

# 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/SB 466  
SPONSOR: Transportation Committee and Senator Burt  
SUBJECT: Submission of Current Information for Preparation of Jury Lists  
DATE: February 13, 2002 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	<u>Vickers</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This CS amends several provisions of the Florida Statutes that pertain to the preparation of jury lists. The CS requires the Department of Highway Safety and Motor Vehicles (DHSMV) to deliver to the clerk of the circuit court in each county, on a monthly basis, a list of persons qualified for jury duty in that county. The CS also requires the Department to capture county of residence information from each holder of a Florida driver’s license or identification card.

The CS substantially amends the following sections of the Florida Statutes: 40.011; 322.051; and 322.08.

## II. Present Situation:

In 1991, chapter 91-235, L.O.F., was enacted to amend s. 40.01, F.S., to provide that jurors must be at least 18 years old, citizens of the United States, legal residents of Florida and their respective counties, and possess a driver’s license or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV.) Additionally, pursuant to s. 40.011, F.S., individuals who do not have a driver’s license or identification card, but who otherwise meet the qualifications of s. 40.01, F.S., can execute an affidavit expressing their desire to serve as jurors.

Section 40.011, F.S., also enacted in 1991 by ch. 91-235, L.O.F., requires the DHSMV to maintain a database of each driver or holder of an identification card who meets the criteria for jury duty set forth in s. 40.01, F.S. Effective January 1, 1992, the DHSMV was required to begin the process of establishing the jury list database, which was to be operational by January 1, 1998. Since 1998, pursuant to s. 40.011, F.S., the DHSMV has been required to provide the jury list to the clerk of the circuit court in each county on an annual basis.

Once the clerk receives the jury list from the DHSMV, the clerk adds to the list, pursuant to s. 40.022, F.S., any person who has executed an affidavit in accordance with s. 40.011, F.S. The clerk, on a monthly basis, also cross-checks the list provided by the DHSMV with other sources and purges from the list those persons who have died and those who are statutorily disqualified from serving as jurors (i.e., convicted felons who have not had their civil rights restored and people who have been adjudicated mentally incompetent.)

Several issues have arisen since the implementation of the DHSMV jury source list in 1998. One of the problems has centered around the county of residence of the potential juror. The DHSMV database identifies the residence of licensed drivers and identification card holders based upon zip codes and not county of residence. In many instances, zip codes cross county lines. As a result, some clerks of court report that, compared to the jury pool drawn from registered voters, more of the DHSMV source list jurors are not eligible for jury duty because they do not reside in the county where they have been summoned to serve.

Another purported problem with the DHSMV source list is a lower summoning yield due to a higher number of incorrect addresses. The summoning yield is the percentage of citizens available to serve as jurors after eliminating all of those who are disqualified, exempted, excused, and granted postponements. The summoning yield also reflects those jurors who did not receive a summons and those who did receive a summons but failed to report. Some clerks of court report the DHSMV source list contains so many incorrect addresses that they now summon twice as many potential jurors as they summoned under the registered voter source list. Two counties report that this has resulted in increased postage costs of more than \$10,000 for each county.

Another alleged problem with the DHSMV source list is the contention by some parties that the quality of jurors has declined. Several state attorneys and judges have reported a higher incidence of convicted felons being summoned, with some of these statutorily ineligible individuals actually serving on a jury. Many state attorneys and judges also have reported more potential jurors having arrest records. There have been some reported cases, both criminal and civil, where convictions and final judgments have been reversed on appeal because jurors did not disclose personal convictions or arrest histories.

State attorneys, judges, and civil trial lawyers also have reported more jurors appear to be less interested in fulfilling their civic duty. These sources contend that, compared to when the jury pool was drawn from registered voters, the current pool of jurors pay less attention to the proceedings and have less respect for the court system.

In May of 2001, the Jury Innovations Committee, a committee appointed by the Florida Supreme Court in November of 1999, issued its final report on Florida's current jury system.<sup>1</sup> The committee studied the jury source list and recommended no change in the source. Although the committee was informed of, and acknowledged, problems with non-county residents appearing

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<sup>1</sup> The committee's report is only a set of recommendations to the Florida Supreme Court. The court was scheduled to hear oral argument on the report on November 7, 2001. However, the argument was rescheduled for the Court's February 2002 term.

on the DHSMV source list, the committee was of the opinion that lower summoning yields were not solely caused by this factor as summoning yields are dependent on many other factors that are controlled by the court. More specifically, juror excusals, postponements and failures to appear have a large impact on the summoning yield and the committee thought these items could be better addressed by the court.

Accordingly, the Jury Innovations Committee recommended the DHSMV include the county of residence on its driver's license application form. The committee also recommended that s. 322.17(2), F.S., be amended to delete the \$10 fee a licensee must pay for a replacement license due to changes in name or address as the committee viewed the fee as discouraging some persons from keeping the information on their license current.

### **Interim Project 2002-139**

Staff of the Senate Judiciary Committee conducted Interim Project 2002-139, which analyzed the jury source list in light of the aforementioned issues that have arisen since the list's implementation in 1998.

#### **Staff Questionnaire**

A questionnaire was circulated to numerous interested parties, which sought to elicit information related to problems with the DHSMV source list, problems with the registered voter source list, preferred choice of source list, recommended changes to the source list, fiscal impact, and miscellaneous comments. The respondents were also requested to provide, where available, data in support of their responses. The questionnaire was distributed to each of Florida's 67 supervisors of elections, each of the 67 clerks of court (via the Florida Association of Court Clerks and Comptroller), each of the 20 state attorneys (via the Florida Prosecuting Attorneys Association), each of the 20 public defenders (via the Florida Public Defender Association), and the Academy of Florida Trial Lawyers and the Florida Defense Lawyers Association for circulation to their respective members.

According to Interim Project Report 2002-139, issued on October 1, 2001, the questionnaire revealed that those in favor of retaining the DHSMV source list, with or without modifications to the list, comprise 62% of all respondents. Broken down, 100% of the public defenders, 75% of plaintiff-oriented civil trial lawyers, 68% of election supervisors, and 48% of court clerks are in favor of the DHSMV list.

The questionnaire also revealed that only 32% of all respondents are in favor of returning the source list to registered voters. The state attorneys are unanimously in favor of returning the source list to registered voters, while only 47% of the clerks, 22% of plaintiff-oriented civil trial lawyers, and 5% of the election supervisors are in favor of returning to registered voters.

Six percent (6%) of all respondents did not take a position on which source list they preferred, or they suggested other sources. Five percent (5%) of the clerks reported no preference, while 27% of the supervisors took no position.

#### **Voter Registration and Diversity of Jury Pool**

The Interim Project Report indicated that the reasons for changing the jury source list in 1991 were to diversify the jury pool and promote voter registration. Since the DHSMV source list went into operation in 1998, there has been an increase in voter registration. According to the Department of State, Division of Elections, the total number of registered voters has increased by over 780,000 voters since the new source list was implemented in 1998. However, according to the Division of Elections, there have been no studies conducted to determine whether the change in the juror source list has contributed to the increase in voter registration.

Voter registration and minority representation in the pool of registered voters is currently higher than it was in 1991 when the change in the source list was being considered. Currently, registered voters represent 71% of the state's 18 and older population, whereas they only comprised 60% of that same population group in 1990. Likewise, registered voters now represent 55% of the state's total population, whereas they only constituted 47% of population in 1990. Similarly, non-white voters now represent 22% of the state's registered voters (16% of the state's population), whereas they only represented 10% of the registered voters (15% of the state's population) in 1990.

The voter registration numbers currently reflect a more accurate representation of the statewide community than existed in 1991 when the jury source list was being considered for change. It is unknown whether these numbers would decline if the source list was changed back to voter registration. Anecdotal evidence, along with the 1989 study commissioned by the Department of State, may indicate a decrease in voter registration should the source list return to registered voters.

Furthermore, although the number of registered voters has increased and they currently comprise 71% of the state's 18 and over population, the jury pool is still much larger with the DHSMV source list. In 2000, the DHSMV source list had 10,652,973 people. This is 86% of the state's 18 and over population and almost 2 million people more than those in the group of registered voters.

As of this date, there has been only one study that has specifically looked at the impact of the change in the jury source list on the composition of jury pools. In 1998, the *Palm Beach Post* conducted a random sampling of jury pools summoned before and after the implementation of the DHSMV source list. The *Palm Beach Post* reported that, overall, the demographics of Palm Beach County's average jury candidate have not changed much as a result of the jury source list switch.

#### Summoning Yield

The Interim Project Report revealed that, statewide, according to figures from the Office of the State Court Administrator, the average summoning yield using the registered voter source list was 34.8% for the three years before the list was changed. Since the DHSMV source list has been in effect, the summoning yield has averaged 30.1%. Statewide, this translates to a 4.7% drop.

Likewise, on a statewide basis there has been an approximate 26% increase in the number of jury summonses issued since the implementation of the DHSMV source list. The average number of jurors summoned statewide for the three years before the list was changed was 1,344,540 per

year. Since the DHSMV source list has been in effect, the average number of jurors summoned statewide has been 1,882,014 per year. This equates to a statewide annual increase of \$182,741 in postage costs. However, it is unknown whether the increased number of summonses and the increased postage costs are directly related to the DHSMV source list, or whether they are related to other causes such as increased numbers of postponements, excusals, failures to appear and potential trials.

The decreased summoning yield and increased issuance of jury summons has been attributed by some parties to the DHSMV source list containing incorrect addresses and non-county residents. Incorrect addresses often result from people moving during the year or people having different addresses on their driver's license as opposed to their actual residence address. Pursuant to s. 40.011, F.S., the DHSMV is only required to provide the source list to the clerks on an annual basis, which, according to the DHSMV, may account for a portion of the incorrect addresses. A large percentage of court clerks indicated they would like to receive the DHSMV list more frequently, either on a quarterly or monthly basis. The report indicated that, according to the DHSMV, the list can be supplied on a more frequent basis without any fiscal impact and the DHSMV currently provides the list more frequently to five clerks.

Regarding non-county residents being on the jury source list, the DHSMV acknowledges that this is a problem because applicants for driver's licenses and identification cards report their addresses by stating what city they live in and their zip codes, which cross county lines, but do not identify their county of residence. In addressing the issue, the DHSMV has tried many different versions of computer software, met with officials of the United States Post Office, and physically reviewed census accounts in conjunction with zip codes. None of these efforts have met with any success.

According to the DHSMV, the only way to successfully correct this problem is to reprogram the database and collect the residency information from each individual. At last accounting, the DHSMV database had 15,451,277 people who must be screened in order to compose the jury source lists for each clerk. Personal contact with each person equates to \$3,800,000 in mailing costs. Once collected, data entry would begin and could be accomplished in one year at a personnel cost of \$1,245,959. Computer programming costs would total \$8,000. The total projected cost to accomplish the task in a one year time frame would be \$5,053,959. Alternatively, if this task is phased in and only performed when individuals renew their licenses or update their address changes with the DHSMV, the only cost would be the \$8,000 for computer programming.

#### Report Recommendations

Interim Project Report 2002-139 concluded that, at this time, there is not enough data to strongly indicate the current jury source list is defective from an administrative, fiscal, or constitutional standpoint. Likewise, there is not enough data indicating the voter registration source list is superior to the DHSMV source list. Both source lists have positive and negative attributes, yet overall neither set of attributes significantly outweighs the other. The report concluded that, in light of the strong public policy interest in encouraging voter registration, and of the fact that the DHSMV source list covers 86% of the population that is eligible for jury duty, the effect of retaining the DHSMV source list outweighs the deterrent effect jury duty has on voter

registration and the minimal cost associated with addressing the problems with the DHSMV source list

Accordingly, the report recommended that the DHSMV source list prescribed in s. 40.01, F.S., remain unchanged. However, to alleviate the problems with incorrect addresses, the report recommended that s. 40.011, F.S., be amended to require the DHSMV to submit the source list on a monthly basis to each of the court clerks. This is a logical time to update the list as the clerks must update their jury pool lists on a monthly basis pursuant to s. 40.022, F.S.

Additionally, to resolve the non-county resident problem, the report recommended that the DHSMV be directed to include the county of residence and mailing address on all license and identification card application, renewal, and change of address forms. At this time, the approximate \$5 million cost to immediately correct this sole problem is not justified by the apparent minimal fiscal benefit it will achieve. However, if other changes to the driver's license system are recommended by another committee, then the report recommended that this change be implemented immediately in conjunction with any other changes. Accordingly, if there are no other changes to the driver's license application and renewal system, the DHSMV should institute the county of residence information as soon as possible so that the updated forms will be available when people apply for licenses, renew their licenses, and change their addresses.

Finally, to encourage people to update their driver's license information, the report recommended that s. 322.17(2), F.S., be amended to eliminate the \$10 fee that is automatically charged for replacement licenses that reflect name and address changes. Instead, a fee should only be charged when the updated information is not provided in a timely fashion. If the new address or new name is not provided to the DHSMV within the time required by s. 322.19, F.S., which is currently 10 days, then a fee should be assessed on a scaled basis, with the amount of the fee increasing in proportion to the length of time the person is delinquent in notifying the DHSMV of the new name or address. The report further recommended that this 10 day period to report name and address changes be changed so that more time is available before a fee will be assessed.

### **III. Effect of Proposed Changes:**

**Section 1** of the CS amends subsection (1) of s. 40.011, F.S., to require the Department of Highway Safety and Motor Vehicles to deliver jury lists to the clerk of the circuit court in each county on a monthly basis. Currently, s. 40.011(1), F.S., only requires the Department to provide the jury lists to the clerks once a year. Providing an updated list on a monthly basis should alleviate the reported problem of incorrect addresses.

**Section 2** of the CS amends subsection (1) of s. 322.051, F.S., to require the Department of Highway Safety and Motor Vehicles to collect county of residence information from persons applying for identification cards. This change should diminish the reported problem of summoning potential jurors who do not live in the county where they are summoned for jury duty. Accordingly, this change should also increase the juror summoning yield and lower the costs for summoning jurors.

**Section 3** of the CS amends subsection (2) of s. 322.08, F.S., to require the Department of Highway Safety and Motor Vehicles to collect county of residence information from persons applying for driver's licenses. This change should also diminish the reported problem of summoning potential jurors who do not live in the county where they are summoned for jury duty. This change should also increase the juror summoning yield and lower the costs for summoning jurors.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The tradition of trial by jury, whether in criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community in conformance with the Sixth Amendment of the U. S. Constitution, as applied to the states via the Fourteenth Amendment of the U. S. Constitution. *See State v. Silva*, 259 So.2d 153, 160 (Fla. 1972). This does not mean that every jury must contain representatives of all the racial, ethnic, economic, social, religious, political and geographical groups of the community, but it does mean that prospective jurors must be selected at random without systematic and intentional exclusion of any of these groups. *Id.*; *Taylor v. Louisiana*, 419 U.S. 522, 42 L.Ed. 2d 690, 95 S.Ct. 692 (1975). Additionally, the jury pool need not be a perfect mirror of the community nor is it required to reflect accurately the proportionate strength of every identifiable group in the community. *See Thomas v. State*, 223 So.2d 318, 322 (Fla. 1969). In fact, intentionally composing jury lists on a basis of proportional representation of classes of groups is invalid. *See Porter v. State*, 160 So.2d 104 (Fla. 1963), *cert. denied* 379 U.S. 849, 13 L.Ed. 2d 52, 85 S.Ct. 90 (1964).

Selection of trial jurors and grand jurors from voter registration lists is constitutional, as long as the process does not systematically and intentionally exclude members of groups or classes. *See Valle v. State*, 474 So.2d 796 (Fla. 1985); *Johnson v. State*, 660 So.2d 648, 661 (Fla. 1995)[two African-American jury candidates out of 160 candidates in the jury pool valid since it was un rebutted that the pool was randomly generated by computer.] The use of registered voters is constitutional even when it results in certain racial, ethnic, or gender groups being underrepresented. *See Hendrix v. State*, 637 So.2d 916, 920 (Fla. 1994)[minor variations between percentage of African-American residents and African-American registered voters does not equate to underrepresentation]; *Marshall v. Holmes*, 365 F.Supp. 613, (N.D. Fla. 1973)[no constitutional underrepresentation where 25% of

county population was African-American, yet only 15% of the venire was African-American.] To constitute a constitutional violation, the group must be *substantially* underrepresented. *See Duren v. Missouri*, 439 U.S. 357, 58 L.Ed.2d 579, 99 S.Ct. 664, 669 [15% of jury pools were female, yet 85% of the community was female, thus constituting a substantial underrepresentation in violation of the Sixth Amendment right to a fair cross-section of the community.]

As of this date, there have been no court decisions construing the constitutionality of using licensed drivers for the jury source list.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles indicates that the CS will have minimal fiscal impact on the Department.

According to Interim Project Report 2002-139, most of the clerks who reported problems with the current source list identified incorrect addresses and non-county residents as the primary problems. The CS should reduce these problems as it requires the DHSMV to capture county of residence information and provide updated lists to the clerks on a monthly basis. Likewise, according to the Interim Project Report, some of the clerks of court reported that these provisions of the bill would probably have a positive fiscal impact as it could result in higher summoning yields and lower postage costs. No estimated figures were provided.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Senate Bill 434 (2002) relates to this same subject and would change the jury list in s. 40.011, F.S., to registered voters.

**VIII. Amendments:**

None.