

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1319 Voter Registration Maintenance
SPONSOR(S): Public Integrity & Ethics Committee; Mariano
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Toliver	Harrington
2) Transportation & Tourism Appropriations Subcommittee	10 Y, 3 N	Cobb	Davis
3) Public Integrity & Ethics Committee	11 Y, 5 N, As CS	Kiner	Rubottom

SUMMARY ANALYSIS

The Department of State (Department) is headed by the Secretary of State (Secretary), who serves as Florida's chief election officer. Current law charges the Secretary with a variety of responsibilities in his or her capacity as Florida's chief election officer, including creating and administering a statewide voter registration system. The voter registration system (system) is the official list of registered voters in the state and contains the name and registration information of every legally registered voter in Florida. Voter registration officials, such as supervisors of elections (supervisors), are provided secure access to the system and may update the voter registration information contained in the system. Current law requires supervisors to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process. To help ensure the accuracy of the system, certain state and local agencies, such as the Department of Highway Safety and Motor Vehicles (DHSMV), are required to submit data to the Department to verify the eligibility of registered voters.

The bill requires each supervisor to enter into an agreement with the clerk of the circuit court in their jurisdiction to receive, monthly, change-of-address information and a list of potential jurors who identified themselves as aliens. Specifically, the bill requires the list to contain the individual's name, address, date of birth, sex, and, whichever is available, the Florida driver license number or the Florida identification card number.

The bill also requires DHSMV to furnish to the Department a list of persons who identified themselves as aliens. Specifically, the bill requires the list to contain the individual's name, address, date of birth, sex, and, whichever is available, the Florida driver license number or the Florida identification card number. The Department must compare the list received from DHSMV with the information in the system. If the Department determines that a registered voter in the system is an alien, it must provide the name of that voter to the supervisor of the county in which that voter is registered.

The bill will result in an indeterminate, but insignificant fiscal impact on state and local governments.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of State

The Department of State (Department)¹ is headed by the Secretary of State (Secretary) who serves as Florida's chief election officer. The Secretary is charged with a variety of responsibilities in his or her capacity as Florida's chief election officer, including obtaining and maintaining uniformity in the interpretation and implementation of the election laws; providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the supervisors of elections (supervisors) on voter education, election personnel training services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.²

Voter Registration System

The Secretary implements, operates, and maintains the statewide voter registration system (system).³ The system is the official list of registered voters in the state and is required to contain the name and registration information of every legally registered voter in Florida.⁴ Voter registration officials, such as supervisors, are provided secure access to the system and may update the voter registration information contained in the system.⁵ The Department is prohibited from contracting with any other entity for the operation of the system.⁶

Voter Eligibility

Each supervisor is charged with ensuring that each application for voter registration is processed in accordance with the law.⁷ The Florida Election Code sets forth the reasons that a supervisor may deem a voter registration applicant ineligible.⁸ An applicant may be ineligible based on any of the following:

- Failure to complete the voter registration application;
- The applicant is deceased;
- The applicant has been convicted of a felony;
- The applicant has been adjudicated mentally incapacitated;
- The applicant is not 18 years old;
- The applicant is not a United States Citizen;
- The applicant is a fictitious citizen;
- The applicant has provided an address that is not his or her legal residence; or
- The applicant has provided a driver license number, Florida identification number, or the last four digits of a social security number that is not verifiable by the Department.⁹

Voter Registration List Maintenance

Once registered, a voter may only be removed from the system in certain limited circumstances: the voter is deceased, has been convicted of a felony or judged mentally incapacitated, pursuant to a prescribed registration list maintenance activity, or he or she has requested in writing to be removed.¹⁰

¹ Section 20.10(1), F.S.

² Section 97.012, F.S.

³ Section 98.035(1), F.S.

⁴ Section 98.035(2), F.S.

⁵ *Id.*

⁶ Section 98.035(3), F.S.

⁷ Section 98.045(1), F.S.

⁸ *Id.*

⁹ Section 98.045(1)(a)-(i), F.S.

¹⁰ Section 98.045(2)(a), F.S.

Supervisor Voter Registration List Maintenance Activities

Each supervisor, to protect the integrity of the electoral process, is required to conduct voter registration list maintenance at least every odd-numbered year.¹¹ The program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the system.¹² The program must be uniform, nondiscriminatory,¹³ and in compliance with federal election law.¹⁴ Each supervisor must incorporate one of the following methods in his or her list maintenance program:

- Use of change of address information given by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed;
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable address confirmation requests mailed to every registered voter who has not voted in the last two years and who did not make any written request to update his or her registration record during that two-year period.¹⁵

If a supervisor receives change of address information from one of the methods listed above, jury notices returned to the courts and signed by the voter, the Department of Highway Safety and Motor Vehicles (DHSMV), or from other sources which reveal that a registered voter's legal address might have changed, the supervisor must change the registration records to reflect the new address.¹⁶ The supervisor must then send the registered voter an address change notice.¹⁷ If the supervisor receives information that a registered voter has moved his or her legal residence outside the state, the supervisor must send an address confirmation final notice to the registered voter at his or her new address.¹⁸ Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days or for whom the notice is returned as undeliverable are designated as inactive.¹⁹ If the voter does not update his or her information by the second general election²⁰ after being designated as inactive, the voter's name shall be removed from the system.²¹

Department Voter Registration List Maintenance Activities

The Department is required to perform voter registration list maintenance activities to ensure the accuracy of the system and records the system holds.²² Specifically, the Department is required to identify duplicate registrations,²³ deceased persons,²⁴ persons adjudicated to be mentally incapacitated,²⁵ persons convicted of a felony,²⁶ and other ineligible voters contained in the system.²⁷

¹¹ Section 98.065(3), F.S.

¹² Section 98.065(3), F.S.

¹³ The term "nondiscriminatory" applies to, and includes persons with disabilities. Section 98.065(1), F.S.

¹⁴ Section 98.065(1), F.S.

¹⁵ Section 98.065(2), F.S.

¹⁶ Section 98.065(4)(a), F.S.

¹⁷ *Id.*

¹⁸ Section 98.065(4)(b), F.S.

¹⁹ Section 98.065(4)(c), F.S.

²⁰ The Florida Constitution requires that a "general election" shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year. FLA. CONST., art. VI, s. 5; *see also* s. 97.021(16), F.S.

²¹ Section 98.065(4)(c), F.S.

²² Section 98.075(1), F.S.

²³ Section 98.075(2), F.S.

²⁴ Section 98.075(3), F.S.

²⁵ Section 98.075(4), F.S.

²⁶ Section 98.075(5), F.S.

²⁷ Section 98.075(6), F.S.

Duty of Agencies to Furnish Information to the Department

Certain agencies are required to submit information to the Department in order to help identify ineligible voters.²⁸ The following chart lists the agencies required to submit information, the information required, and the frequency of the submissions.

Agency	Frequency	Information Submitted
Department of Health	Monthly	List containing the name, address, date of birth, social security number, race, and sex of each deceased person 17 years of age or older
Clerk of the Circuit Court	Monthly	<ul style="list-style-type: none">• List of persons adjudicated mentally incapacitated with respect to voting during the preceding calendar month;• List of those persons whose mental capacity with respect to voting has been restored during the preceding calendar month;• List of those persons who have returned signed jury notices during the preceding months to the clerk of the circuit court indicating a change of address
Department of Law Enforcement	In a time and manner that enables the Department to meet its obligations under state and federal law	The identity of those persons who have been convicted of a felony who appear in the voter registration records supplied by the system
Florida Commission on Offender Review	Bimonthly	The identity of those persons granted clemency in the preceding month or any updates to prior records which have occurred in the preceding month
Department of Corrections	In a time and a manner that enables the Department to identify registered voters who are convicted felons and to meet its obligations under state and federal law	The identity of those persons who have been convicted of a felony and committed to its custody or placed on community supervision
Department of Highway Safety and Motor Vehicles	Monthly	List of those persons whose names have been removed from the driver license database because they have been licensed in another state

Voter Registration Ineligibility Determinations

Currently, the Department identifies ineligible voters contained in the system,²⁹ the supervisor³⁰ with jurisdiction of that particular voter is then notified of this finding and, after notifying the voter and giving him or her a chance to respond,³¹ makes a final determination regarding the voter's eligibility.³² A person determined to be ineligible by a supervisor may appeal the determination in circuit court.³³

²⁸ Section 98.093, F.S.

²⁹ Section 98.075, F.S.

³⁰ Supervisors are also able to remove the name of a voter based on evidence without the Department having notified them in some circumstances. Section 98.075, F.S.

³¹ No notification is given to those determined to be deceased. Section 98.075(3), F.S.

³² Section 98.075(7), F.S.

³³ Section 98.0755, F.S.

Department of Highway Safety and Motor Vehicles

DHSMV requires proof of identity whenever a person applies for a driver license or an identification card.³⁴ State law provides a list of documents a person may submit to satisfy the proof of identity requirement.³⁵ For instance, if a person is a U.S. citizen, he or she may provide a certified copy of a U.S. birth certificate, a valid unexpired passport, a Consular Report of Birth Abroad, or naturalization certificate issued by the U.S. Department of Homeland Security.³⁶ If the applicant is not a U.S. citizen, he or she may provide a valid unexpired alien registration receipt card (green card), an unexpired employment authorization card issued by the U.S. Department of Homeland Security, or other proof of nonimmigrant classification provided by the U.S. Department of Homeland Security, to satisfy the requirement that he or she provide proof of identity.³⁷

The federal Driver Privacy Protection Act³⁸ prohibits state motor vehicle departments, including the Florida Department of Highway Safety and Motor Vehicles, from knowingly disclosing or otherwise making available certain personal information³⁹ in connection with a motor vehicle record, with limited exceptions.⁴⁰ The following permissible uses are among the 14 exceptions:

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:
 - to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

Florida law incorporates the federal Driver Privacy Protection Act and only authorizes the release of certain personal information as authorized by the Driver Privacy Protection Act.⁴¹

Clerks of the Circuit Court

A juror in Florida is required to be at least 18 years of age, a citizen of the United States, and a legal resident of the state and of their respective county.⁴² Each juror must either possess a driver license or identification card issued by DHSMV or have signed an affidavit attesting that he or she meets the qualifications to be a juror.⁴³ Each clerk of circuit court is required to generate a set of juror candidate lists from which potential jurors will be selected.⁴⁴ The list is derived from two sources: persons who

³⁴ Sections 322.051 and 322.08, F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ 18 U.S.C. §2721

³⁹ 18 U.S.C. §2721 distinguishes between ‘personal information’ and ‘highly restricted personal information.’ Pursuant to the statute, ‘personal information’ is “information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status. Pursuant to the statute, ‘highly restricted personal information’ is “an individual’s photograph or image, social security number, medical or disability information.”

⁴⁰ *Id.*

⁴¹ Section 119.0712(2), F.S.

⁴² Section 40.01, F.S.

⁴³ *Id.*

⁴⁴ Section 40.011(1), F.S.

have submitted an affidavit swearing that they meet the qualifications to be a juror, and those persons who have a driver license or identification card issued by DHSMV.⁴⁵ To obtain the latter, DHSMV is required to submit, on a quarterly basis, to the clerk of the circuit of each county a list of names of persons in that county, who are at least 18 years of age, citizens of the United States, and legal residents of Florida.⁴⁶

Effect of the Bill

The bill requires each supervisor to enter into an agreement with the clerk of the circuit court in their jurisdiction to receive, monthly, change-of-address information and a list of potential jurors who identified themselves as aliens. Specifically, the bill requires the list to contain the individual's name, address, date of birth, sex, and, whichever is available, the Florida driver license number or the Florida identification card number.

The bill also requires DHSMV to furnish to the Department a list of persons who identified themselves as aliens. Specifically, the bill requires the list to contain the individual's name, address, date of birth, sex, and, whichever is available, the Florida driver license number or the Florida identification card number. The Department must compare the list received from DHSMV with the information in the system. If the Department determines that a registered voter in the system is an alien, it must provide the name of that voter to the supervisor of the county in which that voter is registered.

B. SECTION DIRECTORY:

Section 1 amends s. 98.065, F.S., relating to registration list maintenance programs.

Section 2 amends s. 98.093, F.S., relating to the duty of officials to furnish information to the Department.

Section 3 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DHSMV, the bill may result in an indeterminate, but insignificant fiscal impact due to the modification of the monthly report currently provided to DOS⁴⁷. This cost can be absorbed within existing resources. DOS has not provided an estimated fiscal impact as requested therefore it is assumed that any workload costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

⁴⁵ Section 40.011, F.S.

⁴⁶ Section 40.011(2), F.S.

⁴⁷ Email from DHSMV dated February 1, 2018, on file with the Transportation and Tourism Appropriations Subcommittee.

The bill may have an indeterminate, but likely insignificant workload impact on local governments. Clerks of Court will now have to provide information to supervisors on a monthly basis.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is a law concerning elections.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 13, 2018, the Public Integrity & Ethics Committee adopted one amendment to HB 1319 and subsequently reported the bill favorably as amended. The amendment revised the bill to specify the information that will be shared among Florida government entities. Specifically, the following information will be provided:

- The local clerk of court will provide to the Supervisor of Elections – name, address, date of birth, sex, and, whichever is available, the Florida driver license number or the Florida identification card number.
- The DHSMV will provide to the Department of State – name, address, date of birth, sex, and, whichever is available, the Florida driver license number or the Florida identification card number.

The amendment requires the information be reviewed by the receiving Florida government entity on a monthly basis.

The bill analysis is drafted to CS/HB 1319.