

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 Appropriations

BILL: SB 276

INTRODUCER: Senators Hutson and Baxley

SUBJECT: Voter Registration List Maintenance

DATE: December 5, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	Favorable
2.	<u>Wells/Hrdlicka</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 276 authorizes the Department of State (DOS) to enter into information sharing agreements with other states or join a nongovernmental entity for the purpose of verifying voter registration information. The bill requires the Department of Highway Safety and Motor Vehicles to provide driver license or identification information to the DOS for the purpose of sharing and exchanging voter registration information pursuant to any interstate agreement or with the nongovernmental entity. The bill allows the DOS to share confidential and exempt information pursuant to an interstate agreement or participation in a nongovernmental entity as long as there is agreement or a requirement to keep the information confidential.

The bill allows Florida to join the Electronic Registration Information Center (ERIC), a private, non-profit, interstate consortium designed to help states improve the accuracy of their voter rolls through data match identification of problematic registrations and to increase access to voter registration for all eligible citizens. The bill requires the Secretary of State, or his or her designee, be on the board of directors of the ERIC or any other similar entity the DOS joins.

The actual expenses to the state are indeterminate. If the DOS enters into such an agreement or joins a nongovernmental entity, then there may be costs to the state and local governments associated with using the information or data shared to verify voter registration information.

The DOS may incur costs related to the initial membership fee and annual user fees if the DOS elects to participate in a nongovernmental entity. For example, the one-time membership fee for a state to join the ERIC is \$25,000. In addition, each ERIC member pays annual dues which are determined by a formula set by the ERIC board of directors, with larger states paying a bit more than smaller states. Any cost to the Department of Highway Safety and Motor Vehicles to provide the information is indeterminate.

Counties (supervisors of elections) may incur expenses related to any shared information and data received if the supervisor of elections uses such information and data to perform voter list maintenance activity, including outreach to voters to confirm addresses or eligibility. However, counties may also experience long-term cost savings due to more efficient processes and reliable sources of data to maintain the voter rolls. The actual expenses and cost savings to counties are indeterminate.

The bill will take effect on January 1, 2019.

II. Present Situation:

No complete national system currently exists to identify duplicate voter registrations across state lines. While there is no criminal or civil penalty for being registered in two states simultaneously, it is important to identify voters registered in multiple jurisdictions to ensure the accuracy of the voter rolls. However, being registered to vote in multiple jurisdictions does not mean that the voter is casting ballots in two states in the same election.¹

The Florida Secretary of State, as the chief election officer, is responsible for the operation and maintenance of the statewide voter registration system² and each county's Supervisor of Elections is primarily responsible for the registration of voters and records maintenance activities, including removal of voters.³ Supervisors of Elections are the only election officials with authority to register and remove voters from the registration rolls.

Florida Voter List Maintenance Information

The Florida Department of State's Division of Elections and county Supervisors of Elections offices perform ongoing records maintenance activities to protect the integrity of the electoral process by working to keep current and accurate records and ensure that only eligible voters are registered in the statewide voter registration system. Any maintenance program or activity must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.⁴ As part of the records maintenance activities, the elections offices may receive and use information from a variety of sources, including other Florida state and local agencies, the federal government, and other states' elections officials, that may be useful in ensuring the accuracy of the registration system.

Currently in Florida there are two ways in which the state knows that a voter is registered in multiple jurisdictions: when the voter voluntarily notifies Florida election officials that he or she has moved and registered to vote in a new state; and when another state's voting officials notify Florida election officials that the voter has registered in that other state.⁵ There is no requirement

¹ Under s. 104.18, F.S., it is a third degree felony to willfully vote more than one ballot at any election.

² Implemented as part of the Help America Vote Act of 2002. Section 98.035, F.S.

³ Section 98.015(3), F.S. *See also* ss. 98.045, 98.065, and 98.075, F.S.

⁴ Section 98.065(1), F.S.

⁵ A voter may voluntarily indicate on the voter registration application in the other state that he or she was previously registered elsewhere. Additionally, this information could be supplied by the voter at the initial registration or on subsequent registration updates.

that a registered voter must notify a state that he or she has moved out of the state and may have registered elsewhere.

When Florida election officials receive notice from another state's election officials that a Florida voter has registered in the other state, Florida law requires that notification to be treated as a request from the voter to have his or her name removed from the Florida voter registration system.⁶ If the Division of Elections is notified that a Florida registered voter may have registered elsewhere, the information is processed and forwarded to the county Supervisor of Elections to take appropriate action to remove the voter. Sometimes the out-of-state cancellation information is forwarded directly to the county Supervisor of Elections.

If Florida election officials do not receive notice that the voter has moved, that voter will eventually be put into an inactive status pursuant to the county supervisors of elections biennial voter list maintenance efforts and culled from the state's rolls by the second subsequent general election.⁷ Because of the timing of these efforts, a voter who has moved can remain on Florida's voter rolls for up to four years after moving.

Additionally, if a registered Florida voter indicates that he or she was previously registered in another state, then Florida will notify the other state within two weeks of registration to take appropriate action.⁸

Electronic Registration Information Center (ERIC)

The Electronic Registration Information Center, Inc., (ERIC) is a non-profit organization created to assist "states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens."⁹ "The ERIC provides sophisticated data matching services to the member states in order to improve a state's ability to identify inaccurate and out-of-date voter registration records, as well as eligible, but unregistered residents."¹⁰

The ERIC was formed in 2012 and is governed by states who choose to join.¹¹ As of July 2016, the ERIC had 20 state members, plus the District of Columbia, including: Alabama, Alaska, Colorado, Connecticut, Delaware, Louisiana, Illinois, Maryland, Minnesota, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia,

⁶ Section 98.045(2)(b), F.S.

⁷ The biennial voter list maintenance efforts are based on procedures that rely upon change-of-address information, obtained from the U.S. Postal Service or through returned address confirmation requests sent to voters. *See* s. 98.065, F.S.

⁸ Section 97.073(2), F.S.

⁹ Electronic Registration Information Center, available at <http://www.ericstates.org/> (last accessed November 13, 2017).

¹⁰ ERIC, *Technology and Security Overview* (October 20, 2017), available at http://ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.2.pdf (last accessed November 9, 2017). *See also* ERIC, *Bylaws: Exhibit A Membership Agreement, whereas clauses* (updated December 16, 2016), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_12-16-2016.pdf (last accessed November 28, 2017).

¹⁰ Electronic Registration Information Center, available at <http://www.ericstates.org/> (last accessed November 13, 2017).

¹¹ *Id.*

and Wisconsin.¹² Member states pay a one-time initial fee of \$25,000 and annual dues, based upon a formula that includes voting age population as a factor.¹³

The first 20 states to join the ERIC make up the 20 voting members of its board of directors. Board members serve 2-year terms, and rotate off the board, with the most senior member rotating off first, which would allow for other states to have membership on the board, if additional states join.¹⁴

By joining the ERIC, each member state agrees to submit its voter registration and motor vehicle licensee data (which the state must update every 60 days), including voter names, addresses, dates of birth, and last four digits of social security numbers.¹⁵ However, the ERIC does not require information such as race, religion, political party affiliation, or other information that can be used for purposes of discrimination and does not require records that are confidential or protected from disclosure by law or that are unrelated to voter eligibility (like a person's driving record). Sensitive, private data is anonymized by the state ("one-way hashing") and then transmitted to the ERIC, which anonymizes the data again for use in the data matching process.¹⁶ The ERIC assures that all data received is collected, matched, and stored in an environment with state-of-the-art security. The ERIC Board of Directors appointed a 3-person Privacy and Technology Advisory Board made up of leading experts in the data security and encryption fields to advise and review the ERIC's security protections.¹⁷

From the data collected, the ERIC provides each member state with "reports that show voters who have moved within their state, voters who have moved out of state, voters who have died, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not yet registered."¹⁸ Using this information, supervisors of elections can confirm the eligibility of a voter and accuracy of the voter roll and, if necessary, either remove the voter or correct the inaccuracy on the roll, as appropriate (the ERIC does not purge voters from individual states' voter rolls); and the state can send voter registration forms to eligible voters before the voter registration closing date for the next federal election.¹⁹

III. Effect of Proposed Changes:

The bill authorizes the Department of State (DOS) to enter into interstate agreements or to join a nongovernmental entity whose membership is composed entirely of state elections officials, to

¹² *Id.* The most-recent census data indicates that the top states with residents immigrating to Florida include California, Georgia, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Texas. US Census Bureau, *State-to-State Migration Flows* (2016), available at <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/state-to-state-migration.html> (last accessed on November 13, 2017).

¹³ The dues are determined by the Board of Directors. The annual budget for ERIC in their FY 2016-2017 was about \$785,000. ERIC, *Bylaws: Article II, s. 4.* ERIC, *Frequently Asked Questions*, available at <http://www.ericstates.org/faq> (last accessed November 28, 2017).

¹⁴ ERIC, *Bylaws: Article III.*

¹⁵ ERIC, *Bylaws: Exhibit A Membership Agreement, s. 2.b.* and *Exhibit B.* A member can apply to submit an "alternative data source" for the motor vehicle licensing data if it can prove to ERIC that the data is equivalent or better.

¹⁶ ERIC, *Technology and Security Overview.* ERIC, *Bylaws: Exhibit A Membership Agreement, s. 2.b.*

¹⁷ ERIC, *Technology and Security Overview.*

¹⁸ ERIC, *Frequently Asked Questions.*

¹⁹ ERIC, *Bylaws: Exhibit A Membership Agreement, s. 5.a. and b.*

share information or data with other states in order to verify voter registration information. Such agreements or the entity cannot be operated or controlled by the federal government, or any entity acting on the federal government's behalf, and Florida must be allowed to withdraw from the agreements or entities at any time.

If the DOS decides to join a nongovernmental entity, the Secretary of State, or his or her designee, must serve as a full, voting member on the board of directors of the entity within 12 months of Florida's joining the entity.

The bill requires the Department of Highway Safety and Motor Vehicles to provide driver license or identification information to the DOS for the purpose of sharing and exchanging voter registration information pursuant to any interstate agreement or with the nongovernmental entity. The DOS must enter into an agreement with the Department of Highway Safety and Motor Vehicles for such purposes.

The bill allows the DOS to share confidential and exempt information pursuant to an agreement or participation in a nongovernmental entity if either of the following occurs:

- All states participating in the interstate agreement or that are members of the nongovernmental entity agree to maintain the confidentiality of the information or data.
- The bylaws of the nongovernmental entity require member states and the entity to maintain the confidentiality of the information as required by the laws of the state providing the information.

The bill requires the DOS to provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that describes the agreement or membership and provides information on the number of registered voters removed from the Florida Voter Registration system as a result of participation in the agreement or nongovernmental entity, as well as the reasons for the removals.

The bill takes effect on January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill permits the Department of State to share confidential and exempt information under certain circumstances. Under Florida law, most voter registration information is public record pursuant to ch. 119, F.S. The social security number, the driver license number or state identification card number, where the voter submitted his or her registration information, and whether the voter declined to register or update voter registration information are exempt from public disclosure.²⁰ Additionally, while a

²⁰ Section 97.0585, F.S.

voter's signature can be viewed or inspected, it cannot be copied.²¹ Further, personal information of certain current and former government employees and their spouses and children may be exempt from public records, such as addresses, phone numbers, and dates of birth.²² Additionally, the names, addresses, and telephone numbers of actual or threatened victims who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence are exempt from public records.²³ The confidentiality and disclosure of such information must be maintained if the state enters into an interstate agreement or becomes a member of a nongovernmental entity as permitted by this bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill allows the DOS to enter into interstate agreements or to join a nongovernmental entity to share information or data with other states in order to verify voter registration information. If the DOS enters into such an agreement or joins a nongovernmental entity, then there may be costs associated with using the information or data shared to verify voter registration information.

Local Government Expenditures

Counties (supervisors of elections) may incur expenses related to any shared information and data received when the supervisor of elections uses such information and data to perform voter list maintenance activity, especially if such information triggers a significant amount of activity that needs to be processed including outreach to voters to confirm addresses or eligibilities. However, the counties may also incur long-term cost savings due to more efficient processes and reliable sources of data helping to maintain the voter rolls. The extent of the potential costs and savings is currently indeterminate.

For example, if Florida joins the ERIC, the ERIC's membership agreement encourages member states to "establish a regular schedule for requesting ERIC data with a minimum of one request every calendar year." If the state fails to make a request for 425 days, then

²¹ *Id.*

²² Section 119.071(4)(d)1., F.S.

²³ Section 741.4651, F.S.

the ERIC will automatically send data to the state and require the state to use the data as discussed above in the Present Situation.

State Government

The DOS may incur expenses related to working with the data sets provided through participation in an interstate agreement or a nongovernmental entity.

Further, participation may require the payment of fees or membership dues by the DOS. For example, the ERIC charges a one-time membership fee of \$25,000 to join and annual dues. The precise amount of annual dues is indeterminate and will vary from year-to-year. If other states join the ERIC after Florida, that could affect the cost for annual dues.

Any costs to the Department of Highway Safety and Motor Vehicles is indeterminate at this time.

VI. Technical Deficiencies:

The bill requires the Secretary of State, or his or her designee, to serve as a full member with voting rights on the nongovernmental entity's board of directors within 12 months after joining the entity. The Board of Directors for the ERIC has 20 members that serve two-year terms. If Florida joins the ERIC, it would be the 21st state to join, and therefore it could be up to two years before the Secretary of State could be a member of the ERIC Board of Directors.

VII. Related Issues:

SB 278 is tied to this bill (effective upon the date that this bill or similar legislation is effective) and creates an exemption from the public records disclosure and inspection requirements for voter registration information received by the DOS pursuant to an interstate agreement or membership in a nongovernmental entity.

The ERIC provided the following information to the Florida State Association of Supervisors of Elections that the ERIC predicts will be in an initial ERIC report on Florida information and data:²⁴

- Intrastate voters: 717,000 voters who have moved within Florida but haven't updated their voter records;
- Interstate voters: 233,000 interstate voters with out-of-date records because the voter moved to another state;
- Deceased voters: 24,000 voters still on the rolls;
- Duplicates: 17,000 duplicate registrations in the statewide database; and
- Potential Voter Registrants: 4.5 million eligible but unregistered voters in the motor vehicles database.

²⁴ Florida State Association of Supervisors of Elections, *FSASE 2017 Legislative Issues* (page entitled *ERIC at Work*), available at http://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2017_FSASE_Legislative_Priorities.pdf (last accessed November 9, 2017).

The ERIC caveats that its numbers are based on the “averages” of what other member states have experienced.

VIII. Statutes Affected:

This bill substantially amends section 98.075 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.
