

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 Ethics and Elections

BILL: SB 1354

INTRODUCER: Senator Brandes

SUBJECT: Statewide Voter Registration Application

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1354 restores the former statutory *felon declaration of voting eligibility* language on the statewide voter registration application, after a federal court invalidated the 2019 legislative form changes adopted to implement Constitutional Ballot Amendment 4 (2018) (felon voting restoration). The bill codifies and re-adopts the straightforward pre-2019 language, which the Florida Division of Elections and county supervisors of elections had resorted to using as a stop-gap measure following the federal court ruling.

The bill takes effect upon becoming law.

II. Present Situation:

Amendment 4 (2018) Ballot Measure

Until the 2018 election, Article VI, section 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until restoration of his or her civil rights.¹

In the 2018 General Election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Florida Constitution to provide voting rights restoration to specified voters. Specifically, the ballot language provided that “any disqualification arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.”² The provision excludes a “person convicted of murder

¹ Article VI, s. 4, FLA. CONST. (2018)

² *Id.* See also Time, ‘Our Voice Will Count.’ *Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, Alejandro De Le Garza, November 7, 2018, available at <http://time.com/5447051/florida-amendment-4-felon-voting/> (last visited on Jan. 23, 2020).

or a felony sexual offense” from restoration of voting rights unless and until his or her civil rights are restored.³

Legislative Implementation

With regard to restoration of voting rights, Florida’s statewide voter registration form used to simply require an applicant to mark a checkbox affirming that he or she was not a convicted felon, or, if so, that he or she had his or her voting rights restored.⁴

In 2019, the Legislature adopted Amendment 4 implementing language, including highly-detailed changes to the statewide voter registration application’s felon declaration of voter eligibility designed to more closely track the language of the Amendment.⁵ Specifically, the 2019 bill provided that the statewide voter registration application must elicit:

- (t)1. Whether the applicant has never been convicted of a felony by including the statement “I affirm I have never been convicted of a felony.” and providing a box for the applicant to check to affirm the statement.
2. Whether the applicant has been convicted of a felony, and if convicted, has had his or her civil rights restored through executive clemency, by including the statement “If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency.” and providing a box for the applicant to check to affirm the statement.
3. Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution, by including the statement “If I have been convicted of a felony, I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation.” and providing a box for the applicant to check to affirm the statement.⁶

Judicial Action

In October 2019, Judge Robert Hinkle of the United States District Court for the Northern District of Florida threw out the new statutory language as not only inartfully drawn but *defective*, in failing to “reach felons whose rights have been restored in other states or through other methods, including executive pardons.”⁷ In analyzing plaintiff’s due process claim, the Judge stated:

Prior to the adoption of SB 7066, Florida’s standard voter-registration form required an applicant to attest that the applicant had never been convicted of a felony or, if the applicant had been convicted of a felony, the right to vote had been restored. (cite

³ The DOS, Division of Elections, *Proposed Constitutional Amendments and Revisions for the 2018 General Election*, p. 10-11, available at <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> (last visited on Jan. 23, 2020).

⁴ Section 97.052(2)(t), F.S. (2018).

⁵ CH. 2019-166, § 21, L.O.F. The Legislature also adopted conforming changes that included a new public records exemption relating to eliciting specifics of the prior felony conviction along with the specific manner of voting rights restoration. *Id.* at § 22; CH. 2019-55, § 1, L.O.F.

⁶ CH. 2019-166, § 21, L.O.F.

⁷ See, *Jones v. DeSantis*, 2019 WL 5295192 at 17-18, N.D.Fla., Oct. 18, 2019 (appeal pending).

omitted) This apparently worked without difficulty and, *if used now, would allow a felon who asserts a right to vote to submit an application and thus begin the process that, if there is disagreement, eventually leads to a hearing.* (emphasis added)

Subsequently, the Secretary of State represented to Judge Hinkle that Florida's 67 county supervisors of elections had reverted to accepting the old voter registration felon voting declaration language,⁸ which currently appears on a registration form on the Department of State, Division of Elections' website.⁹

III. Effect of Proposed Changes:

SB 1354 reverts to the simple, pre-2019 *felon declaration of voting eligibility* language on the voter registration application, specifically:

... Whether the applicant has been convicted of a felony, and if convicted, has had his or her voting rights restored by including the statement "I affirm I have never been convicted of a felony or, if I have been, my rights relating to voting have been restored." and providing a box for the applicant to check to affirm the statement.

As such, the bill adopts the tacit *suggestion* of the federal district court and the current practice of the Division of Elections and county supervisors of elections in publishing and processing voter registration applications.

The bill also makes conforming changes, including the elimination of a public records exemption specifically created for the application form's stricken felon voting attestation requirements.

SB 1354 takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. Bills which affect state or local elections are exempt from Article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ *Id.* at 18.

⁹ See Current Florida Voter Registration Application, available at: <https://dos.myflorida.com/media/702368/dsde39-eng-pre-7066-with-2019-addresses.pdf> (last accessed Jan. 23, 2020).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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 97.0585.

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.