

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 Fiscal Policy

BILL: SB 1256

INTRODUCER: Senator Martin

SUBJECT: Voter Registration Applications

DATE: February 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>Wells</u>	<u>Jerrett</u>	<u>ATD</u>	Favorable
3.	<u>Biehl</u>	<u>Yeatman</u>	<u>FP</u>	Pre-meeting

I. Summary:

SB 1256 revises voter-registration duties of the Florida Department of Highway Safety and Motor Vehicles (DHSMV) by:

- Prohibiting the DHSMV from changing the party affiliation of an applicant who is updating his or her voter registration record unless the applicant designates and consents in writing to change his or her party affiliation.
- Requiring the DHSMV to, after verifying voter registration information and receiving the applicant's electronic signature, provide the applicant with a printed receipt that includes the submitted voter registration information and document any changes in party affiliation.
- Requiring driver license examiners providing voter registration services to ask certain questions, and prohibiting certain questions, regarding voter registration; and requiring the DHSMV to record when a person chooses not to disclose his or her voter registration status and forward such information to the Department of State.
- Requiring the DHSMV to ensure that technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant.
- Requiring the DHSMV to be in full compliance with the bill's requirements within 3 months after the bill becomes law.

The bill may have an indeterminate, but likely substantial fiscal impact. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

National Voter Registration Act of 1993

Congress passed the National Voter Registration Act (NVRA) in 1993¹ “to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office,” while also ensuring “that accurate and current voter registration rolls are maintained.”² The NVRA requires, among other things, that each a state allow a driver’s license application, or a renewal application, submitted to a state motor vehicle authority to also serve as a voter registration application with respect to elections for Federal office, unless the applicant fails to sign the voter registration application.³ The voter registration application portion of a driver’s license application is prohibited by the NVRA from requiring any information that duplicates information⁴ required in the driver’s license portion of the form.⁵ The NVRA requires a voter registration application to include the following:

- A statement of each voter eligibility requirement (including citizenship).
- An attestation that the applicant meets each eligibility requirement.
- A signature of the applicant, under penalty of perjury.⁶

A voter registration application submitted to a state motor vehicle authority by a person who has already registered to vote is considered as updating the person’s voter registration.⁷

Voter Registration and the Florida Department of Highway Safety and Motor Vehicles

The Florida Election Code⁸ implements the NVRA by requiring the Department of Highway Safety and Motor Vehicles (DHSMV)⁹ to provide an applicant “the opportunity to register to vote or to update a voter registration record” when he or she does any of the following actions:

- Applies for or renews a driver license.
- Applies for or renews an identification card (I.D. card).¹⁰
- Changes an address on an existing driver license or I.D. card.¹¹

¹ National Voter Registration Act of 1993, P.L. 103-31.

² 52 U.S.C. § 20501.

³ 52 U.S.C. § 20504(a)(1). This provision of the NVRA has given the act the colloquial designation by which the bill is most commonly known: the “Motor-Voter” law.

⁴ Additionally, the NVRA requires that a voter registration application issued in conjunction with an application for a driver’s license only contain the minimum amount of information necessary to prevent duplicate voter registration and to enable state election officials to assess applicant eligibility and administer voter registration and other parts of the election process. 52 U.S.C. §20504(c)(2)(B).

⁵ 52 U.S.C. §20504(c)(2)(A).

⁶ 52 U.S.C. §20504(c)(2)(C).

⁷ 52 U.S.C. §20504(a)(2).

⁸ Chapters 97-106, F.S., are known as the Florida Election Code. Section 97.011, F.S.

⁹ The DHSMV and certain county tax collectors have entered into statutorily authorized contracts, whereby tax collectors may deliver full or limited driver license services on behalf of the department. *See* s. 322.02, F.S.

¹⁰ *See* s. 322.051, F.S.

¹¹ Section 97.057(1), F.S.

The DHSMV must notify each applicant, orally or in writing, that:¹²

- Information gathered for a driver license or I.D. card application, renewal, or change of address can be automatically transferred to a voter registration application.
- If he or she submits additional information and provides his or her signature, the voter registration application will be completed and thereafter sent to the proper election authority.
- Any information provided by him or her may also be used to update an existing voter registration record.
- If he or she declines to register to vote, such declination will remain confidential and may be used only for voter registration purposes.¹³
- The driver license office in which he or she applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.¹⁴

During the process of completing a driver license or I.D. card application, renewal, or change of address, each driver license examiner¹⁵ must ask orally, or in writing if the person is hearing impaired, whether he or she wants to register to vote or update their voter registration record.¹⁶ If the person responds in the affirmative, all applicable information used by the DHSMV to fill out the application, renewal, or change of address will be transferred to the voter registration application.¹⁷ The voter registration application is required to be the same in content, format, and size as the uniform statewide voter registration application.¹⁸ After the applicable information has been transferred, the person will be asked to provide any additional information necessary for the voter registration application to be complete.¹⁹ The completed voter registration application must be presented to the person for him or her to review and verify.²⁰ Once the person reviews and verifies the information, he or she must provide an electronic signature affirming the accuracy of the information.²¹ The DHSMV is required to electronically transmit completed voter registration applications within 24 hours to the statewide voter registration system,²² which is administered by the Department of State (DOS).²³

¹² Section 97.057(2)(a), F.S.

¹³ The NVRA requires that declinations to register to vote be kept confidential. 52 U.S.C. § 20504(c)(2)(D)(ii); *see also* s. 97.0585(1)(a), F.S., providing a public record exemption for such declinations.

¹⁴ The NVRA requires that the office at which an applicant submits a voter registration application be kept confidential. 52 U.S.C. § 20504(c)(2)(D)(iii); *see also* s. 97.0585(1)(b), F.S., providing a public record exemption for information relating to the place where a person registered to vote or where he or she updated a registration record.

¹⁵ The DHSMV is required to designate persons as “driver license examiners,” who are tasked with conducting examinations, making factual reports of findings and recommendations as the DHSMV may require, and enforcing the following: all driver license laws; suspension, revocation, and cancellation orders; and laws relating to the registration of motor vehicles. Section 322.13, F.S.

¹⁶ Section 97.057(2)(b), F.S.

¹⁷ Section 97.057(2)(b)1., F.S.

¹⁸ Section 97.057(3)(a), F.S.; *see* s. 97.052, F.S.

¹⁹ However, the additional information may not duplicate information already obtained by the driver license examiner. Section 97.057(2)(b)1.b., F.S.

²⁰ Section 97.057(2)(b)1.c., F.S.

²¹ *Id.*

²² *See* ss. 97.012(11) and 98.035, F.S.

²³ If the voter registration application was completed via a physical paper document, the DHSMV must forward the document within five days to the supervisor of elections of the applicable county. Section 97.057(4), F.S.

If an applicant declines to register to vote, update their voter registration record, or change their address by either orally declining or by failing to sign the completed voter registration application, the DHSMV must note the declination and forward the information to the statewide voter registration system.²⁴

A driver license examiner providing voter registration services is prohibited from:

- Seeking to influence an applicant’s political preference or party registration;
- Displaying any political preference or party allegiance;
- Making any statement to an applicant or taking any action the purpose or effect of which is to discourage the person from registering to vote; or
- Disclosing any applicant’s voter registration information except as needed for the administration of voter registration.²⁵

The Florida Election Code provides an adjudicatory mechanism for a person who has suffered an alleged violation of the NVRA.²⁶ Such person may file with the DOS a written complaint that states the alleged violation.²⁷ Once received, the parties to the complaint must be given an opportunity to resolve the issue through an informal dispute resolution process.²⁸ If the informal dispute resolution process fails to resolve the issue, the complainant may bring an action in the respective circuit court for declaratory or injunctive relief if he or she gave proper written notice to the Secretary of State and an agreement was not reached or the alleged violation was not corrected within 90 days after the notice — or within 20 days of the notice if the alleged violation occurred within 120 days before the date of the election.²⁹

Statewide Voter Registration Application

The DOS is required to create a uniform statewide voter registration application (VR application) by rule.³⁰ The VR application is required to elicit the following information:

- Name.
- Date of Birth.
- Address of legal residence.³¹
- Mailing address (if different from address of legal residence).
- E-mail address and whether the applicant wishes to receive sample ballots by e-mail.

²⁴ Section 97.057(2)(b)2., F.S. This voter registration information transmittal is in addition to other types of information required to be submitted weekly by the DHSMV to the DOS. *See* s. 98.093(8), F.S.

²⁵ Section 97.057(6), F.S.

²⁶ Section 97.023, F.S.; *see also* r. 1S-2.036, F.A.C.

²⁷ Section 97.023(1)(a) and (b), F.S.

²⁸ Section 97.023(2), F.S. If the alleged violation occurred within 30 days before a state or federal election and the alleged violation will affect the registrant’s right to vote in such election, the registrant may immediately bring an action in the circuit court in the county where the alleged violation occurred. Section 97.023(3), F.S.

²⁹ Section 97.023(3), F.S.

³⁰ Section 97.052(1), F.S.; *see* r. 1S-2.040, F.A.C., incorporating the uniform statewide voter registration application by reference. Uniform Statewide Voter Registration Application, DS-DE 39, *available at* <https://www.flrules.org/gateway/readRefFile.asp?refId=3171&filename=Voter%20Reg%20App%20-%20DS-DE%2039%20-%20adoption.doc> (last visited February 2, 2024).

³¹ “Address of legal residence” means the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier. Section 97.021(3), F.S.

- County of legal residence.
- Race or ethnicity.
- State or country of birth.
- Sex.
- Party Affiliation.
- Whether the applicant needs assistance in voting.
- Name and address where last registered.
- Last four digits of the applicant’s social security number.
- Florida driver license number or the identification number from a Florida I.D. card.
- An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida I.D. card, or a social security number.
- Telephone number (optional).
- Signature of the applicant under penalty for false swearing.³²
- Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.
- Whether the applicant is a citizen of the United States by asking the question “Are you a citizen of the United States of America?”
- Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored.
- Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored.³³

The VR application must also contain the following constitutionally required oath:³⁴

I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida.³⁵

Voter Registration and Party Affiliation

If a person fails to designate a party when he or she initially registers to vote, the supervisor of elections (supervisor) must designate that person as registered without party affiliation, also known as No Party Affiliated (NPA).³⁶ The supervisor must notify the voter of such designation and how he or she may change party affiliation.³⁷ Once registered, a voter’s currently recorded political party affiliation may not be changed unless the voter indicates otherwise.³⁸ If a voter does wish to update the party affiliation on his or her voter registration record, he or she must

³² See s. 104.011, F.S., for penalties for false swearing.

³³ Section 97.052(2), F.S.

³⁴ Section 97.052(3)(a), F.S.

³⁵ Article VI, s. 3, FLA. CONST.; see also s. 97.051, F.S.

³⁶ Section 97.053(5)(b), F.S.

³⁷ *Id.*; See s. 97.1031(2), F.S., to see how a voter’s party affiliation may be changed.

³⁸ Rule 1S-2.039(6)(b), F.A.C.

notify the supervisor by submitting a VR application indicating such.³⁹ After a voter's party affiliation is changed, the supervisor will issue that person a new voter information card.⁴⁰

III. Effect of Proposed Changes:

The bill requires the VR application to allow an applicant who is completing an application for the purpose of updating a voter registration record without changing their party affiliation to indicate that he or she is choosing not to disclose his or her party affiliation.

The bill prohibits the party affiliation of an applicant who is updating his or her voter registration record from being changed unless the applicant designates and consents in writing to change his or her party affiliation.

The bill prohibits the DHSMV from:

- Using a voter registration application to change the party affiliation of an applicant, unless the applicant designates a change in party affiliation and provides a separate original signature consenting to the party affiliation change.
- Updating a voter's registration record to change party affiliation, unless the individual designates the change and separately consent to such change in writing.

The bill requires the DHSMV to, after verifying the voter registration information and receiving the applicant's electronic signature, provide the applicant with a printed receipt that includes the submitted voter registration information and document any change in party affiliation.

The bill requires driver license examiners providing voter registration services to ask the following new questions:

- Whether the applicant is registered to vote;
- Whether the applicant is not registered to vote;
- Whether the applicant does not know if he or she is registered to vote; or
- Whether the applicant does not wish to disclose whether he or she is registered to vote.

If the applicant is not registered to vote or does not know whether he or she is registered to vote, the bill requires the driver license examiner to ask whether the applicant wishes to register to vote and, if the applicant is registered to vote, whether he or she wishes to update a voter registration record.

The bill provides that the DHSMV must also record when a person chooses to not disclose his or her voter registration status and forward such information to the DOS.

³⁹ Section 97.1031(2), F.S.

⁴⁰ Section 97.1031(3), F.S. Supervisors must provide registered voters with a voter information card, which constitutes notice of approval of registration. The card must contain the voter's registration number, date of registration, full name, party affiliation, date of birth, address of legal residence, precinct number, polling place address, name and contact information of the supervisor, and other information deemed necessary by the supervisor. Voters may request a replacement card in writing and supervisors must issue a new card if the voter's name, address of legal residence, polling place address, or party affiliation changes. Section 97.071, F.S.

The bill prohibits driver license examiners from making any change to applicant's party affiliation, unless the applicant provides a separate original signature consenting to the party affiliation change or discussing an applicant's political preference or party registration.

The bill requires the DHSMV to ensure that information technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant. Lastly, the DHSMV must be in full compliance with the bill within three months after the bill becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities. In addition, bills that affect state or local elections are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate, but likely substantial, fiscal impact on state expenditures as the DHSMV will have to make changes to the program used to register

voters. The DHSMV has estimated that reprogramming the program could cost \$9,675.⁴¹ Additionally, if the bill is interpreted as requiring a separate “wet” (i.e. physical signature on paper) then the DHSMV will have to alter their largely electronic processes to account for the signature and may no longer be able offer driver license renewal or replacement transactions online.⁴² Lastly, the DHSMV might incur costs related to the production of the registration receipt required under the bill, as well as training staff on the new requirements in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.053, and 97.057.

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.

⁴¹ DHSMV Agency Bill Analysis of HB 135, on file with the Committee on Ethics and Elections. House Bill 135 is identical to this bill.

⁴² *Id.*