

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 131 Voter Registration Maintenance
SPONSOR(S): Mariano and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	9 Y, 1 N	Toliver	Harrington
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Cobb	Davis
3) State Affairs Committee	19 Y, 2 N	Toliver	Williamson

SUMMARY ANALYSIS

The Department of State (DOS) 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 Florida Voter Registration System (FVRS) 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 FVRS 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 FVRS, certain state and local agencies, such as the Department of Highway Safety and Motor Vehicles (DHSMV), are required to submit data to DOS 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 Florida driver license number or Florida identification card number.

The bill also requires DHSMV to furnish monthly to DOS a list of persons who identified themselves as aliens. The bill requires the list to contain the individual's name, address, date of birth, sex, and Florida driver license number or Florida identification card number. DOS must compare the list received from DHSMV with the information in the FVRS. If DOS determines that a registered voter in the FVRS 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 likely result in a negative, indeterminate fiscal impact on state government expenditures, and an indeterminate, though likely insignificant negative fiscal impact on local government expenditures. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of State

The Department of State (DOS)¹ is headed by the Secretary of State (Secretary) who serves as Florida's chief election officer.² 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 2002.³

Florida Voter Registration System

The Secretary implements, operates, and maintains the Florida Voter Registration System (FVRS).⁴ The FVRS 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.⁵ Voter registration officials, such as supervisors, are provided secure access to the FVRS and may update the voter registration information contained therein.⁶ DOS is prohibited from contracting with any other entity for the operation of the FVRS.⁷

Voter Eligibility

Each supervisor is charged with ensuring that each application for voter registration is processed in accordance with the law.⁸ The Florida Election Code sets forth the reasons that a supervisor may deem a voter registration applicant ineligible.⁹ 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 for which his or her civil rights have not been restored;
- 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 DOS.¹⁰

¹ Section 20.10(1), F.S.

² Section 97.012, F.S.

³ *Id.*

⁴ Section 98.035(1), F.S.

⁵ Section 98.035(2), F.S.

⁶ *Id.*

⁷ Section 98.035(3), F.S.

⁸ Section 98.045(1), F.S.

⁹ *Id.*

¹⁰ Section 98.045(1)(a)-(i), F.S.

Voter Registration List Maintenance

Once registered, a voter may only be removed from the FVRS 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.¹¹

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.¹² The program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the FVRS.¹³ The program must be uniform, nondiscriminatory,¹⁴ and in compliance with federal election law.¹⁵ Each supervisor must incorporate at least 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.¹⁶

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.¹⁷ The supervisor must then send the registered voter an address change notice.¹⁸ 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.¹⁹ 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.²⁰ If the voter does not update his or her information by the second general election²¹ after being designated as inactive, the voter's name is removed from the FVRS.²²

DOS Voter Registration List Maintenance Activities

DOS is required to perform voter registration list maintenance activities to ensure the accuracy of the FVRS.²³ Specifically, DOS is required to identify duplicate registrations,²⁴ deceased persons,²⁵ persons adjudicated to be mentally incapacitated,²⁶ persons convicted of a felony,²⁷ and other ineligible voters contained in the FVRS.²⁸

¹¹ Section 98.045(2)(a), F.S.

¹² Section 98.065(3), F.S.

¹³ Section 98.065(3), F.S.; *see also* 52 U.S.C. s. 20507(c)(2)(A).

¹⁴ The term "nondiscriminatory" applies to and includes persons with disabilities. Section 98.065(1), F.S.

¹⁵ Section 98.065(1), F.S.

¹⁶ Section 98.065(2), F.S.

¹⁷ Section 98.065(4)(a), F.S.

¹⁸ *Id.*

¹⁹ Section 98.065(4)(b), F.S.

²⁰ Section 98.065(4)(c), F.S.

²¹ The Florida Constitution requires a "general election" 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.

²² Section 98.065(4)(c), F.S.

²³ Section 98.075(1), F.S.

²⁴ Section 98.075(2), F.S.

²⁵ Section 98.075(3), F.S.

²⁶ Section 98.075(4), F.S.

Duty of Agencies to Furnish Information to DOS

Certain agencies are required to submit information to DOS in order to help identify ineligible voters.²⁹ 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 FVRS
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, DOS identifies ineligible voters contained in the FVRS,³⁰ the supervisor³¹ 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,³² makes a final determination regarding the voter's eligibility.³³ A person determined to be ineligible by a supervisor may appeal the determination in circuit court.³⁴

²⁷ Section 98.075(5), F.S.

²⁸ Section 98.075(6), F.S.

²⁹ Section 98.093, F.S.

³⁰ Section 98.075, F.S.

³¹ Supervisors are also able to remove the name of a voter based on evidence without DOS having notified them in some circumstances. *See s. 98.075(6), F.S.*

³² No notification is given to those determined to be deceased. Section 98.075(3), F.S.

³³ Section 98.075(7), F.S.

³⁴ Section 98.0755, F.S.

DHSMV

Voter Registration

In 1993, the U.S. Congress passed the National Voter Registration Act of 1993 (NVRA),³⁵ requiring state motor vehicle agencies to offer persons applying or renewing a driver license the opportunity to register to vote.³⁶ Florida implemented the NVRA by requiring DHSMV to offer individuals applying, modifying, or renewing a driver license or identification card the opportunity to register to vote.³⁷ DHSMV is required to electronically submit completed voter registration applications, within 24 hours of receipt, to the FVRS.³⁸

The Florida Election Code requires DHSMV to enter into an agreement with DOS to match the information contained in the FVRS with information in the DHSMV database to verify the accuracy of driver license numbers, identification numbers, or the last four digits of the social security number.³⁹

Driver Licenses and Identification Cards

DHSMV requires proof of identity whenever a person applies for a driver license or an identification card.⁴⁰ State law provides a list of documents a person may submit to satisfy the proof of identity requirement.⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ Each clerk of the circuit court is required to generate a set of juror candidate lists from which potential jurors will be selected.⁴⁶ The list is derived from two sources: persons who 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.⁴⁷ To obtain the latter, DHSMV is required to submit, on a quarterly basis, to the clerk of the circuit court 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.⁴⁸

³⁵ National Voter Registration Act of 1993, P.L. 103-31 (1993).

³⁶ 52 U.S.C. s. 20504.

³⁷ Section 97.057(1), F.S.

³⁸ Section 97.057(4), F.S.

³⁹ Section 97.057(11), F.S.

⁴⁰ Sections 322.051 and 322.08, F.S.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Section 40.01, F.S.

⁴⁵ *Id.*

⁴⁶ Section 40.011(1), F.S.

⁴⁷ Section 40.011, F.S.

⁴⁸ Section 40.011(2), F.S.

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.⁴⁹ The bill requires the list to contain the individual's name, address, date of birth, sex, and Florida driver license number or Florida identification card number.

The bill also requires DHSMV to furnish to DOS a list of persons who identified themselves as aliens. The list must contain the individual's name, address, date of birth, sex, and Florida driver license number or Florida identification card number. DOS must compare the list received from DHSMV with the information in the FVRS. If DOS determines that a registered voter in the FVRS 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 DOS.

Section 3 provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may result in a negative fiscal impact to DHSMV due to the new monthly report the bill requires DHSMV to provide to DOS. DHSMV estimates that approximately \$32,010, or the equivalent of 486 hours in FTE and contracted resources will be required to implement the bill. This impact can be absorbed within existing resources.⁵⁰

According to DOS, the bill will require the Division of Elections to avail itself of federal resources including the U.S. Department of Homeland Security's SAVE database in order to determine citizenship status of individuals mentioned in the report furnished by DHSMV. The SAVE database has a monthly access fee of \$25 and \$0.50 per transaction; however, the department has not provided a total cost estimate to use this database, so it is assumed that the cost can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, though likely insignificant negative fiscal impact on local governments. Clerks of court will now be required to provide change of address information and a list of potential jurors identifying as alien to supervisors on a monthly basis.

⁴⁹ The term "alien" is defined to mean a person who is not a citizen of the United States. Section 327.02(2), F.S.

⁵⁰ DHSMV Agency Bill Analysis for HB 131 (2019), on file with the Oversight, Transparency & Public Management Subcommittee.

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:

DHSMV noted that while it could provide information obtained during driver license/identification card issuances that would indicate whether an individual is an 'immigrant' or 'non-immigrant,' a driver license/identification card can be valid for up to 8 years⁵¹ during which time an individual's citizenship may change.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁵¹ *Id.*