

SJ 35: STUDY OF VOTER LIST MAINTENANCE AND INTEGRITY

STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE
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INTRODUCTION

At the June 2025 Legislative Council meeting, the council assigned SJ 35: Study of Voter List Maintenance and Integrity to the State Administration and Veterans' Affairs (SAVA) Interim Committee. During the September 2025 SAVA meeting, committee members voted to allocate 0.35 FTE to SJ 35 in the committee work plan. This memo is intended to provide committee members with an introduction to the federal and state laws governing voter list maintenance.

WHAT IS VOTER LIST MAINTENANCE?

According to the U.S. Election Assistance Commission (EAC) and the National Conference of State Legislatures (NCSL), voter list maintenance is the process state and local election officials use to maintain accurate and up-to-date voter lists. Federal law establishes a baseline of requirements, but the frequency, scope, and specific activities of list maintenance vary by state. Keeping voter registration lists up to date is a continual process that includes adding new eligible voters, updating voter registration information when a voter moves, and removing ineligible voters. Election officials follow applicable state and federal laws to determine whether a voter should be removed from a list.

According to NCSL, having an accurate voter list:

- protects against fraud by ensuring only eligible electors can cast a ballot;
- ensures eligible voters are assigned to the correct voting districts;
- informs Election Day planning by helping accurately budget for ballots, voting machines, polling places, and poll workers;
- minimizes wait times at the polls; and
- simplifies post-election procedures by reducing the need for provisional ballots.

FEDERAL LAW

Federal law places limits on how states may conduct voter registration list maintenance. The National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA) both provide a floor for state actions on list maintenance.

Other federal laws, like the Privacy Act of 1974 and the Driver's Privacy Protection Act of 1993, may play a role in what personal voter information is available for list maintenance purposes. These two federal privacy laws govern how a voter's personal information may be used to confirm or remove ineligible voters from registration lists.

NATIONAL VOTER REGISTRATION ACT OF 1993 (NVRA)

The National Voter Registration Act (NVRA), or “motor voter” law, requires states to conduct list maintenance in a uniform manner in compliance with the Voting Rights Act of 1965 and prohibits list maintenance activities within 90 days of an election.

The NVRA limits the reasons a state may remove a voter from the rolls. Allowable reasons include 1) at the voter’s request, 2) due to a felony conviction or mental incapacity, or 3) because a voter has moved to an address outside the voter registration agency’s jurisdiction. The NVRA does not outline specific procedures states must follow to remove voters but rather sets a regulatory floor.

The NVRA provides a notification process that states must follow before they can remove voters who have moved and failed to update their registrations. The process involves mailing a forwardable notice with a preaddressed, postage-paid return card to registrants whose address has changed. If the voter returns the card, the registration record is either updated with the information the voter provides or, if the voter has moved outside the jurisdiction, deleted.

Jurisdictions have the option to designate a registrant who fails to respond to this notice as inactive. Voters who fail to respond with an updated address can be removed from the rolls only if they fail to vote or to appear to vote in an election during the period beginning when the notice is sent and ending after the second federal general election occurring after the notice is sent.

HELP AMERICA VOTE ACT OF 2002 (HAVA)

The Help America Vote Act (HAVA) requires states to develop a computerized, statewide list for voter registration and to coordinate voter records with those from state departments of corrections, vital statistics and other state agencies to keep voter records current.

HAVA also clarifies the language in the NVRA that prohibits removing a voter solely for failure to vote. The HAVA language allows for the removal of voters who do not respond to an address confirmation mailing and subsequently fail to vote during the period comprising two federal general elections.

PRIVACY ACT OF 1974

The Privacy Act of 1974 prohibits any federal, state or local government from denying any right—including registering to vote or voting—because of an individual’s refusal to disclose their social security number, meaning that states cannot require an individual to provide their social security number to register to vote. HAVA amended the Privacy Act to allow election officials to ask for the last four digits of an individual’s social security number (SSN) only if the individual cannot provide their driver’s license number.

If a voter refuses to provide the last four digits of their SSN and they do not have a valid driver’s license, federal law requires the state to assign the applicant a number that is used for voter registration purposes. A social security number could be used to confirm a voter on a registration list but may not be adequate alone for list maintenance.

DRIVER'S PRIVACY PROTECTION ACT OF 1993

The Driver’s Privacy Protection Act of 1993 prohibits the disclosure of certain individual information derived from motor vehicle records. The protected information includes an individual’s driver’s license number and SSN. Federal law permits this information to be used for government functions such as list maintenance, but states often place additional safeguards on using this information for cross-state comparisons of voter registration lists.

STATE LAW

MONTANA CODE ANNOTATED

Under 13-2-107, MCA, the Secretary of State is required to establish a statewide voter registration system which meets the requirements of 42 U.S.C. 15483. It also requires that the system be used as the official list of registered electors for the conduct of all elections subject to Title 13, MCA. Rulemaking authority for the statewide voter registration list is provided to the Secretary of State under 13-2-108, MCA.

Under 13-2-220, MCA, election administrators are required to perform annual maintenance of the voter list, using at least one of the following methods:

- a) compare the entire list of registered electors, including electors on the absentee ballot list, against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;
- b) mail a nonforwardable, first-class, "return if undeliverable--address correction requested" notice to all registered electors, including electors on the absentee ballot list, of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices; or
- c) mail a targeted mailing to electors, including electors on the absentee ballot list, who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration forms, and provisionally registered electors by:
 - i. sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;
 - ii. comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;
 - iii. sending forwardable confirmation notices; or
 - iv. making a door-to-door canvass.

RECENT LEGISLATION

The following bills related to the voter list maintenance process have been passed in recent years:

- **SB 170 (2021)**: Changed the required frequency of voter list maintenance from odd years to annually
- **HB 335 (2023)**: Prohibits electors on the inactive list from being mailed an absentee ballot until the elector reactivates their registration
- **SB 498 (2023)**: Provides that annual voter list maintenance also applies to the absentee ballot list
- **HB 179 (2025)**: Provides that an elector on the inactive list may not be moved to the active list solely by signing a petition for a statewide ballot issue
- **HB 193 (2025)**: Provides that a written request for cancellation from an elector must be signed
- **HB 248 (2025)**: Clarifies that any obituary, not just a newspaper obituary, may be used to cancel an elector's registration
- **HB 423 (2025)**: Provides rulemaking authority to the Secretary of State regarding list maintenance, including the removal of provisionally registered electors