

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1070

INTRODUCER: Ethics and Elections Committee and Senator Hutson

SUBJECT: Voter Registration List Maintenance

DATE: April 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Fav/CS
2.	Pitts	Hansen	AP	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1070 authorizes the Secretary of State to enter into information sharing agreements with other states for the purpose of maintaining the statewide voter registration system. The bill directs the Secretary to use that data to identify registered voters or applications for voter registration that would be ineligible to vote and provides that those involved with such a data sharing agreement must keep all personal information confidential, if that information or data was confidential in its state of origin.

The bill, along with its public records counterpart CS/SB 1072, will provide the statutory authorization for Florida to join the Electronic Registration Information Center (ERIC), a private, non-profit, interstate consortium designed to help states improve the accuracy of their voter rolls through data match identification of problematic registrations and to increase access to voter registration for all eligible citizens. The bill would require that the Secretary of State or his or her designee be on the board of directors of ERIC or any other similar entity it joins.

The Department of State may incur costs related to the initial membership fee and annual user fees if the department elects to participate in the program. The one-time membership fee for states is \$25,000 and the annual user fee is estimated to be between \$50,000 and \$75,000.

County supervisors of elections may incur costs related to maintenance activity associated by the receipt of information from ERIC, including outreach to voters to confirm addresses or eligibility. However, they may also incur cost savings due to more efficient processes and

reliable sources of data to maintain the voter rolls over the long term. The actual expenses and cost savings are indeterminate.

The bill will take effect on July 1, 2017.

II. Present Situation:

No complete national system currently exists to identify duplicate voter registrations across state lines. While there is no criminal or civil penalty for being registered in two states simultaneously, it is important to identify voters registered in multiple jurisdictions to ensure the accuracy of the voter rolls. Currently, the process in Florida relies upon either the voter voluntarily notifying Florida election officials that they have moved and registered to vote in a new state or, another state's voting officials notifying Florida election officials that the elector has registered there. In the event that Florida election officials receive notice from another state's election officials that one of its electors has registered in another state, the law requires that notification to be treated as a request from the voter to have his or her name removed from the Florida Voter Registration System.¹

If Florida election officials do not receive notice that the elector has moved, a voter who has moved out of state will eventually be put into an inactive status pursuant to the county supervisors of elections biennial voter list maintenance efforts and culled from the state's rolls by the *second subsequent general election*, as provided by federal law.² That means that a voter who has moved can remain on Florida's voter rolls for up to 4 years. It *does not mean*, however, that such a voter is casting ballots in two states in the same election; which would be a felony under Florida law.³

Florida Voter List Maintenance Information⁴

The Secretary of State, as the chief election officer of the State, is responsible for the operation and maintenance of the statewide voter registration system implemented as part of the Help America Vote Act of 2002.⁵ The 67 county Supervisors of Elections are primarily responsible for the registration of voters under section 98.045, F.S., and records maintenance activities including removal of voters pursuant to sections 98.065 and 98.075, F.S., Supervisors of Elections are the only election officials with authority to register and remove voters from the registration rolls.

These ongoing records maintenance activities are conducted to protect the integrity of the electoral process through current and accurate records and to ensure only eligible voters are registered in the statewide voter registration system. By law, any maintenance program or activity must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.

¹ Section 98.045(2)(b), F.S.

² Section 98.065(4)(b) and (c), F.S.

³ Section 104.18, F.S.

⁴ This section is derived almost in its entirety from the Present Situation section of the Department of State bill analysis for SB 1070 (2017), provided by the pursuant to the Legislature's Agency Bill Analysis Request (ABAR) system.

⁵ See also § 98.035, F.S.

As part of maintenance activities, the Florida Department of State's Division of Elections and county supervisor of elections offices may receive and use information from a variety of credible and reliable sources, including other Florida state and local agencies, federal government, and other states' elections officials, that may be useful in ensuring the accuracy of the registration system. Currently, information as to whether a voter has registered elsewhere is contingent upon the voter voluntarily indicating on a voter registration application that he or she was previously registered elsewhere. A voter may provide that information at the time he or she first registers or in subsequent registration record updates. There is no requirement that a registered voter must notify a state that he or she has moved out of the state and may have registered elsewhere.

If a registered voter indicates a prior state of registration, Florida will notify the other State within two weeks of registration to take appropriate action, and other States reciprocate with similar information.⁶ If the Division of Elections is notified that a Florida registered voter may have registered elsewhere the information is processed and forwarded to the county Supervisor of Elections to take appropriate action to remove the voter. Sometimes the out-of-state cancellation information is forwarded directly to the county Supervisor of Elections. As noted above, a notice from another state election official that a voter has registered there is to be processed as if it were a direct request by the voter to be removed from rolls.⁷

Voter registration information once submitted to a governmental agency is public record pursuant to chapter 119, F.S., but a few exceptions exist. The social security number, the driver license number or state identification card number, where the voter submitted his or her registration information, and whether the voter declined to register or update voter registration information are exempt from public disclosure.⁸ Additionally, while a voter's signature can be viewed or inspected, it cannot be copied.⁹ Further, the law allows voters who fall into a number of high-risk professional classes to request that certain information such as their address and phone numbers and dates of birth be exempt for themselves and their spouses and children.¹⁰ Finally, the "voter stalking exemption" that the Legislature adopted in 2010 exempts the names, addresses, and telephone numbers of actual or threatened victims who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence.¹¹

Electronic Registration Information Center (ERIC)

The Florida State Association of Supervisors of Elections has made joining ERIC one of its two *priority* legislative issues for the 2017 session.¹² This bill, along with its linked public records bill CS/SB 1072, provides the Secretary of State the necessary legal authorization to do so.

ERIC represents the best available, though admittedly only a partial, solution to identifying interstate duplicate voter registrations.

⁶ Section 97.073(2), F.S.

⁷ Section 98.045(2), F.S.

⁸ Section 97.0585, F.S.

⁹ *Id.*

¹⁰ Section 119.071(4)(d)1., F.S.

¹¹ Section 741.4651, F.S.

¹² FSASE, 2017 Legislative Issues, available at http://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2017_FSASE_Legislative_Priorities.pdf (last accessed (Mar. 20, 2017))

“The Electronic Registration Information Center (ERIC) is a *non-profit organization* (corporation) with the sole mission of assisting states to improve the accuracy of America’s voter rolls and increase access to voter registration for all eligible citizens. ERIC is governed and managed by states who choose to join, and was formed in 2012 with assistance from The Pew Charitable Trusts.”¹³ It is essentially a multistate, data-sharing partnership that uses modern technology to provide election officials with information to keep voter lists complete and current, and to increase voter registration by notifying qualified, unregistered voters.¹⁴

As of July 2016, ERIC has 20 state members plus the District of Columbia: Alabama, Alaska, Colorado, Connecticut, Delaware, Louisiana, Illinois, Maryland, Minnesota, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia, and Wisconsin.¹⁵

ERIC is controlled by a Board of Directors with each State having a vote; however, only the first 20 states to join appoint a member of the Board of Directors.¹⁶ Florida would be the 21st state to join ERIC.

By joining ERIC, each member state submits, at a minimum, its voter registration and motor vehicle licensee data (which it updates every 60 days), including voter names, addresses, dates of birth, and last four digits of social security numbers.¹⁷ However, ERIC does not require information such as race, religion, political party affiliation, or other information that can be used for purposes of discrimination. Sensitive, private data is anonymized (or “one-way hashing”) and then transmitted to ERIC for use in the data matching process.¹⁸ ERIC assures that all data received is collected, matched, and stored in an environment with state-of-the-art security.¹⁹ The ERIC website offers a technical and security brief, for those seeking more information about privacy and technical concerns:

http://www.ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.1.pdf.

¹³ <http://www.ericstates.org/>

¹⁴ The Pew Charitable Trusts, *ERIC Mailings Encourage Voter Registration in Washington State* (March 9, 2016), available at <http://www.pewtrusts.org/en/research-and-analysis/analysis/2016/03/09/eric-mailings-encourage-voter-registration-in-washington-state> (last accessed Jan. 25 2017). Recent data show that after the State of Washington sent mailings through the Electronic Registration Information Center (ERIC) to eligible but unregistered voters, new registrations came in at a rate of 12.4 percent (27,000/200,000). *Id.*

¹⁵ *Id.*; The most-recent census data indicates that the top 5 states with residents emigrating to Florida are New York, Georgia, Texas, New Jersey, and North Carolina. <http://www.governing.com/gov-data/census/2010-census-state-migration-statistics.html> (run query for “Moving to Florida”).

¹⁶ <http://www.ericstates.org/faq>; see also, ERIC Bylaws, Article III (last updated October 28, 2015), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_10-28-2015.pdf (last visited Mar. 20, 2017). Florida could obtain a Director’s seat either through a supermajority vote of three-fourths of the membership or by filling a vacancy should one arise. Florida would be first in line to fill a vacancy as the 21st state to join the consortium. *Id.*

¹⁷ <http://www.ericstates.org/>; see also, ERIC Bylaws, Membership Agreement (Exhibit A), § 2b. (last updated October 28, 2015), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_10-28-2015.pdf (last visited Mar. 20, 2017).

¹⁸ <http://www.ericstates.org/faq>; see also, ERIC, *ERIC, Technology and Security Overview*, available at http://www.ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.1.pdf (last accessed Mar. 20, 2017).

¹⁹ *Id.*

Using advanced algorithms, ERIC compares databases from its members and determines inaccuracies in states' voting lists — who has moved *interstate* and *intrastate*, who has died, and who is eligible to vote, but is not yet registered.²⁰

ERIC then makes a report available to the states so that: 1) supervisors of elections can confirm the eligibility of a voter and accuracy of the voter roll and, if necessary, either remove the voter or correct the inaccuracy on the roll, as appropriate (ERIC does not purge voters from individual states' registration rolls); and, 2) the State can send voter registration forms to age-eligible voters before the voter registration closing date for the next federal election.²¹

III. Effect of Proposed Changes:

The bill authorizes the Secretary, as he or she deems necessary, to enter into agreements or to join nongovernmental entities whose membership is composed entirely of state elections officials, to share information or data with other states in order to maintain the statewide voter registration system. The bill requires that the Secretary of State, or his or her designee, must serve as a full, voting member on the board of directors of any nongovernmental entity that Florida joins. However, such agreements or entities cannot be operated or controlled by the federal government. Additionally, Florida must be allowed to withdraw from such agreements or entities at any time. The bill directs the Secretary to use that data to identify registered voters or applications for voter registration that would be potentially ineligible to vote based on current law.

The bill also provides that all states and nongovernmental entities that receive personal information maintain the confidentiality of information or data given as part of the agreement, if that information or data was confidential in its state of origin.

The bill requires an annual report to the Governor, President of the Senate, and Speaker of the House describing the agreement and providing information on the number of registered voters removed from the Florida Voter Registration system, as well as the reason for the removal.

The Secretary of State will be authorized to join ERIC,²² in order to: 1) better identify problem voter records in the statewide registration database that the supervisors of elections can either remove, if they are determined to be invalid, or correct; and 2) identify potential voters who the State can contact to register to vote. If Florida joins ERIC, the Secretary of State, or his or her designee, must serve on ERIC's Board of Directors. As mentioned above, this same requirement concerning service on the board of directors applies to any nongovernmental entity composed

²⁰ Common Cause, *ERIC Fact Sheet*, Massachusetts Legislature HB 582 (Rep. Moran, 2015-2016, 189th General Court), available at <http://www.commoncause.org/states/massachusetts/issues/voting-and-elections/electronic-registration-information-center/ccma-eric-factsheet-final.pdf> (last accessed Mar. 20, 2017).

²¹ <http://www.ericstates.org/faq>; see also, ERIC Bylaws, Membership Agreement (Exhibit A), § 5a.,b. (last updated October 28, 2015), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_10-28-2015.pdf (last visited Mar. 20, 2017). It is important to note that when online voter registration “goes live” in October 2017, the Supervisors of Elections will not necessarily need to print and mail a Florida Voter Registration Application. The Supervisor could instead simply include the website address for the online voter registration system to potential voters.

²² While most of the discussion concerning this legislation revolves around whether Florida will join ERIC, technically the bill will allow Florida to enter into other similar agreements with other states as well.

solely of elections officials that Florida may agree to join in sharing information for voter registration list maintenance activities.

Information provided to committee staff from ERIC on an initial set of Florida reports *projects* the following numbers:²³

- Intrastate voters: 717,000 voters who have moved within Florida but haven't updated their voter records;
- Interstate voters: 233,000 interstate voters with out-of date records because the voter moved to another state;
- Deceased voters: 24,000 voters still on the rolls;
- Duplicates: 17,000 duplicate registrations in the statewide database; and,
- Potential Voter Registrants: 4.5 million eligible voters in the motor vehicles database to be contacted to register to vote.

ERIC caveats their numbers by stating that they are based on the "averages" of what other member states have experienced, but also indicates that their projections "have so far proven to be reliable predictors" of the number of records that show up on initial reports.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, s. 18(d) of the Florida Constitution provides, in pertinent part laws having insignificant fiscal impact, and laws creating, modifying, or repealing noncriminal infractions, are exempt from the mandate requirements of this section.

An exemption from the mandates provision may apply if the expected fiscal impact on municipalities/counties is less than \$2 million. Because the fiscal impact on counties is anticipated to be less than \$2 million, the bill appears to be exempt from the mandate requirements.

²³ FSASE, 2017 Legislative Issues, (Page entitled ERIC at Work), available at, http://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2017_FSASE_Legislative_Priorities.pdf (last accessed (Mar. 20, 2017))

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**Local Government/Expenditures**

County supervisors of elections may incur expenses related to maintenance activity associated by the receipt of information from ERIC, including outreach to voters to confirm addresses or eligibility. However, they may also incur cost savings due to more efficient processes and reliable sources of data to maintain the voter rolls over the long term. The actual expenses and cost savings are indeterminate.

State Government***Expenditures/non-recurring***

If the DOS elects to participate in the program, the department will incur the one-time membership fee of \$25,000. In addition, each ERIC member pays annual dues which are determined by a formula set by the Board of Directors, with larger states paying a bit more than smaller states. While the precise amount of dues is indeterminate and will vary from year-to-year, this amount is likely to be no more than about \$50,000-\$75,000/year, based on ERIC's projected budget of \$785,000 for FY 2016-17 (for the current 20 members).²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁴ <http://www.ericstates.org/faq>

VIII. Statutes Affected:

This bill substantially amends section 97.012 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Elections on April 4, 2017:

The Committee Substitute differs from the original bill in that it:

- Moves the authorization to join interstate agreements and nongovernmental entities whose membership is composed solely of elections officials for purposes of voter list maintenance activities from s. 97.012, F.S. (relating to the duties of the Secretary of State) to s. 98.075, F.S. (relating to voter registration list maintenance activities and ineligibility determinations);
- Authorizes the Department of State to participate in such agreements or entities so long as they are not operated or controlled by the federal government or any entity on behalf of the federal government;
- If the Department enters an interstate agreement or agrees to join a nongovernmental entity, the agreement must allow the Department to withdraw from the agreement or entities at any time;
- Requires an annual report to the Governor, President of the Senate, and Speaker of the House describing the agreement and providing information on the number of registered voters removed from the Florida Voter Registration system, as well as the reason for the removal;
- Requires each member, and the entity, to agree to maintain personal information such as social security numbers confidential according to the laws of the state that supplies that information; and,
- Requires the Secretary or his or her designee to be a full voting member of the board of directors of any non-governmental entity it joins for the purposes of exchange information to improve voter list maintenance activities.

- B. **Amendments:**

None.