

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 135 Voter Registration Applications

SPONSOR(S): Gossett-Seidman and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|-----------|--|
| 1) Ethics, Elections & Open Government Subcommittee | 16 Y, 0 N | Skinner | Toliver |
| 2) Infrastructure & Tourism Appropriations Subcommittee | 12 Y, 0 N | McAuliffe | Davis |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The Florida voter registration application is required to elicit certain information from an applicant, including: name; date of birth; address of legal residence; party affiliation; and whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.

Under the National Voter Registration Act (NVRA), state motor vehicle authorities are required to allow individuals to register to vote in federal elections when applying for or renewing a driver license. The Florida Department of Highway Safety and Motor Vehicles (DHSMV) implements the NVRA by providing an applicant “the opportunity to register to vote or to update a voter registration record” when the applicant applies for or renews a driver license or an identification card or changes an address on an existing driver license or identification card.

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 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 consents to such change in writing.

The bill requires 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 certain questions, as well as prohibits certain questions, regarding voter registration and requires 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.

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

The bill has an indeterminate, but likely insignificant, negative fiscal impact on state government expenditures and does not appear to have a fiscal impact on local governments. See Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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 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

An 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

Florida Department of Highway Safety and Voter Registration

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

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

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 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.

¹² Section 97.057(2)(a), F.S.

- 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 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 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

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, DHSMV is required to 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 for 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 from an alleged violation of the NVRA.²⁶ A written complaint that states the alleged violation may be filed with DOS.²⁷ Once received, the parties to the complaint must be given an opportunity to resolve the issue

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 DHSMV is required to designate persons as “driver license examiners,” who are tasked with conducting examinations, making factual reports of findings and recommendations as 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, DHSMV must forward the document within five days to the supervisor of elections of the applicable county. Section 97.057(4), F.S.

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 DHSMV to 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.

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 20 days of the notice if the alleged violation occurred within 120 days before the date of the election.²⁹

Statewide Voter Registration Application

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.
- 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

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 Jan. 24, 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.

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.

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 Affiliation (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 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

Effect of the Bill

The bill requires the VR application to allow an applicant that 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 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 consents to such change in writing.

DHSMV must, 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 DHSMV must also record when a person chooses to not disclose his or her voter registration status and forward such information to DOS.

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.

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 an 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 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, DHSMV must be in full compliance with the bill within three months after the bill becomes law.

B. SECTION DIRECTORY:

Section 1 amends s. 97.052, F.S., relating to the uniform statewide voter registration application.

Section 2 amends s. 97.053, F.S., relating to the acceptance of voter registration applications.

Section 3 amends s. 97.057, F.S., relating to voter registration by the Department of Highway Safety and Motor Vehicles.

Section 4 provides an unnumbered section of law requiring the Department of Highway Safety and Motor Vehicles to be in compliance with the bill.

Section 5 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, but likely insignificant, fiscal impact on state expenditures. The bill requires DHSMV to make changes to the program used to register voters. DHSMV has estimated that reprogramming would cost \$9,675.⁴¹ Additionally, 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁴¹ DHSMV Agency Bill Analysis of HB 135, on file with the Ethics, Elections & Open Government Subcommittee.
STORAGE NAME: h0135c.ITA
DATE: 2/13/2024

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill might require DHSMV to alter rules, however DHSMV likely has sufficient existing rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.