

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 707 Voter Registration List Maintenance

**SPONSOR(S):** Government Accountability Committee; Oversight, Transparency & Administration Subcommittee; Spano

**TIED BILLS:** CS/CS/HB 709 **IDEN./SIM. BILLS:** CS/SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Toliver	Harrington
2) Transportation & Tourism Appropriations Subcommittee	9 Y, 0 N	Cobb	Davis
3) Government Accountability Committee	20 Y, 0 N, As CS	Toliver	Williamson

### 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 obtaining and maintaining uniformity in the interpretation and implementation of the election laws and creating and administering a statewide voter registration system. The voter registration 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.

The bill allows the Department to enter into interstate agreements or become a member of a nongovernmental entity whose membership is composed solely of state government election officials for the purpose of sharing and exchanging information with other states to maintain the statewide voter registration system. The bill also provides that the Department may only enter into such an agreement or membership if the agreement or entity is controlled or operated by participant states. The Department must retain the ability to withdraw from any interstate agreement or membership at any time. The Department may only share confidential and exempt information pursuant to an interstate agreement or after becoming a member in a nongovernmental entity if each state or member agrees to maintain the confidentiality of the information. Additionally, if the department becomes a member of a nongovernmental entity its bylaws must provide that each member and the entity itself maintain the confidentiality of any information as required by the laws of the state supplying the information.

The bill requires the Department of Highway Safety and Motor Vehicles to submit certain information to the Department for the purpose of sharing the information pursuant to an interstate agreement or with a nongovernmental entity.

If the Department enters into an interstate agreement or becomes a member of a nongovernmental entity, it must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year.

According to the Department, the bill may result in the agency incurring expenses should it choose to enter into an agreement to share information with other states. Additionally, the Department notes that there may be additional costs associated with the administration and management of the data provided via an interstate agreement.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0707e.GAC

**DATE:** 4/20/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Department of State

The Department of State (Department)<sup>1</sup> 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.<sup>2</sup>

##### Voter Registration System

The Secretary implements, operates, and maintains the statewide voter registration system (system).<sup>3</sup> 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.<sup>4</sup> Voter registration officials, such as supervisors, are provided secure access to the system and may update the voter registration information contained in the system.<sup>5</sup> The Department is prohibited from contracting with any other entity for the operation of the system.<sup>6</sup>

##### Voter Registration List Maintenance

Florida law requires the supervisors to conduct voter registration list maintenance at least every odd-numbered year to protect the integrity of the electoral process.<sup>7</sup> The program must be uniform, nondiscriminatory,<sup>8</sup> and in compliance with federal election law.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

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<sup>1</sup> Section 20.10(1), F.S.

<sup>2</sup> Section 97.012, F.S.

<sup>3</sup> Section 98.035(1), F.S.

<sup>4</sup> Section 98.035(2), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 98.035(3), F.S.

<sup>7</sup> Section 98.065(3), F.S.

<sup>8</sup> The term "nondiscriminatory" applies to and includes persons with disabilities. Section 98.065(1), F.S.

<sup>9</sup> Section 98.065(1), F.S.

<sup>10</sup> Section 98.065(2), F.S.

<sup>11</sup> Section 98.065(3), F.S.

If a supervisor receives change of address information from one of the methods listed above, jury notices, the Department of Highway Safety and Motor Vehicles, 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.<sup>12</sup> The supervisor must then send the registered voter an address change notice.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

#### Voter Registration Ineligibility Determinations

Currently, the Department identifies deceased persons, persons adjudicated of mental incapacity, persons convicted of a felony, and other ineligible voters contained in the system.<sup>16</sup> The supervisor<sup>17</sup> is then notified of this finding and, after notifying the voter and giving him or her a chance to respond,<sup>18</sup> makes a final determination regarding the voter's eligibility.<sup>19</sup> A person determined to be ineligible by a supervisor may appeal the determination in circuit court.<sup>20</sup>

#### **Effect of the Bill**

The bill allows the Department to enter into interstate agreements or become a member of a nongovernmental entity whose membership is composed solely of state government election officials for the purpose of sharing and exchanging information with other states to maintain the statewide voter registration system. If the Department becomes a member of a nongovernmental entity, the entity must place the Secretary, or his or her designee, on its board of directors with full voting rights. The bill also provides that the Department may only enter into an interstate agreement or membership if the agreement or entity is controlled or operated by participant states. The interstate agreement or nongovernmental entity may not be operated or controlled by the Federal Government or any entity acting on behalf of the Federal Government. The Department must retain the ability to withdraw from any interstate agreement or membership in a nongovernmental entity at any time.

The Department may only share confidential and exempt information pursuant to an interstate agreement or after becoming a member in a nongovernmental entity if each state or member agrees to maintain the confidentiality of the information. Additionally, if the department becomes a member of a nongovernmental entity its bylaws must provide that each member and the entity itself maintain the confidentiality of any information as required by the laws of the state supplying the information.

The bill requires the Department of Highway Safety and Motor Vehicles to submit certain information to the Department for the purpose of sharing the information pursuant to an interstate agreement or with a nongovernmental entity.

If the Department enters into an interstate agreement or becomes a member of a nongovernmental entity, it must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year. The report must describe the agreement or membership and provide information on the total number of voters removed from the voter registration system as a result of the agreement and the reasons for their removal.

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<sup>12</sup> Section 98.065(4)(a), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 98.065(4)(b), F.S.

<sup>15</sup> Section 98.065(4)(c), F.S.

<sup>16</sup> Section 98.075, F.S.

<sup>17</sup> 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.

<sup>18</sup> No notification is given to those determined to be deceased. Section 98.075(3), F.S.

<sup>19</sup> Section 98.075(7), F.S.

<sup>20</sup> Section 98.0755, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 98.075, F.S., relating to voter registration list maintenance.

Section 2 provides an effective date of January 1, 2018.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department, the bill may result in the agency incurring expenses should it choose to enter into an agreement to share information with other states.<sup>21</sup> Additionally, the Department notes that there may be additional costs associated with the administration and management of the data provided via an interstate agreement.<sup>22</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, though likely insignificant fiscal impact on local government expenditures. Supervisors are charged with certain responsibilities associated with removing names from the voter registration system. If the Department enters into an agreement or membership with a nongovernmental entity to share information, the arrangement may lead to an increase in determinations of voter ineligibility and, therefore, might increase the workload of supervisors and their staff.

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 State Constitution because it is an election law.

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<sup>21</sup> Department of State, 2017 Agency Legislative Bill Analysis of HB 707, at pg. 4 (March 13, 2017), on file with the Oversight, Transparency & Administration Subcommittee.

<sup>22</sup> *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2017, the Oversight, Transparency & Administration Subcommittee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The strike-all amendment moved the authority to enter into an interstate agreement from the section of law detailing the Secretary's duties to a section of law relating to voter registration records maintenance activities. The amendment removed provisions relating to keeping certain records confidential and exempt from public record requirements. The amendment directed the Department to provide the information to supervisors for the purpose of conducting voter registration list maintenance. The amendment also added the following requirements that were not previously included in the bill:

- The interstate agreement must be controlled or operated by participant states and the agreement may not be operated or controlled by the Federal Government or any entity acting on behalf of the Federal Government;
- The Department must retain the ability to withdraw from any interstate agreement at any time;
- The Department must report on annual basis specified information if it enters into an interstate agreement.

On April 19, 2017, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably with a committee substitute. The strike-all amendment allowed the Department, in addition to entering into interstate agreements, to become a member of a nongovernmental entity if the entity is composed of state government election officials and its sole purpose is the exchanging of information to verify voter registration information. In order to become a member of such an entity, the Secretary must be allowed a place on its board of directors. The amendment required the Department of Highway Safety and Motor Vehicles to submit certain information to the Department which the Department would then share pursuant to an interstate agreement or with a nongovernmental entity of which it is a member. The amendment specified the circumstances under which information that is confidential and exempt under state law may be shared pursuant to an interstate agreement or membership in a nongovernmental entity. The amendment also changed the effective date of bill from July 1, 2017, to January 1, 2018.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.