

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1300

SPONSOR: Committees on Judiciary and Ethics and Elections and Senator Sebesta

SUBJECT: Voter Registration; Supervisors of Elections

DATE: March 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rubinas</u>	<u>Rubinas</u>	<u>EE</u>	<u>Favorable /CS</u>
2.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for CS/SB 1300 amends several provisions in the Florida Election Code as specifically relates to voter registration as follows:

- Permits copies of the uniform statewide voter registration application to be made by any private individual or group as long as the copies are in the same format as the uniform application;
- Revises the statewide voter registration application to additionally elicit the state or country of birth from applicants;
- Requires voter registration agencies including the Department of Highway Safety and Motor Vehicles (“DHSMV”) to forward unsigned or uncompleted voter registration applications to the appropriate supervisor of elections within 5 days after receipt;
- Requires the voter registration identification card to include the name in lieu of the actual signature of the supervisor of elections;
- Permits an elector the option to make a change of address and provide notice thereof by a signed, written notice, or by telephonic or electronic means, provided the elector gives his birthdate; and
- Clarifies the procedure for removing ineligible voters from the statewide voter registration database.

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.057, 97.058, 97.071, 97.1031, and 98.0977. For purposes of incorporating amendments made to s. 97.052, F.S., this bill reenacts subsections (3) and (5) of s. 97.057, F.S.; subsection (3) of section 97.058, F.S.; subsection (11) of section 98.015, F.S.; and section 98.461, F.S., which cross-reference s. 97.052, F.S., as amended by this bill. For the same reason, the bill reenacts s

subsection (1) of section 97.0585, F.S., which cross-references ss. 97.057, and 97.058, F.S., as now amended by this bill.

II. Present Situation:

The Florida Election Code encompasses chapters 97-106, F.S. The Florida Registration Act is contained in part II of chapter 97 and is patterned after the National Voter Registration Act of 1993 (also known as the “NVRA” or “Motor Voter Act”). The purposes of the National Voter Registration Act are to increase voter registration, to enhance voter participation, to protect the integrity of the electoral process, to ensure the accuracy and validity of the voter registration lists, and to prevent fraud in the electoral process. As part of the Act, in order to secure federal funding, a state can implement a process for voter registration in connection with driver’s license applications. *See* 42 U.S.C. 1973gg-5(a),(b). Therefore, Florida provides that a person may simultaneously register to vote and obtain a driver’s license at the Department of Highway Safety and Motor Vehicle (DHSMV) office. A person may also register at a number of other agencies.

Uniform Statewide Voter Registration Application

Currently, the Department of State (“Department”), prescribes the uniform statewide voter registration application for use in this state. The Department is also exclusively responsible for printing and distributing the application to certain individuals and entities. *See* s. 97.052(1)(b), F.S. A supervisor of elections may reprint an application with the supervisor’s direct mailing address, if the application has been first approved by the Department. No other private individual or groups designated as voter registration agencies by the state can reproduce the application. *See* s. 97.052(1)(c), F.S. The application must elicit 19 categories of information including, but not limited to full name, address of homestead-exempted property, race or ethnicity, partial social security number, purpose for which application is being made, citizenship and signature of the applicant under oath.

Under current law, the DHSMV is required to notify each individual who completes a driver’s license or an identification card application, renewal or change of address that such information will be automatically transferred to a voter registration application. *See* s. 97.057, F.S. If the additional information and a signature is provided, only then can and must the voter registration application be completed and sent to the proper election authority. A driver’s license or identification card applicant can decline or simply fail to sign a voter registration application to either register, update the record or change his or her address. Such declinations (i.e., the unsigned application) to register to vote are confidential and exempt from the public records law and can only be used for voter registration purposes. *See* s. 97.0585, F.S. The application can not be forwarded and the declination must be retained for 2 years. The law is currently silent as to DHSMV’s other duties relative to the retention of these unsigned applications which are not considered agency records and therefore presumably are not public records either.

Registration Identification Card

Once a voter registers, a registration identification card must be furnished. The card must contain the signature of the supervisor of elections.

Notice of Change of Residence

Currently, when a voter moves from the address listed on that person's voter registration record to another address within the same county, the elector must give written notice to the supervisor and obtain a registration identification card reflecting the new address of legal residence.

Statewide Voter Registration Database

In 2001, the Legislature appropriated \$2 million to the Department of State¹ to develop a statewide voter registration database containing voter registration information from all of the counties. The purpose of the database is to verify the eligibility of voters and to help maintain an up-to-date voter registration list that excludes ineligible persons such as convicted felons, deceased persons, duplicate registrations, and those persons adjudicated mentally incompetent with respect to voting. *See* ch.2001-40, L.O.F.; s. 98.0977, F.S. The database is to be fully operational by June 1, 2002. Under federal law, a state's election code must be submitted to the Department of Justice for approval. With the exception of the statewide voter registration database provisions, all other components of the Election Code as revised in 2001 have been (reportedly) preliminarily approved to date.

A voter's name can not be removed from a list by the supervisor of election unless the voter makes a written request, is convicted of a felony offense (and for which civil rights have not been restored), is adjudicated mentally incompetent (and for which a right to vote has not been restored), has died, or unless done as authorized by activities arising from ss. 98.065, or 98.075, F.S., relating to registration list maintenance programs. *See also* 42 U.S.C. s.1973gg-6. Current law requires each supervisor of elections to compare a voter's registration information with information held by the Department of Law Enforcement, the Board of Executive Clemency, the Office of Vital Statistics, and other relevant sources or databases. *See* s. 98.0977, F.S. If there is information to suggest that a voter is ineligible for any of the statutory reasons, a supervisor of election is required to notify the voter including a statement as to the potential basis for the ineligibility and a request for supplemental information. If the supervisor of election determines that the voter is ineligible, then another notice must be sent via certified mail, stating the reason for ineligibility and the intent to remove his or her name from the registry. No provision exists for a hearing or an appeal to challenge that determination..

III. Effect of Proposed Changes:

Uniform Statewide Voter Registration Application Form: The bill amends section 97.052, F.S., to allow a voter registration application to be reproduced by private individuals or groups, so long as the application is in the same format as that prescribed by the Department. The bill further amends this section to revise the application to elicit additionally the *state or country of the applicant's birth*.

Voter Registration Applications: Section 97.057, F.S., is amended to require DHSMV to forward *unsigned* voter registration applications to the appropriate supervisor of election within five days of receipt. The bill also amends section 97.058, F.S., to require other voter registration

¹ Although the law provides that the Department will work with the Florida Association of Clerks to administer and maintain the statewide voter registration database, the Department is handling the database exclusively.

agencies to forward *copies of incompletd* voter registration applications to the appropriate supervisors of elections within 5 days after receipt.

Voter Registration Identification Card: Section 97.071, F.S., is amended to require the voter registration identification card to contain the name in lieu of the actual signature of the applicable supervisor of election.

Voter's Change of Address: Section 97.1031, F.S., is amended to allow an elector to request an address change through a signed, written notice, by the telephone or by electronic mail. If an elector opts to use telephonic or electronic notice, the elector must provide his or her date of birth.

Administration of Statewide Voter Registration Database: Section 98.0977, F.S., is amended to clarify how the voter registration database is to be administered and maintained through the removal of ineligible voters as follows:

- It requires the supervisors of elections to remove automatically without notice from the database the names of deceased and the names of persons subsequently registered as voters in another county;
- It implements a notice and hearing process for voters who are potentially ineligible on the basis of a felony conviction or an adjudication of mental incompetence (for which civil rights or a right to vote has not been restored, respectively) prior to removal of their names from the database;

Specifically, as pertains to such convicted felons and mentally incompetent persons, the supervisor is required to notify them by certified mail that they are potentially ineligible to vote because of information contained in the database. The notice must contain an opportunity for persons to provide information concerning eligibility or request a hearing before the supervisor to show cause why they should not be removed from the voter rolls. If the supervisor has evidence that a person did not receive the notice, the supervisor must publish a notice in a newspaper of general circulation. If an elector fails to respond to the notice within 30 days or fails to attend a hearing, the supervisor must "strike" the elector's from the voter rolls.

An appeal, in accordance with the Florida Rules of Appellate Procedure, may be made to the circuit court in the county where the affected person is registered. The appeal is to heard as a de novo review. The affected person bears the cost of the appeal unless it is shown that the name was erroneously or illegally stricken or the affected person is indigent, in which case the board of county commissioners bears the cost of such appeal.

The hearing procedure referred to above is designed to track similar requirements contained in section 98.075, F.S., with regard to a supervisor's voter registration list maintenance duties. Section 98.075, F.S., provides for an appeal to the circuit court, if an elector is dissatisfied with the supervisor's decision at the hearing.

The bill would take effect upon becoming law.

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

A board of county commissioners must pay for any appeal by any affected person who is indigent or successfully shows that his or her name was erroneously or illegally removed from the voter registration database on the basis of a felony conviction or mental incompetency. It is indeterminate what the fiscal impact will be.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Voters who are potentially ineligible on the basis of a felony conviction or mental incompetence will be provided notice and the opportunity to be heard to challenge the erroneous or illegal removal of their names from the voter registration database.

Specifically designated voter registration agencies, other than DHSMV, may be able to facilitate more voter registration by virtue of the authority to reproduce the voter registration application form.

C. Government Sector Impact:

The bill may enhance the integrity and accuracy of the voter registration database. The Department of Highway Safety and Motor Vehicles (DHSMV) believes that Committee Substitute for Senate Bill 1300 will result in a non-recurring fiscal impact for fiscal year 2002-2003 of \$13,500. Committee Substitute for Senate Bill 1300 requires DHSMV to deliver unsigned voter registration applications in addition to completed voter registration applications within five days after receipt of such applications to the appropriate supervisor of elections. According to DHSMV, this will require 100 hours of contracted programming modifications to the Driver License software system at a cost of \$13,500.

There is a minor fiscal impact involved with the printing of revised voter registration applications, however, the actual amount is indeterminate and dependent upon the number of applications required by individual counties and the number of distribution locations for these applications in each individual county.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- Sections 97.057, and 97.058, F.S., are inconsistently amended to require specified voter registration applications to be forwarded to the supervisor of elections within 5 days of receipts. Under s. 97.057, F.S., the Department of Highway Safety and Motor Vehicles is required to forward *unsigned voter registration applications* to the appropriate supervisor of election. Under s. 97.058, F.S., other voter registration agencies are required to forward *copies of incompleted voter registration applications*. The difference may be significant if current law is construed to prohibit such applications from being forwarded unless signed under oath even if incomplete. Second, to the extent that existing statutory language refers to declinations as being either a oral statement to decline to register (which is presumably recorded by the DHSMV) or an actual “unsigned voter registration application,” unless the DHSMV also records the “unsigned voter registration application” as a declination, it is unclear how DHSMV can both retain the “unsigned voter registration application” for two years and send the actual application within 5 days of receipt to the supervisor of elections. Third, no direction is provided to the supervisor of elections about what to do with these technically unverified and uncompleted applications or the limitations as to what he or she should be able to rely on information provided in such applications, particularly in the removal of names from the voter registration database or rolls. It may need to be clarified that such information contained in these unsigned or uncompleted applications shall be used solely to initiate notice to an individual of his or her potential ineligibility resulting from the unsigned or uncompleted application, particularly as the bill does not provide a requirement to notice persons of their ineligibility due to the unsigned or uncompleted applications.
- The bill eliminates the requirement to notice all persons who may be ineligible to vote based on information that a supervisor of election may have. Instead, the requirement to notice (and the opportunity to be heard) is limited to persons whose basis for potential ineligibility is a felony conviction or an adjudication of mental incompetence. The supervisor of elections is given authority to delete automatically (without notice) the names of deceased persons and the names of voters for which information or evidence exists that the voter registered subsequently in another county. There does not appear to be a notice requirement for all persons who may otherwise be ineligible for reasons such as an unsigned or incompleted registration form which is notable because the bill requires the DHSMV to forward these registration forms to the supervisors of elections but does not address what they are supposed to do with them.
- It is uncertain whether the option to provide a notice of change of residence by telephone is consistent with the requirements of the National Voter Registration Act. The federal Act allows for a change-of-address requests by the voter and removal of the voter registrant’s name but the federal Act also appears to require some form of written confirmation or verification of that request. Only after the voter fails to respond to notice

and fails to vote at the next election, is the voter's name removed. *See* 42 U.S.C. ss.1973gg-6(a)(3), (d).

- Existing law in chapter 98, F.S., as well as language in the bill refer to a person adjudicated as mentally incompetent for whom a right to vote has not been restored. Current law under chapter 744, F.S., which governs formal adjudication of incompetence, refers to such persons more commonly as "incapacitated." Moreover, contrary to existing law under chapter 744, F.S., chapter 98, F.S., as exists and as is amended by this bill appear to presume that every person who is adjudicated mentally incompetent or incapacitated has automatically had his or her right to vote removed by the court. There are certain rights under the law that are retained even if one is adjudicated incapacitated and there are other rights that *may* be taken away, such as the right to vote, but only through a court order after an adjudication of incapacity. *See* s. 744.3215, F.S.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
