

By the Committee on Election Reform and Representative  
Flanagan

1                                   A bill to be entitled  
2           An act relating to rulemaking authority of the  
3           Department of State; amending s. 120.54, F.S.;  
4           authorizing the department to adopt rules for  
5           incorporating materials by reference; amending  
6           s. 106.23, F.S.; requiring advisory opinions to  
7           be submitted in accordance with rules adopted  
8           by the department; amending s. 106.22, F.S.;  
9           authorizing the department to adopt rules for  
10          the filing and investigation of voter fraud  
11          complaints; amending s. 106.07, F.S.;  
12          authorizing the department to prescribe by rule  
13          the requirements for the filing of campaign  
14          treasurer's reports; amending s. 101.62, F.S.;  
15          authorizing the department to adopt rules for  
16          the preparation and mailing of absentee ballots  
17          to overseas electors; amending s. 101.161,  
18          F.S.; requiring the designating number for  
19          constitutional amendments to be in accordance  
20          with rules adopted by the department; amending  
21          s. 99.061, F.S.; authorizing the department to  
22          prescribe by rule the requirements for filing  
23          candidate qualifying papers; providing  
24          legislative intent; providing an effective  
25          date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29           Section 1. Paragraph (i) of subsection (1) of section  
30 120.54, Florida Statutes, is amended to read:  
31           120.54 Rulemaking.--

1           (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER  
2 THAN EMERGENCY RULES.--

3           (i) A rule may incorporate material by reference but  
4 only as the material exists on the date the rule is adopted.  
5 For purposes of the rule, changes in the material are not  
6 effective unless the rule is amended to incorporate the  
7 changes. No rule may be amended by reference only. Amendments  
8 must set out the amended rule in full in the same manner as  
9 required by the State Constitution for laws. The Department of  
10 State may prescribe by rule the requirements for incorporating  
11 materials by reference pursuant to this section.

12           Section 2. Subsection (2) of section 106.23, Florida  
13 Statutes, is amended to read:

14           106.23 Powers of the Division of Elections.--

15           (2) The Division of Elections shall provide advisory  
16 opinions when requested by any supervisor of elections,  
17 candidate, local officer having election-related duties,  
18 political party, political committee, committee of continuous  
19 existence, or other person or organization engaged in  
20 political activity, relating to any provisions or possible  
21 violations of Florida election laws with respect to actions  
22 such supervisor, candidate, local officer having  
23 election-related duties, political party, committee, person,  
24 or organization has taken or proposes to take. Requests for  
25 advisory opinions must be submitted in accordance with rules  
26 adopted by the Department of State.A written record of all  
27 such opinions issued by the division, sequentially numbered,  
28 dated, and indexed by subject matter, shall be retained. A  
29 copy shall be sent to said person or organization upon  
30 request. Any such person or organization, acting in good  
31 faith upon such an advisory opinion, shall not be subject to

1 any criminal penalty provided for in this chapter. The  
2 opinion, until amended or revoked, shall be binding on any  
3 person or organization who sought the opinion or with  
4 reference to whom the opinion was sought, unless material  
5 facts were omitted or misstated in the request for the  
6 advisory opinion.

7 Section 3. Subsection (11) of section 106.22, Florida  
8 Statutes, is amended to read:

9 106.22 Duties of the Division of Elections.--It is the  
10 duty of the Division of Elections to:

11 (11) Conduct preliminary investigations into any  
12 irregularities or fraud involving voter registration or voting  
13 and report its findings to the state attorney for the judicial  
14 circuit in which the alleged violation occurred for  
15 prosecution, where warranted. The Department of State may  
16 prescribe by rule the requirements for the filing and  
17 investigation of voter fraud complaints.

18 Section 4. Subsection (9) is added to section 106.07,  
19 Florida Statutes, to read:

20 106.07 Reports; certification and filing.--

21 (9) The Department of State may prescribe by rule the  
22 requirements for the filing of campaign treasurers' reports as  
23 set forth in this chapter.

24 Section 5. Paragraph (a) of subsection (4) of section  
25 101.62, Florida Statutes, is amended to read:

26 101.62 Request for absentee ballots.--

27 (4)(a) To each absent qualified elector overseas who  
28 has requested an absentee ballot, the supervisor of elections  
29 shall, not fewer than 35 days before the first primary  
30 election, mail an absentee ballot. Not fewer than 45 days  
31 before the second primary and general election, the supervisor

1 of elections shall mail an advance absentee ballot to those  
2 persons requesting ballots for such elections. The advance  
3 absentee ballot for the second primary shall be the same as  
4 the first primary absentee ballot as to the names of  
5 candidates, except that for any offices where there are only  
6 two candidates, those offices and all political party  
7 executive committee offices shall be omitted. Except as  
8 provided in s. 99.063(4), the advance absentee ballot for the  
9 general election shall be as specified in s. 101.151, except  
10 that in the case of candidates of political parties where  
11 nominations were not made in the first primary, the names of  
12 the candidates placing first and second in the first primary  
13 election shall be printed on the advance absentee ballot. The  
14 advance absentee ballot or advance absentee ballot information  
15 booklet shall be of a different color for each election and  
16 also a different color from the absentee ballots for the first  
17 primary, second primary, and general election. The supervisor  
18 shall mail an advance absentee ballot for the second primary  
19 and general election to each qualified absent elector for whom  
20 a request is received until the absentee ballots are printed.  
21 The supervisor shall enclose with the advance second primary  
22 absentee ballot and advance general election absentee ballot  
23 an explanation stating that the absentee ballot for the  
24 election will be mailed as soon as it is printed; and, if both  
25 the advance absentee ballot and the absentee ballot for the  
26 election are returned in time to be counted, only the absentee  
27 ballot will be counted. The Department of State may prescribe  
28 by rule the requirements for the preparation and mailing of  
29 absentee ballots to overseas electors.

30 Section 6. Subsection (2) of section 101.161, Florida  
31 Statutes, is amended to read:

1           101.161 Referenda; ballots.--  
2           (2) The substance and ballot title of a constitutional  
3 amendment proposed by initiative shall be prepared by the  
4 sponsor and approved by the Secretary of State in accordance  
5 with rules adopted pursuant to s. 120.54. The Department of  
6 State shall give each proposed constitutional amendment a  
7 designating number for convenient reference. This number  
8 designation shall appear on the ballot. Designating numbers  
9 shall be assigned in the order of filing or certification and  
10 in accordance with rules adopted by the Department of State of  
11 ~~the amendments~~. The Department of State shall furnish the  
12 designating number, the ballot title, and the substance of  
13 each amendment to the supervisor of elections of each county  
14 in which such amendment is to be voted on.

15           Section 7. Subsection (9) is added to section 99.061,  
16 Florida Statutes, to read:

17           99.061 Method of qualifying for nomination or election  
18 to federal, state, county, or district office.--

19           (9) The Department of State may prescribe by rule the  
20 requirements for filing candidate qualifying papers pursuant  
21 to this section.

22           Section 8. It is the intent of the Legislature that  
23 the amendments to ss. 99.061, 101.161, 101.62, 106.07, 106.22,  
24 106.23, and 120.54, Florida Statutes, made by this act be  
25 supplemental to other amendments to said sections which may be  
26 enacted at the 2000 Regular Session of the Legislature, unless  
27 a contrary intent is specifically indicated herein or in such  
28 other amendments.

29           Section 9. This act shall take effect upon becoming a  
30 law.

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HOUSE SUMMARY

Provides, pursuant to the directive in s. 120.536(2)(b),  
F.S., specific legislation to enact into law the  
substance of rules of the Department of State that exceed  
rulemaking authority under the Administrative Procedure  
Act and that the department has decided not to repeal.  
See bill for details.