

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 Ethics and Elections

BILL: SB 230

INTRODUCER: Senator Gruters

SUBJECT: Voter Registration Maintenance

DATE: April 8, 2019

REVISED: 03/20/19

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	Pre-meeting
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 230 requires each supervisor of elections (supervisor) to enter into an agreement with the clerk of the circuit court in his or her jurisdiction to receive, on a monthly basis, change-of-address information for jurors and potential jurors and a list of potential jurors who have 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 the Department of Highway Safety and Motor Vehicles (DHSMV) to furnish to the Department of State (DOS) a list of persons who have 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. DOS must compare the list received from DHSMV with the information in the Florida voter registration system (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 for the county in which that voter is registered.

II. Present Situation:

Department of State

The Department of State¹ 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;

¹ Section 20.10(1), F.S.

² Section 97.012, F.S.

- 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 voter registration application 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 Under current statutory requirements, 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 felony¹⁰ 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.¹¹

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 With the passage of Amendment 4 in 2018, Florida's Constitution now provides that, except for a conviction of murder or felony sex offense, disqualification from voting arising from a felony conviction terminates and voting rights are restored upon completion of all terms of sentence, including parole or probation. FLA. CONST., Art. VI, s. 4 (a) and (b).

¹¹ Section 98.045(1)(a)-(i), F.S.

Voter Registration List Maintenance

Once registered, a voter may only be removed from the FVRS in the following limited circumstances:

- The voter is deceased;
- The voter has been convicted of a felony;¹²
- The voter has been judged mentally incapacitated;
- Pursuant to a prescribed registration list maintenance activity (see below), or
- The voter has requested in writing to be removed.¹³

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.¹⁴ The list maintenance program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the FVRS.¹⁵ The program must be uniform, nondiscriminatory,¹⁶ and in compliance with federal election law.¹⁷ Each supervisor must incorporate at least one of the following methods in his or her list maintenance program:

- Use of change of address information provided 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 a 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.¹⁸

A supervisor must change the registration records to reflect a new address if the 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 DHSMV; or
- From other sources which reveal that a registered voter's legal address might have changed.¹⁹

¹² *Supra* note 10.

¹³ Section 98.045(2)(a), F.S.

¹⁴ Section 98.065(3), F.S.

¹⁵ Section 98.065(3), F.S.; *see also* 52 U.S.C. s. 20507(c)(2)(A).

¹⁶ The term "nondiscriminatory" applies to and includes persons with disabilities. Section 98.065(1), F.S.

¹⁷ Section 98.065(1), F.S.

¹⁸ Section 98.065(2), F.S.

¹⁹ Section 98.065(4)(a), F.S.

The supervisor must then send the registered voter an address change notice.²⁰ 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.²¹ 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.²² If the voter does not update his or her information by the second general election²³ after being designated as inactive, the voter's name must be removed from the FVRS.²⁴

DOS Voter Registration List Maintenance Activities

DOS is required to perform voter registration list maintenance activities to ensure the accuracy of the FVRS.²⁵ Specifically, DOS is required to identify:

- Duplicate registrations;²⁶
- Deceased persons;²⁷
- Persons adjudicated to be mentally incapacitated,²⁸
- Persons convicted of a felony,²⁹ and
- Other ineligible voters contained in the FVRS.³⁰

Duty of Agencies to Furnish Information to DOS

Certain agencies are required to submit information to DOS in order to help identify ineligible voters.³¹ The following chart lists the agencies required to submit information, the information required, and the frequency of the submissions.

²⁰ *Id.*

²¹ Section 98.065(4)(b), F.S.

²² Section 98.065(4)(c), F.S.

²³ 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.

²⁴ Section 98.065(4)(c), F.S.

²⁵ Section 98.075(1), F.S.

²⁶ Section 98.075(2), F.S.

²⁷ Section 98.075(3), F.S.

²⁸ Section 98.075(4), F.S.

²⁹ Section 98.075(5), F.S. *Supra* note 10.

³⁰ Section 98.075(6), F.S.

³¹ Section 98.093, F.S.

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 ³² 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 ³² 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

³² *Supra* note 10.

Voter Registration Ineligibility Determinations

Currently, DOS identifies ineligible voters contained in the FVRS.³³ The supervisor³⁴ whose jurisdiction includes that particular voter is then made aware of this finding and, after notifying the voter and giving him or her a chance to respond,³⁵ makes a final determination regarding the voter's eligibility.³⁶ A person determined to be ineligible by a supervisor may appeal the determination in circuit court.³⁷

Voter Registration

In 1993, the U.S. Congress passed the National Voter Registration Act of 1993 (NVRA),³⁸ requiring state motor vehicle agencies to offer persons applying or renewing a driver license the opportunity to register to vote.³⁹ 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.⁴⁰ DHSMV is required to electronically submit completed voter registration applications, within 24 hours of receipt, to the FVRS.⁴¹

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.⁴²

Driver Licenses and Identification Cards

DHSMV requires proof of identity whenever a person applies for a driver license or an identification card.⁴³ State law provides a list of documents a person may submit to satisfy the proof of identity requirement.⁴⁴ 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.⁴⁵ 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.⁴⁶

³³ Section 98.075, F.S.

³⁴ In some circumstances, supervisors are also able to remove the name of a voter based on evidence without DOS having notified them. *See s. 98.075(6)*, F.S.

³⁵ No notification is given to those determined to be deceased. Section 98.075(3), F.S.

³⁶ Section 98.075(7), F.S.

³⁷ Section 98.0755, F.S.

³⁸ National Voter Registration Act of 1993, P.L. 103-31 (1993).

³⁹ 52 U.S.C. s. 20504.

⁴⁰ Section 97.057(1), F.S.

⁴¹ Section 97.057(4), F.S.

⁴² Section 97.057(11), F.S.

⁴³ Sections 322.051 and 322.08, F.S.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

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 his or her respective county.⁴⁷

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.⁴⁸ Each clerk of circuit court is required to generate a set of juror candidate lists from which potential jurors will be selected.⁴⁹ 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.⁵⁰ For the clerk 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.⁵¹

III. Effect of Proposed Changes:

The bill requires each supervisor to enter into an agreement with the clerk of the circuit court in his or her jurisdiction to receive, on a monthly basis, change-of-address information for jurors and potential jurors and a list of potential jurors who have identified themselves as aliens.⁵² 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. Each supervisor must compare the information included in the monthly list with the FVRS.

The bill also requires DHSMV to furnish monthly to DOS a list of persons who have identified themselves as aliens during the preceding calendar month. 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. 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.

This bill will take effect on July 1, 2019.

⁴⁷ Section 40.01, F.S.

⁴⁸ *Id.*

⁴⁹ Section 40.011(1), F.S.

⁵⁰ Section 40.011, F.S.

⁵¹ Section 40.011(2), F.S.

⁵² The term "alien" is defined to mean a person who is not a citizen of the United States. Section 327.02(2), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None. The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is a law relating to elections.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may result in a negative fiscal impact due to the new monthly report the bill requires DHSMV to provide to DOS. DHSMV estimates that the software programming necessitated by the new report and its implementation will require 486 hours in FTE and contracted resources resulting in overall cost of \$32,010.⁵³

The bill may have an indeterminate fiscal impact on local governments. Clerks of court will now be required to provide information to supervisors on a monthly basis.

VI. Technical Deficiencies:

None.

⁵³ DHSMV Agency Bill Analysis for SB 230 (2019), on file with the Senate Committee on Ethics and Elections.

VII. Related Issues:

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 years during which time an individual’s citizenship may change.⁵⁴

VIII. Statutes Affected:

This bill substantially amends sections 98.065 and 98.093 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁵⁴ *Id.*