automatically approve a voter registration after reviewing it on their computer screen.

Since the demonstration, the counties have regularly checked-in with our Office to offer more feedback, request additional demos, explain their needs and concerns about efficiency in registration processing and generally advise on how the State can effectively implement the law. Though pleased with these new timesaving and more accurate capabilities, county clerks still express concerns with AVR (see *Practical Considerations* below).

III. Division of Motor Vehicles

On August 23, 2019, the AVR Committee and WVSOS members met with the DMV Commissioner and key staff, and a representative from the Department of Transportation at the DMV's main office in Kanawha City. Topics covered include:

- DMV's expected implementation date of its new drivers licensing system;
- Impact the new DMV system will have on the existing motor voter processes;
- Needs for assessing compatibility between the new DMV system to the upgraded SVRS;
- Options for auditing regular transactions;
- Options for auditing and preventing improper voter registrations (*e.g.* records of deceased persons, non-citizens, non-residents, minors, etc.);
- Programming changes to the data files shared by DMV with counties through SVRS; and
- Voter registration training and materials for DMV clerks and offices around the state.

As a follow-up to the August 23 meeting, on September 16, 2019 the technical staff from WVSOS, DMV and DMV's new system vendor discussed data files and formatting requirements for each new system. Following the development and programming stages, WVSOS and its SVRS vendor are poised to for the transition to the testing and implementation phases.

IV. WVSOS & DMV Voter Registration Efforts

While the intent of AVR is generally to increase voter registrations, it is important to recognize other efforts that are ongoing in West Virginia. WVSOS shares data provided by the DMV with a national organization that analyzes DMV data from 29 other states to generally assist with (1) identifying eligible but unregistered voters, and (2) voter registration data list maintenance. Since joining this national organization, WVSOS has mailed invitations to register to vote to 421,301 postcards to eligible citizens who, at the time of the mailing, had a WV license but were not registered.

Additionally, in the past two years over 130,000 voters have registered to vote. Thanks in large part to WVSOS' partnership with the county clerks, over 36,000 eligible high-school-age students registered to vote in that time period. These efforts are, and will be, ongoing regardless of AVR.

Infrastructure Required

Following numerous discussions with county clerks and the meeting at DMV in August, it is clear that WVSOS must utilize a vendor's product and services that provide the proper infrastructure to (1) reduce manual data-entry at the county level; (2) securely and accurately transmit data from WVSOS and DMV to the county level; and (3) include auditing capabilities to investigate reported issues from other voter registration agencies, all to ensure every eligible voter is properly registered to vote.

With the passage of SB 1015, the current SVRS vendor can operate within the constraints of statutory timing and funding to provide the needed infrastructure to the counties with the upgraded SVRS version 9.0. Notably, all funding will come from existing monies generated by WVSOS business and licensing activities and no additional funds will be needed from the Legislature.

Working towards implementation, WVSOS hosted several planning calls and online demonstrations between the SVRS vendor and county clerks across the state. In early September 2019, WVSOS received a proposed work schedule from the vendor, which included several features at the counties' request. At the time of this report, the vendor projects a start date for production and development of November 1, 2019.

Programming and development are expected to last roughly seven months until June 2020, with a pilot period of testing/UAT and necessary technical modifications to end several months ahead of the July 2021 AVR deadline.

Practical Considerations

WVSOS and the county clerks stand ready to implement AVR in West Virginia. However, it is important that the Legislature is aware that the vast majority of county clerks are foundationally opposed to AVR. WVSOS supports the clerks' position that this law has the unintended implication of being practically unnecessary in light of regular registration efforts currently taking place without AVR. This presents the question of whether it is Government's role to "automatically" register a person to vote rather than offer them a free and fair opportunity to register?

AVR will certainly increase the volume of new and updated registrations for counties to process. The counties do not complain that voter registration is not their duty; quite the contrary. They are concerned that with the registration efforts already taking place, will AVR have the desired effect, and at what cost?

Looking at the data, West Virginia has roughly 1.2 million currently registered voters. As noted above, postcards were mailed to over 400,000 people identified as being potentially eligible to register to vote since AVR originally passed. According to the 2018 Election Administration and Voting Survey report to Congress by the Federal Election Assistance Commission, West Virginia's citizen voting age population is 1,428,859.¹

In sum, 1.6 million West Virginians are either registered to vote or have been asked if they want to register, with just 1.4 million eligible based on their age. Statistically speaking, every single eligible person in West Virginia should either be registered to vote or has been asked, "Do you want to register to vote?"

These figures beg the ultimate question of whether voter registration is an "automatic" right that should be imposed by government, or one that should be affirmatively asserted and exercised by the individual the same as other Constitutional rights? Is it conceivable that some people have chosen not to participate, have no interest in being registered to vote or simply choose not to share their personal information with the government?

With regard to practical effects of AVR implementation timing, during the 2019 Regular Session a WVSOS representative expounded on some of the Office's concerns with then-recent events in the existing motor voter processes. There was evidence of "systematic errors" identified during the 2018 General Election that required dozens of voters to cast provisional ballots. Shortly thereafter, national news broke out of California regarding tens-of-thousands of AVR errors due to improper implementation.

Thanks to the ongoing partnership between the DMV and WVSOS, the aforementioned systematic errors have been investigated and resolved. And, with a new DMV system being developed by a third-party vendor, WVSOS is optimistic that there will be fewer growing pains during transition. However, both WVSOS and the DMV are at the behest of third-party vendors constrained by statutory time limits and funding to ensure technical success and proper implementation. Additionally, in some states AVR has not lived up to the glowing recommendation that is often portrayed by special interest organizations and affiliated news outlets.

For example, there were 77,000 registration errors stemming from a "software issue" within the first two weeks of the "rushed" California AVR rollout.² Just a few months later, an "administrative processing error" led to 23,000 DMV customers being incorrectly registered to vote (some of whom were assigned to the wrong political party), and a month later an estimated 500 transmittal errors caused hundreds of people who wanted to vote to not be registered in time for the midterm elections.

¹ Source: https://www.eac.gov/assets/1/6/2018_EAVS_Report.pdf

² John Myers, May 24, 2018. "California DMV Audit Pending with Lawmakers Suspicious of Voter Fraud." *California Globe*. Accessed on September 18, 2019 at <https://californiaglobe.com/legislature/california-dmv-audit-pending-with-lawmakers-suspicious-of-voter-fraud/>

Across the board, investigative journalism has shed substantial light on the error-plagued California AVR rollout. One National Public Radio (NPR) investigation reported that:

California rushed to roll out its new “motor voter” system before the 2018 election and a million new voters were signed up as a result The state's system was plagued with technological glitches and errors, including tens of thousands of inaccurate voter records and some non-citizens accidentally being registered.³

Other headlines include:

*"Hackers attacked California DMV voter registration system marred by bugs, glitches"*⁴

*“Deleted texts and ‘show stopper defects’: California tech official raced to launch Motor Voter”*⁵

*“California Audits DMV for 100,000 Voter Registration Errors”*⁶

*“One voter, two registration forms: Errors reported in rollout of California’s ‘motor voter’ system”*⁷

Our 55 local election officials have worked tirelessly to clean up their registration rolls of deceased, relocated and otherwise ineligible voter registrations. Every person who currently goes to the DMV but declines to register to vote is asked again before a major election by WVSOS and invited to register to vote.

Nevertheless, WVSOS stands ready with the county clerks and DMV to implement AVR by July 2021. We are grateful for the Legislature’s acknowledgment during the 2019 Regular Session that a risky AVR implementation was not in the best interests of the State, counties or voters.

³ Pam Fessler, April 11, 2019. [NPR Politics](https://www.npr.org/2019/04/11/711779753/report-voter-rolls-are-growing-due-to-automatic-voter-registration). Accessed on September 18, 2019 at

<https://www.npr.org/2019/04/11/711779753/report-voter-rolls-are-growing-due-to-automatic-voter-registration>

⁴ John Myers, April 9, 2019. [LA Times](https://www.latimes.com/politics/la-pol-ca-california-motor-voter-problems-investigation-20190409-story.html). Accessed on September 18, 2019 at <https://www.latimes.com/politics/la-pol-ca-california-motor-voter-problems-investigation-20190409-story.html>

⁵ Bryan Anderson, May 8, 2019. [The Sacramento Bee](https://www.sacbee.com/news/politics-government/capitol-alert/article229967789.html#storylink=cpy). Accessed on September 18, 2019 at <https://www.sacbee.com/news/politics-government/capitol-alert/article229967789.html#storylink=cpy>

⁶ Fred Lucas, March 12, 2019. [The Daily Signal](https://www.dailysignal.com/2019/03/12/california-audits-dmv-for-100000-voter-registration-errors/). Accessed on September 18, 2019 at

<https://www.dailysignal.com/2019/03/12/california-audits-dmv-for-100000-voter-registration-errors/>

⁷ John Myers, May 24, 2018. [LA Times](https://www.latimes.com/politics/la-pol-ca-motor-voter-registrations-errors-20180524-story.html). Accessed on September 18, 2019 at <https://www.latimes.com/politics/la-pol-ca-motor-voter-registrations-errors-20180524-story.html>

Conclusion

Working in conjunction with the county clerks and Division of Motor Vehicles, the Secretary of State's Office is making progress towards a proper and responsible implementation of AVR.

The practical considerations of AVR are worthy of further discussion, especially with a lack of support from local officials and statistically exceptional amount of eligible citizens who have either registered or been given multiple opportunities to register to vote.

Nevertheless, to accommodate the Legislature's will and counties' needs for adequate tools to assist with the exponential volume increase, the development of the needed infrastructure is already in the works with sufficient funding secured. Regardless the clerks/WVSOS position on AVR, we are on track to implement the provisions of the law by July 1, 2021.