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**DATE:** February 19, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
RULES, ETHICS & ELECTIONS (PRC)  
ANALYSIS**

**BILL #:** HB 1391  
**RELATING TO:** Jurors  
**SPONSOR(S):** Representative(s) Bean

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) RULES, ETHICS & ELECTIONS (PRC) YEAS 9 NAYS 2
- (2) PROCEDURAL & REDISTRICTING COUNCIL
- (3)
- (4)
- (5)

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I. SUMMARY:

HB 1391 provides that prospective jurors be selected from the list of registered voters in a county rather than from the list of persons holding a driver's license or an identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV).

The Committee on Rules, Ethics & Elections adopted a "strike-everything" amendment that is traveling with the bill. See Section VI., Amendments or Committee Substitute Changes.

The effective date of the bill is October 1, 2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

In 1991, ch. 91-235, Laws of Fla., was enacted to amend s. 40.01, F.S., to provide that jurors must be at least 18 years old, citizens of the United States, legal residents of Florida and their respective counties, and possess a driver's license or identification card issued by the DHSMV. In addition, persons who do not have a driver's license or identification card but who otherwise meet the qualifications of s. 40.01, F.S., may execute an affidavit expressing their desire to serve as jurors.

Section 40.011, F.S., also enacted by ch. 91-235, Laws of Fla., requires the DHSMV to maintain a database of each driver or holder of an identification card who meets the criteria for jury duty set forth in s. 40.01, F.S. Effective January 1, 1992, the DHSMV was required to begin the process of establishing the jury list database, to be operational by January 1, 1998. Since 1998 the DHSMV has been required to provide jury lists to the clerk of the circuit court in each county on an annual basis.

After receiving a jury list from the DHSMV, the clerk adds to the list, pursuant to s. 40.022, F.S., any person who has executed an affidavit in accordance with s. 40.011, F.S. The clerk, on a monthly basis, also cross-checks the list provided by the DHSMV with other sources and purges from the list those persons who have died and those who are statutorily disqualified from serving as jurors (i.e., convicted felons who have not had their civil rights restored and people who have been adjudicated mentally incompetent.)

Several issues have arisen since the implementation of the DHSMV jury source list in 1998. One problem involves a potential juror's county of residence. The DHSMV database identifies the residence of licensed drivers and identification card holders by zip code and not by county of residence. In many instances, zip codes cross county lines. As a result, some clerks of court report that more of the jurors from the DHSMV source list are not eligible for jury duty because they do not reside in the county where they have been summoned to serve.

Another purported problem with the DHSMV source list is a lower summoning yield due to a higher number of incorrect addresses. The summoning yield is the percentage of citizens available to serve as jurors after eliminating all of those who are disqualified, exempted, excused, and granted postponements. The summoning yield also reflects those jurors who did not receive a summons and those who did receive a summons but failed to report. Some clerks of court report that the DHSMV source list contains so many incorrect addresses that they now summon twice as many potential jurors as they summoned using the registered voter source list. Two counties report that this has resulted in increased postage costs of more than \$10,000 per each county.

A further question has arisen as to the quality of jurors using the DHSMV source list. Several state attorneys and judges have reported a higher incidence of convicted felons being summoned, with some of these statutorily ineligible individuals actually serving on a jury. Many state attorneys and judges also have reported more potential jurors having arrest records. There have been some reported cases, both criminal and civil, where convictions and final judgments have been reversed on appeal because jurors did not disclose personal convictions or arrest histories.<sup>1</sup>

In May of 2001 the Jury Innovations Committee, a committee appointed by the Florida Supreme Court in November of 1999, issued its final report on Florida's current jury system.<sup>2</sup> The committee carefully studied the jury source list but recommended no change in the source. Although the committee was informed of, and acknowledged, problems with non-county residents appearing on the DHSMV source list, the committee was of the opinion that lower summoning yields were not caused solely by this factor as summoning yields are dependent on many other factors that are controlled by the court such as juror excusals, postponements and failures to appear. The committee concluded that these items could be better addressed by the courts.

Accordingly, the Jury Innovations Committee recommended that the DHSMV include the county of residence on driver's license application forms. The committee also recommended that s. 322.17(2), F.S., be amended to delete the \$10 fee a licensee must pay for a replacement license due to changes in name or address because the committee viewed the fee as discouraging some persons from keeping the information on their license current.

### **Senate Judiciary Committee Interim Project 2002-139**

The staff of the Senate Judiciary Committee recently conducted Interim Project 2002-139, which analyzed the jury source list in light of the above issues.

#### **Staff Questionnaire**

A survey was circulated seeking information related to problems with the DHSMV source list, problems with the registered voter source list, preferred choice of source list, recommended changes to the source list, fiscal impact and miscellaneous comments. The survey was distributed to each of Florida's 67 supervisors of elections, each of the 67 clerks of court (via the Florida Association of Court Clerks and Comptroller), each of the 20 state attorneys (via the Florida Prosecuting Attorneys Association), each of the 20 public defenders (via the Florida Public Defenders Association), the Academy of Florida Trial Lawyers and the Florida Defense Lawyers Association for circulation to their respective members.

According to Interim Project Report 2002-139, issued on October 1, 2001, the questionnaire revealed that 62% of all respondents favored retaining the DHSMV source list, with or without modifications to the list. Broken down, 100% of the public defenders, 75% of plaintiff-oriented civil trial lawyers, 68% of the supervisors of elections, and 48% of court clerks favor the DHSMV list.

The questionnaire also revealed that only 32% of all respondents favor returning the source list to registered voters. The state attorneys are unanimously in favor of returning the source list to registered

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<sup>1</sup> *Massey v. State*, 760 So.2d 956 (Fla. 3<sup>rd</sup> DCA 2000) (Judgment reversed when juror failed to disclose felony charge during jury selection.).

<sup>2</sup> The committee's report is only a set of recommendations to the Florida Supreme Court. The court was scheduled to hear oral argument on the report on November 7, 2001. However, the argument was rescheduled for the Court's February 2002 term.

voters, while 47% of the clerks, 22% of plaintiff-oriented civil trial lawyers, and 5% of the supervisors of elections favor returning to registered voters.

Six percent (6%) of all respondents did not take a position on which source list they preferred, or they suggested other sources. Five percent (5%) of the clerks reported no preference, while 27% of the supervisors took no position.

#### *Voter Registration and Diversity of Jury Pool*

The Senate Interim Project Report indicated that the reasons for changing the jury source list in 1991 were to diversify the jury pool and promote voter registration. Since the DHSMV source list went into operation in 1998, there has been an increase in voter registration. According to the Department of State, Division of Elections, the total number of registered voters has increased by over 780,000 voters since the new source list was implemented in 1998. According to the Division of Elections, there have been no studies conducted to determine whether the increase in voter registration can be attributed to the change in the juror source.

Voter registration and minority representation in the pool of registered voters is currently higher than it was in 1991, when the change in the source list was being considered. Currently, registered voters represent 71% of the state's 18-and-older population, whereas they only comprised 60% of that same population group in 1990. Likewise, registered voters now represent 55% of the state's total population, whereas they only constituted 47% of population in 1990. Similarly, non-white voters now represent 22% of the state's registered voters (16% of the state's population), whereas they only represented 10% of the registered voters (15% of the state's population) in 1990.

The voter registration numbers currently reflect a more accurate representation of the statewide community than existed in 1991, when the jury source list was being considered for change. It is unknown whether these numbers would decline if the source list were changed back to voter registration. Anecdotal evidence, along with the 1989 study commissioned by the Department of State, indicates a possible decrease in voter registration if the source list returns to registered voters.

Although the number of registered voters has increased and currently comprises 71% of the state's 18-and-over population, the jury pool is larger with the DHSMV source list. In 2000, the DHSMV source list had 10,652,973 people. This is 86% of the state's 18-and-over population and almost 2 million people more than those in the group of registered voters.

#### *Summoning Yield*

The Senate Interim Project Report revealed that, statewide, according to figures from the Office of the State Court Administrator, the average statewide summoning yield using the registered voter source list was 34.8% for the three years before the list was changed. Since the DHSMV source list has been in effect, the summoning yield has averaged 30.1%.

Likewise, on a statewide basis there has been an approximate 40% increase in the number of jury summonses issued since the implementation of the DHSMV source list. The average number of jurors summoned statewide for the three years before the list was changed was 1,344,540 per year. Since the DHSMV source list has been in effect, the average number of jurors summoned statewide has been 1,882,014 per year. This equates to a statewide annual increase of \$182,741 in postage costs. It is unknown whether the increased number of summonses and the increased postage costs are directly related to the DHSMV source list, or whether they are related to other causes such as increased numbers of postponements, excusals, failures to appear, and potential trials.

The decreased summoning yield and increased issuance of jury summons have been attributed by some parties to the DHSMV source list containing incorrect addresses and non-county residents.

Incorrect addresses often result from people moving during the year or people having an address on their driver's licenses that differs from the actual residence address. Pursuant to s. 40.011, F.S., the DHSMV is required to provide the source list to the clerks only on an annual basis, which may account for a portion of the incorrect addresses. A large percentage of court clerks indicated they would like to receive the DHSMV list more frequently, either on a quarterly or monthly basis. The report indicated that, according to the DHSMV, the list can be supplied on a more frequent basis without any fiscal impact.

Regarding non-county residents being on the jury source list, the DHSMV acknowledges that this is a problem because applicants for driver's licenses and identification cards report their addresses by providing their city of residence and zip code, which may cross county lines but do not identify their county of residence. DHSMV has tried different versions of computer software, met with officials of the United States Post Office, and physically reviewed census accounts in conjunction with zip codes to address this issue. None of these efforts has been successful.

According to the DHSMV, the only way to successfully correct this problem is to reprogram the database and collect the residency information from each individual. At last accounting, the DHSMV database had 15,451,277 people who must be screened in order to compose the jury source lists for each clerk. Personal contact with each person requires \$3,800,000 in mailing costs. Once collected, data entry would begin and could be accomplished in one year, at a personnel cost of \$1,245,959. Computer programming costs would total \$8,000. The total projected cost to accomplish the task in a one-year time frame would be \$5,053,959. Alternatively, if this task is phased in and performed only when individuals renew or update their licenses with address changes, the only cost would be \$8,000 for computer programming.

#### Senate Report Recommendations

The Senate Interim Project Report 2002-139 concluded that, at this time, there is insufficient data to indicate the current jury source list is defective from an administrative, fiscal, or constitutional standpoint. Likewise, there is insufficient data indicating that the voter registration source list is significantly superior to the DHSMV source list. Both source lists have positive and negative attributes. The report concluded that, in light of the strong public policy interest in encouraging voter registration, and the fact that the DHSMV source list covers 86% of the population that is eligible for jury duty, the effect of retaining the DHSMV source list outweighs the deterrent effect jury duty has on voter registration and the minimal cost associated with addressing the problems with the DHSMV source list. *Accordingly, the Senate report recommended that the DHSMV source list prescribed in s. 40.01, F.S., remain unchanged.*

#### C. EFFECT OF PROPOSED CHANGES:

See Section-by-Section Analysis.

#### D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 40.01 F.S., is amended to require that a prospective juror must be a registered elector in his or her county of residence or complete an affidavit expressing his or her desire to serve as a juror. The requirement that a person hold a valid driver's license or Florida identification card is deleted.

Section 2. Section 40.011 F.S., is amended to remove requirements related to receiving the list of prospective jurors from the DHSMV and the directions to the agency for purging of that list.

Section 3. Section 40.022 F.S., relating to the clerk of court's requirement to purge lists, is amended to replace the reference to the list of driver's license holders with the list of registered voters.

Section 4. Section 98.095 F.S., is amended to authorize voter registration lists to be furnished to the courts for the purpose of jury selection.

Section 5. Section 322.20 F.S., is amended to remove the authority of the DHSMV to furnish lists of holders of Florida driver's licenses and Florida identification cards to the clerks of the court for purposes of selecting jurors.

Section 6. The effective date of the bill is October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

DHSMV has indicated that the bill would have no fiscal impact on the agency even though it would no longer be providing lists of registered drivers and holders of State identification cards to the 67 clerks of the court. On the other hand, county supervisors of elections would experience some costs with providing the list of registered voters to the clerk of the court. The amount would vary for each county, but costs are expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 19, 2002, meeting, the Committee on Rules, Ethics & Elections adopted a "strike everything" amendment that maintains the current juror selection procedure using the DHSMV source list. In addition, it requires the Florida Department of Law Enforcement (FDLE) to establish procedures to allow county clerks to check their jury selection lists against the FDLE criminal database for possible disqualification of ineligible jurors.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS & ELECTIONS (PRC):

Prepared by:

Staff Director:

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Emmett Mitchell, IV

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Richard Hixson