

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 1225 Preventing Voting by Noncitizens

**SPONSOR(S):** Metz

**TIED BILLS:**           **IDEN./SIM. BILLS:** SM 1514

| REFERENCE                            | ACTION    | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--------------------------------------|-----------|---------|--|
| 1) Local & Federal Affairs Committee | 12 Y, 4 N | Walker  | Kiner                                    |
| 2) State Affairs Committee           |           |         |  |

### SUMMARY ANALYSIS

HM 1225 calls upon the U.S. Congress to amend the National Voter Registration Act of 1993 (NRVA) to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote using the federal form. The memorial further requests that Congress amend the Immigration Reform and Control Act (IRCA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) to expressly grant the states immediate access to the Systematic Alien Verification for Entitlements (SAVE) program database to confirm immigration status information for purposes of voter registration. Finally, the memorial requests that Congress amend NRVA to clarify that noncitizen voters may be removed from voter rolls within the 90 day period before a federal election.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The National Voter Registration Act of 1993 (NRVA) was enacted to increase voter registration and participation by allowing voters to register with the Department of Highway Safety and Motor Vehicles. NRVA also requires states to use a standard federal form to register voters which asks whether the individual is a U.S. citizen but does not require verification.<sup>1</sup> In 2013, the Supreme Court held that states could not require verification outside of the 'check the box' provision contained on the federal registration form.<sup>2</sup> In order to supersede the Supreme Court ruling, Congress would have to amend NRVA to allow or require additional proof of citizenship.

Additionally, Section 8(c)(2)(A) of the NRVA requires states to "complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." Currently, courts have interpreted the 90 day provision in NRVA to mean that any removal of noncitizens from the voter rolls must occur at least 90 days before any federal election.<sup>3</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides a mechanism to verify immigration status, but sharply limits the number and reasons for inquiries.<sup>4</sup> However, another potential mechanism for immigration status verification exists. In 1986 the Immigration Reform and Control Act (IRCA) authorized what is presently the Systematic Alien Verification for Entitlements (SAVE) database, administered by the U.S. Department of Homeland Security.<sup>5</sup> SAVE is presently used to determine eligibility for the receipt of benefits or licenses. The SAVE database contains more than 100 million immigration status records.<sup>6</sup>

Since the time NRVA was enacted in 1993, the population of foreign born residents has increased from approximately 19 million, accounting for 7.9% of the population, to approximately 40 million, accounting for 12.9% of the population.<sup>7</sup> Of those, the population of unauthorized foreign born residents has increased from approximately 3.5 million in 1993 to 11.3 million in 2014.<sup>8</sup> Of the 40 million total foreign

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<sup>1</sup>THE DEPARTMENT OF JUSTICE, *About the National Voter Registration Act*, <http://www.justice.gov/crt/about-national-voter-registration-a> <http://www.justice.gov/crt/about-national-voter-registration-actct> (last visited Jan. 25, 2016).

<sup>2</sup> *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013).

<sup>3</sup> *Arcia v. Sec'y of Fla.*, 772 F.3d 1335, 1348 (11th Cir. 2014).

<sup>4</sup> GOVERNMENT PRINTING OFFICE, *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) Pub. L. No. 104-208*, <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjz4cbS4sXKAhXHSiYKHberBncQFggcMAA&url=https%3A%2F%2Fwww.gpo.gov%2Ffdsys%2Fpkg%2FPLAW-104publ208%2Fpdf%2FPLAW-104publ208.pdf&usg=AFQjCNG4s43LZt9u-ttRKXhWAbVh0Qbhf> (last visited Jan. 25, 2016).

<sup>5</sup> AMERICAN IMMIGRATION COUNSEL, *The Systematic Alien Verification for Entitlements (SAVE) Program: A Fact Sheet*, <http://www.immigrationpolicy.org/just-facts/systematic-alien-verification-entitlements-save-program-fact-sheet> (last accessed Jan. 25, 2016).

<sup>6</sup> U.S. DEPARTMENT OF HOMELAND SECURITY: U.S. CITIZENSHIP AND IMMIGRATION, *What is SAVE?*, <https://www.uscis.gov/save/what-save/what-save> (last visited Jan. 25, 2016).

<sup>7</sup> U.S. CENSUS BUREAU, *The Foreign-Born Population in the United States*, available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwj9uaDj18rKAhWKpR4KHU\\_NC4sQFggjMAE&url=https%3A%2F%2Fwww.census.gov%2Fnewsroom%2Fpdf%2Fspan\\_fb\\_slides.pdf&usg=AFQjCNF1g5JedWWg7F4kQ0ZUA6YdF4RpPw](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwj9uaDj18rKAhWKpR4KHU_NC4sQFggjMAE&url=https%3A%2F%2Fwww.census.gov%2Fnewsroom%2Fpdf%2Fspan_fb_slides.pdf&usg=AFQjCNF1g5JedWWg7F4kQ0ZUA6YdF4RpPw) (last accessed Jan. 27, 2016).

<sup>8</sup> PEW RESEARCH CENTER, *5 facts about illegal immigration in the U.S.*, <http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/> (last visited Jan. 25, 2016).

born residents, 44% are naturalized citizens eligible to vote.<sup>9</sup> The national average of foreign born citizens as a percent of total state population is 12.9 compared to 19.4% of Florida's population.<sup>10</sup>

### **Effect of the Memorial**

HM 1225 calls upon the U.S. Congress to amend NRVA to clarify that states have the authority to require documentary proof of citizenship for applicants who seek to register to vote using the federal form. The memorial further requests that Congress amend the IRCA and IIRIRA to expressly grant the states immediate access to the SAVE program database to confirm immigration status information for purposes of voter registration. Finally, the memorial requests that Congress amend NRVA to clarify that noncitizen voters may be removed from voter rolls within the 90 day period before a federal election.

B. SECTION DIRECTORY: N/A

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT: None.

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS: None.

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

## **III. COMMENTS**

A. CONSTITUTIONAL ISSUES: None.

1. Applicability of Municipality/County Mandates Provision:

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<sup>9</sup> U.S. CENSUS BUREAU, The Foreign-Born Population in the United States, available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwj9uaDj18rKAhWKpR4KHU\\_NC4sQFggjMAE&url=https%3A%2F%2Fwww.census.gov%2Fnewsroom%2Fpdf%2Fspan\\_fb\\_slides.pdf&usg=AFQjCNF1g5JedWWg7F4kQ0ZUA6YdF4RpPw](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwj9uaDj18rKAhWKpR4KHU_NC4sQFggjMAE&url=https%3A%2F%2Fwww.census.gov%2Fnewsroom%2Fpdf%2Fspan_fb_slides.pdf&usg=AFQjCNF1g5JedWWg7F4kQ0ZUA6YdF4RpPw) (last accessed Jan. 27, 2016).

<sup>10</sup> Id.

2. Other:

B. RULE-MAKING AUTHORITY: N/A

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.