

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: Judiciary Committee

---

BILL: CS/CS/SB 2086

SPONSOR: Judiciary Committee, Ethics and Elections Committee and Senator Posey

SUBJECT: Elections Reform

DATE: April 29, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babington</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Babington</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>TA</u>	_____
4.	_____	_____	<u>WM</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

---

## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 2086 primarily contains numerous conforming, technical, and clarifying changes to the Florida Election Code, as recommended by the Division of Elections (“the Division”), stemming from Florida’s overhaul of its election administration system originating with the passage of the Florida Election Reform Act of 2001. Proposed changes are mainly in the following general areas:

- Duties of the Secretary of State;
- Definitions of election-related terms;
- Legal challenges to the election code;
- Uniform statewide voter registration;
- Third-party voter registration;
- Voter signature updates;
- Candidate qualifying and the petition process;
- Vacancies in nominations;
- Provisional ballots;
- Proof of the identity of a voter;
- Voter solicitation;
- Voter challenges;
- Poll watchers;
- Voting equipment;
- Polling place regulations;
- Mail ballots;
- Early voting;

- Absentee ballots;
- Poll workers;
- Certification of returns;
- Recounts;
- Presidential electors; and
- Voter protection.

The committee substitute also makes the following substantive changes:

- Provides for the award of attorney's fees and costs to the prevailing party in any court or administrative proceeding challenging the application, interpretation, or constitutionality of any election law or voter-registration law. **(Section 3)**
- Regulates voter registration activities by third-party voter registration organizations. **(Section 8)**
- Permits a person casting a provisional ballot to present written evidence supporting his or her eligibility to vote to the supervisor no later than 5 p.m. on the third day following an election. **(Section 25)**
- Prohibits anyone from soliciting a voter at a polling place, early voting site, or within 100 feet of such locations, in an effort to provide the voter with assistance in casting their vote. **(Section 27)**
- Permits any elector or poll watcher to challenge the right of any voter to vote 30 days or less before an election by filing a completed copy of the oath, and provides a penalty for a voter or poll watcher who files a frivolous challenge. However, an elector or poll watcher is not subject to liability for any action taken in good faith and in furtherance of any activity or duty permitted of such elector or poll watcher by law. Each instance where any elector or poll watcher files a frivolous challenge of any person's right to vote constitutes a separate offense. **(Section 28)**
- Permits poll watchers at early voting areas, and allows political committees registered to support or oppose an issue on the ballot to have one watcher in each polling room and early voting area. **(Section 29)**
- Permits any employee of the Department of State (department), with expertise in the matter of concern to the Secretary, to have full access to all premises, records, equipment, and staff of a supervisor of elections, upon the written direction of the Secretary of State. **(Section 41)**
- Requires a voter's request for an absentee ballot to be received by the supervisor no later than 5 p.m. on the sixth day prior to the election, and requires a supervisor to mail an absentee ballot to the voters requesting ballots no later than four days before the election. **(Section 44)**
- Requires a supervisor to track when a ballot is delivered to a voter, or the voter's designee, or when the ballot was delivered to the post office. **(Section 41)**
- Prohibits the solicitation of voters inside the polling place or within 100 feet of the entrance to a polling place or early voting site, and removes all exceptions to the no-solicitation zone. The committee substitute also prohibits photography in the polling room or early voting area. **(Section 55)**
- Prohibits a manual recount from being ordered if the number of overvotes, undervotes, and provisional ballots is fewer than the number of votes needed to change the outcome

- of the election. The committee substitute also removes the provision allowing a candidate who was defeated by between one-quarter and one-half percent of the votes from requesting a manual recount. **(Section 60)**
- Defines the phrase “national party” for the purposes of nominating presidential electors. **(Section 62)**

Committee Substitute for Committee Substitute for Senate Bill 2086 shall take effect on January 1, 2006, except as provided therein.

This committee substitute substantially amends, creates, or repeals the following sections of the Florida Statutes: 97.012, 97.021, 97.029, 97.051, 97.052, 97.053, 97.055, 97.0575, 97.071, 98.045, 98.077, 98.095, 98.0979, 98.181, 98.481, 99.061, 99.063, 99.092, 99.095, 99.0955, 99.096, 99.09651, 100.011, 100.101, 100.111, 100.141, 101.031, 101.043, 101.048, 101.049, 101.051, 101.111, 101.131, 101.151, 101.171, 101.253, 101.294, 101.295, 101.49, 101.51, 101.5612, 101.572, 101.58, 101.595, 101.6103, 101.62, 101.64, 101.653, 101.657, 101.663, 101.68, 101.69, 101.6923, 101.694, 101.697, 102.012, 102.014, 102.031, 102.061, 102.071, 102.111, 102.112, 102.141, 102.166, 102.168, 103.021, 103.051, 103.061, 103.121, 105.031, 105.035, 106.022, 106.085, 106.144, 106.141, 106.22, 16.56, 119.07, 145.09, and 104.0615.

## II. Present Situation:

The Florida Legislature made extensive changes to the Florida Election Code after the 2000 Presidential Election to address the administration of future elections in this state. The enactment of the Florida Election Reform Act of 2001 has resulted in only two types of voting machines being certified for use – optical scan machines using Marksense ballots, and touch screen systems (a/k/a “direct recording equipment” or “DRE”). A number of existing election provisions have lost their usefulness or application due to these and other changes made in the Election Reform Act, and is progeny. A number of new issues arose during the 2004 Presidential Election, ranging from voter registration to early voting to the reporting of results, which are not fully addressed in the current election code.

## III. Effect of Proposed Changes:

### **Section 1. Secretary of State as chief election officer. [amending s. 97.012, F.S.]**

- a. Permits voter education activities of the Department of State or the department in conjunction with the supervisors of elections to be exempt from the competitive solicitation requirements.
- b. Provides that it is the responsibility of the Secretary of State to conduct preliminary investigations into irregularities or fraud involving voter registration, voting, or candidate or issue petition activities. Findings would be reported to the statewide prosecutor or the state attorney. The department is permitted to promulgate rules for filing elections-fraud complaints and for investigating any such complaint.

**Section 2. Definitions. [amending s. 97.021, F.S.]**

- a. Redefines “paper ballots” as “Marksense ballots.”
- b. Defines the phrase “early voting area” to mean the area designated by the supervisor of election at an early voting site at which early voting activities occur, including, but not limited to, lines of voters waiting to be processed, the area where voters check in and are processed, and the area where voters cast their ballots.
- c. Defines the phrase “early voting site” to mean those locations specified under the early voting section of the statute and the building in which early voting occurs.
- d. Defines the phrase “third-party registration organization” to mean any person, entity, or organization soliciting or collecting voter registration applications. This definition does not include a political party, a person who seeks only to register to vote or collect voter registration applications from that person’s spouse, child, or parent, or a person engaged in registering to vote or collecting voter registration applications as an employee of a government agency.

**Section 3. Attorney’s fees and costs. [creating s. 97.029, F.S.]**

- a. Provides for the award of attorney’s fees and costs to the prevailing party in any court or administrative proceeding challenging the application, interpretation, or constitutionality of any election law or voter-registration law.
- b. A party may not be required to pay an award of attorney’s fees and costs under this section in an amount that exceeds \$200,000.

**Section 4. Oath upon registering. [amending s. 97.051, F.S.]**

Modifies the oath a person must take upon registering to vote to mirror the oath in the Florida Constitution. This section deletes the statement which states, “I am a citizen of the United States and a legal resident of Florida,” and inserts the affirmation that “all information in the application is true.”

**Section 5. Uniform statewide voter registration application. [amending s. 97.052, F.S.]**

- a. Specifically provides that a voter registration application can be used for a signature update.
- b. Removes the references to homestead exemption on the voter registration application.
- c. Clarifies and specifically articulates the questions and statements on a voter registration application relating to citizenship, felon status, and mental competency. Specifically, the application must state: “Are you a citizen of the United States of America;” “I affirm I am not a convicted felon, or if I am, my rights relating to voting have been restored;” and “I affirm I have not been adjudicated mentally incapacitated with respect to voting or, if I

have, my competency has been restored.” The section requires check boxes on the application for a voter to indicate his or her responses.

- d. Amends the ‘first-time voter’ identification requirement to apply to applicants who have not been issued a Florida driver’s license, a Florida identification card, or a social security number, and register by mail.

**Section 6. Acceptance of voter registration applications. [amending s. 97.053, F.S.]**

- a. Provides that voter registration applications must be complete at the time of book closing for the applicant to be eligible to vote in the upcoming election.
- b. Clarifies the provision concerning the registration date as it relates to the postmark date. The registration date of an applicant is the postmark when mailed to a driver license office, a voter registration agency, an armed forces recruitment office, the division, or any supervisor of elections in the state.
- c. Requires that marks must be in the checkboxes confirming the questions relating to citizenship, felon status, and mental competency for a voter registration application to be considered complete.
- d. Clarifies that a voter registration application must include an original signature.

**Section 7. Registration books; when closed for an election. [amending s. 97.055, F.S.]**

Clarifies that when the registration books are closed for an election, only the voter’s name, address, and signature may be updated purposes of the upcoming election. Those changes must be made pursuant to s. 98.077 and s. 101.045, F.S.

**Section 8. Third-party voter registrations. [creating s. 97.0575, F.S.]**

- a. Requires a third-party voter registration organization to register with the division, and submit quarterly reports to the division providing the date and location of any organized voter-registration drives conducted by the organization in the previous quarter.
- b. Provides that the failure of an organization to comply with the above requirements will not subject the organization to any civil or criminal penalties, nor will it serve as a basis for denying the organization with copies of voter-registration application forms.
- c. Creates a fiduciary duty in the organization for the voter registration applications to which it has been entrusted. The section places monetary penalties on an organization’s board of directors, president, vice president, managing partner, or other individuals engaged in similar duties or functions for not timely submitting voter registration applications that the organization has collected.
- d. Provides a \$250 fine for each application received by the state or a supervisor more than ten days after the applicant submitted the application to the organization; provides for a

- \$500 fine for each application submitted to the organization before book closing but received by the state or a supervisor after book closing; and provides for a \$5000 fine for each application collected by the organization which is not submitted to the state or supervisor.
- e. Provides that fines shall be reduced by three-fourths in cases in which the organization has registered with the state and filed quarterly reports.
  - f. Requires the division to adopt by rule a form to elicit specific information concerning the facts and circumstances from a person who claims to have been registered by a third-party voter registration organization but who does not appear as an active voter on the voter-registration rolls.
  - g. Authorizes alleged violations to be investigated by the division and that civil fines may be assessed by the division.
  - h. Provides that the date on which an applicant signs a voter registration application is presumed to be the date on which the third-party voter registration organization received or collected the application.

**Section 9. Registration identification card. [amending s. 97.071, F.S.]**

- a. Makes a technical change.
- b. Moves the substance of s. 98.045(3) into s. 97.071, F.S., and corrects a cross reference.

**Section 10. Administration of voter registration. [amending s. 98.045, F.S.]**

Amends a cross-reference.

**Section 11. Update of voter signature. [amending s. 98.077, F.S.]**

Requires signature updates for use in verifying absentee and provisional ballots to be received by the appropriate supervisor of elections by 5 p.m. on the fifth day prior to the election.

**Section 12. Method of qualifying for nomination or election to federal, state, county, or district office. [amending s. 99.061]**

- a. Amends cross-references and replaces phrase “alternative method” with “petition process.”
- b. Codifies in the election code an ethics code provision that allows a public officer who has filed his or her financial disclosure statement with the Commission on Ethics or the supervisor of elections to file a copy of that disclosure at the time of qualifying.

- c. Permits a qualifying officer to accept and hold qualifying papers submitted no more than 14 days prior to the beginning of qualifying to be processed and filed during the qualifying period.

**Section 13. Candidates for Governor and Lieutenant Governor. [amending s. 99.063, F.S.]**

Conforms the current public disclosure of financial interest requirements to candidates for Lieutenant Governor. A public officer who has filed the full and public disclosure with the Commission on Ethics prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

**Section 14. Qualifying fee of candidate; notification of Department of State. [amending s. 99.092]**

Amends a cross-reference.

**Section 15. Petition process in lieu of a qualifying fee and party assessment. [amending s. 99.095, F.S.]**

- a. Substantially amends and rewords the section relating to the alternative method of qualifying. Section now applies to all candidates, and is referred to as the “petition process.”
- b. Removes requirement that a candidate who seeks to qualify by the petition method must file an oath.
- c. Removes restriction on circulating petitions prior to the first Tuesday after the first Monday in January of the election year. Instead requires that signatures may not be obtained until the campaign treasurer is appointed.
- d. Requires the form of the petition to be prescribed by the division, and requires that if the candidate is running for an office that requires a group or district designation. If the petition fails to do so, the signatures on the petitions are not valid.
- e. Requires petitions to be submitted to a supervisor of elections one week earlier than in current law, i.e. the 28<sup>th</sup> day preceding the first day of qualifying.
- f. Requires supervisors to certify the number of valid signatures seven days before the first day of qualifying.

**Section 16. Candidates with no party affiliation; name on general election ballot. [amending s. 99.0955, F.S.]**

Amends cross-references and deletes redundant provisions relating to qualifying by petition. Candidates with no party affiliation must now comply with the petition process requirements of s. 99.095, F.S.

**Section 17. Minor political party candidates; names on ballot. [amending s. 99.096, F.S.]**

Re-words section relating to minor party candidacies, amends cross reference, and deletes redundant provisions relating to qualifying by petition. Qualifying by petition for all candidates is now addressed in s. 99.095, F.S.

**Section 18. Signature requirements for ballot position in year of apportionment. [amending s. 99.09651, F.S.]**

Amends cross-references.

**Section 19. Opening and closing of polls, all elections; expenses. [amending s. 100.011, F.S.]**

Requires that any elector who is in line at the time of the official closing of the polls be allowed to cast a vote in the election. This has been the common practice in the state of Florida, but has never been addressed in the election code.

**Section 20. Special elections and special primary elections. [amending s. 100.101, F.S.]**

Deletes requirement that a special election be held if a vacancy occurs in nomination.

**Section 21. Filling vacancy. [amending s. 100.111, F.S.]**

- a. Amends cross-references and deletes redundant provisions.
- b. Deletes the restriction on candidates filling vacancies in nomination if the person was a qualified candidate for another office.
- c. Deletes provision addressing situation where a vacancy occurs which leaves less than 4 weeks to qualify by petition, and therefore permits a candidate to collect 25 percent of the number of signatures required by statute.

**Section 22. Notice of special election to fill any vacancy in office. [amending s. 100.141, F.S.]**

Makes conforming changes.

**Section 23. Instructions for electors. [amending s. 101.031, F.S.]**

Revises the Voter's Bill of Rights to remove the provision that allows the voter to prove his or her identity by signing an affidavit.

**Section 24. Identification required at polls. [amending s. 101.043, F.S.]**

Rewords provision relating to the requirement that a voter be permitted to vote a provisional ballot if the voter fails to furnish the required identification.

**Section 25. Provisional ballots. [amending s. 101.048, F.S.]**

- a. Permits an election official to assert that a person is not eligible to vote and is therefore entitled to vote a provisional ballot.
- b. Permits a person casting a provisional ballot to present written evidence supporting his or her eligibility to vote to the supervisor no later than 5 p.m. on the third day following the election.
- c. Requires the county canvassing board to consider the information provided in the Voter's Certificate and Affirmation, written evidence provided by the person, any other evidence presented by the supervisor of elections, and in the case of a challenge, any evidence presented by the challenger in determining whether to count a provisional ballot. The provision establishes a preponderance of the evidence standard for determining whether to count a provisional ballot.
- d. Modifies the Voter's Certificate and Affirmation for a provisional ballot.
- e. Requires a provisional ballot to be provided on electronic machines for voters with disabilities.
- f. Requires that written instructions be given to people casting provisional ballots concerning the right to provide the supervisor of elections with written evidence of his or her eligibility to vote.

**Section 26. Provisional ballots; special circumstances. [amending s. 101.049, F.S.]**

Includes language relating to persons with disabilities casting provisional ballots.

**Section 27. Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished. [amending s. 101.051, F.S.]**

- a. Prohibits anyone from soliciting a voter at a polling place, early voting site, or within 100 feet of such locations, in an effort to provide the voter with assistance in casting their vote. A violation of this provision is a first degree misdemeanor.
- b. Requires people providing assistance to voters to subscribe to an oath. The oath states that the provider of assistance is "not the employer, an agent of the employer, or an officer or agent of the union of the voter and that I have not solicited this voter at the polling place or early voting site or within 100 feet of such locations in an effort to provide assistance."

**Section 28. Person desiring to vote may be challenged; challenger to execute oath; oath of person challenged; determination of challenge. [amending s. 101.111, F.S.]**

- a. Revises the oath of Person Entering Challenge, and eliminates the oath of the Person Challenged.

- b. Permits a challenged voter to cast a provisional ballot.
- c. Deletes provisions relating to clerks and inspectors determining voter eligibility.
- d. Permits any elector or poll watcher to challenge the right of any voter to vote 30 days or less before an election by filing a completed copy of the oath.
- e. Provides a penalty for a voter or poll watcher who files a frivolous challenge. However, an elector or poll watcher is not subject to liability for any action taken in good faith and in furtherance of any activity or duty permitted of such elector or poll watcher by law. Each instance where any elector or poll watcher files a frivolous challenge of any person's right to vote constitutes a separate offense.

**Section 29. Watchers at polls. [amending s. 101.131, F.S.]**

- a. Permits poll watchers for early voting areas.
- b. Permits political committees registered to support or oppose an issue on the ballot to have one watcher in each polling room and early voting area.
- c. Prohibits poll watchers from interacting with voters, and requires poll watchers to pose any questions regarding polling place procedures to the clerk.
- d. Provides requirements for selecting poll watchers for early voting areas.

**Section 30. Specifications for ballots. [amending s. 101.151, F.S.]**

Requires Marksense ballots to meet the specifications of the voting system what will be used to tabulate the ballots.

**Section 31. Copy of constitutional amendment to be available at voting locations. [amending s. 101.171, F.S.]**

Requires the proposed constitutional amendments to be in either poster or booklet form at the polls

**Section 32. Purchase and sale of voting equipment. [amending s. 101.294, F.S.]**

- a. Prohibits vendors of voting equipment from providing any uncertified voting system, voting system component, or voting system upgrade in this state.
- b. Requires certification of any equipment or system by vendor to the county.

**Section 33. Penalties for violation. [amending s. 101.295, F.S.]**

Provides a third degree felony for any vendor who provides uncertified voting equipment in this state.

**Section 34. Procedure of election officers where signatures differ. [amending s. 101.49, F.S.]**

- a. Amends the affidavit required for electors whose identities are questioned by a clerk or inspector.
- b. Permits a person who fails or refuses to file the affidavit, but asserts his or her eligibility, to vote a provisional ballot.

**Section 35. Electors to occupy booth alone. [amending s. 101.51, F.S.]**

Clarifies the statute prohibiting a voter from speaking with anyone while in the voting booth.

**Section 36. Requirements for approval of systems. [amending s. 101.5606, F.S.]**

Makes a conforming change.

**Section 37. Voting by electronic or electromechanical method; procedures. [amending s. 101.5608, F.S.]**

Makes conforming changes.

**Section 38. Testing of tabulating equipment. [amending s. 101.5612, F.S.]**

Permits a supervisor to conduct a second logic and accuracy test, not more than ten days before the election, if the ballots are not available at the time of initial testing.

**Section 39. Canvass of returns. [amending s. 101.5614, F.S.]**

Amends a cross-reference.

**Section 40. Public inspection of ballots. [amending s. 101.572, F.S.]**

Clarifies that the supervisor of elections needs to contact candidates whose names appear on the ballots only if the ballots are being examined prior to the end of the contest period.

**Section 41. Supervising and observing registration and election processes. [amending s. 101.58, F.S.]**

Permits any employee of the Department of State, with expertise in the matter of concern to the Secretary, to have full access to all premises, records, equipment, and staff of a supervisor of elections, upon the written direction of the Secretary of State.

**Section 42. Analysis and reports of voting problems. [amending s. 101.595, F.S.]**

- a. Requires supervisors to provide information to the department on the number of overvotes and undervotes on either the Presidential race or the governor's race.

**Section 43. Mail ballot election procedure. [amending s. 101.6103, F.S.]**

- a. Permits the canvassing board to begin processing ballots from mail ballot elections at 7 a.m. on the fourth day preceding the election, provided that no results are released until after 7 p.m. on election day. The committee substitute imposes a penalty for violating this section. This section would conform the procedures for mail ballots to those currently in place for absentee ballots.
- b. Requires that a mail ballot that otherwise satisfies the requirements of law for mail ballots be counted even if the elector dies after mailing the ballot but before election day if certain conditions are met.

**Section 44. Request for absentee ballots. [amending s. 101.62, F.S.]**

- a. Requires a voter's request for an absentee ballot to be received by the supervisor no later than 5 p.m. on the sixth day prior to the election.
- b. Requires a supervisor to mail an absentee ballot to the voters requesting ballots no later than four days before the election.
- c. Requires the supervisor to track when the ballot was delivered to the voter, or the voter's designee, or when the ballot was delivered to the post office. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than noon of each day and shall be contemporaneously provide to the division. The voter requesting the ballot may obtain this information.
- d. Requires that advance absentee ballots be mailed only when the regular absentee ballots are not available by the date overseas ballots are required to be mailed.
- e. Clarifies that an absentee ballot may be personally given to a voter before 7 p.m. on election day, in effect permitting a voter to vote an in-person absentee ballot until polls close on election night.

**Section 45. Delivery of absentee ballots; envelopes; form. [amending s. 101.64, F.S.]**

Requires supervisors to provide the standard oath required by Federal law to voters voting absentee under Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

**Section 46. Early voting. [amending s. 101.657, F.S.]**

- a. Clarifies that early voting is a convenience.

- b. Requires that early voting is only permitted in a permanent facility of the supervisor or a permanent public library facility. This has the effect of prohibiting supervisors from conducting early voting in book mobiles or temporary offices established specifically for early voting.
- c. Requires supervisors to designate early voting sites no later than 30 days prior to an election. Designations of early voting sites may not be changed except by petition to the division, and the petition shall only be granted for reasons of a natural or unavoidable event resulting in the unavailability of such early voting sites.
- d. Requires early voting sites to be open on the same days for the same amount of time across a county, and permits any person in line at the closing of an early voting site to vote.
- e. Permits supervisors to conduct early voting for municipal and special district elections.
- f. Requires supervisors to prepare an electronic data file listing the voters who cast ballots during early voting. The data file is required to be updated by noon of each day.
- g. Requires that the ballot of each elector voting early be counted even if the elector dies on or before election day.

**Section 47. Electors; change of residence. [amending s. 101.663, F.S.]**

Permits electors registered in this state who establish a new permanent residence in another state after the registration books in that state have closed, to vote in Florida for the offices of President and Vice President of the United States.

**Section 48. Canvassing of absentee ballots. [amending s. 101.68, F.S.]**

- a. Clarifies that once an absentee ballot is received by the supervisor, it is deemed cast and no changes or additions may be made to the voter's certificate.
- b. Requires that an elector who dies after casting an absentee ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast.
- c. Requires that an absentee ballot that otherwise satisfies the requirements of law be counted even if the elector dies after submitting the ballot but on or before election day if certain conditions are met.

**Section 49. Voting in person; return of absentee ballot. [amending s. 101.69, F.S.]**

- a. Provides that if an elector has returned a voted absentee ballot to the supervisor, the voter is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted.

- b. Permits an elector who has not returned a voted absentee ballot to the supervisor, but wants to vote in person, to return the ballot to the precinct or an early voting site, have the ballot marked cancelled, and vote a regular ballot.
- c. Permits an elector who maintains that he or she has not returned an absentee ballot or remains eligible to vote, to vote a provisional ballot.

**Section 50. Special absentee ballot instructions for certain first-time voters. [amending s. 101.6923, F.S.]**

Requires the instructions provided to voters to be provided in substantially the same form as represented in the statute.

**Section 51. Mailing of ballots upon receipt of federal postcard application. [amending s. 101.694, F.S.]**

Deletes the specifications for envelopes being sent to absent electors overseas. This is replaced with a requirement that the envelopes meet the specifications determined by the Federal Voting Assistance Program and the United States Postal Service.

**Section 52. Electronic transmission of election materials. [amending s. 101.697, F.S.]**

Requires the Department of State to determine whether secure electronic means can be established for receiving ballots from overseas voters. If such security can be established, the department shall adopt rules allowing the electronic transmittal information from overseas voters.

**Section 53. Inspectors and clerks to conduct elections. [amending s. 102.012, F.S.]**

- a. Deletes provisions relating to two election boards, and instead requires one election board comprised of poll workers who serve as clerks or inspectors.
- b. Provides that election inspectors will be provided with a list of registered voters for the precinct, as opposed to the current requirement that inspectors be provided with registration books.

**Section 54. Poll worker recruitment and training. [amending s. 102.014, F.S.]**

- a. Requires the Division of Elections to develop a statewide uniform training curriculum for poll workers, and requires each supervisor to use the curriculum in training poll workers.
- b. Deletes references to precincts on election day, in effect making the section applicable to early voting and election day precinct voting.

**Section 55. Maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters. [amending s. 102.031, F.S.]**

- a. Requires the sheriff to deputize a deputy sheriff for each early voting site.
- b. Restricts access to early voting areas by unauthorized persons.
- c. Prohibits the solicitation of voters inside the polling place or within 100 feet of the entrance to a polling place or early voting site.
- d. Requires the clerk or supervisor to designate the no-solicitation zone and mark the boundaries.
- e. Removes all exceptions to the no-solicitation zone.
- f. Prohibits photography in polling rooms or early voting areas.

**Section 56. Tabulation of votes and proclamation of results. [amending s. 102.071, F.S.]**

Removes the requirement for triplicate certificates of results to be provided from each precinct. The committee substitute instead requires one certificate.

**Section 57. Elections Canvassing Commission. [amending s. 102.111, F.S.]**

Requires a county canvassing board to correct a typographical error in official returns of the county, if the error is discovered within five days after certification and the correction of which could result in a change in the outcome of an election. The Board must certify corrected returns to the Department of State within 24 hours, and the Commission must correct and recertify the election returns as soon as practicable.

**Section 58. Deadline for submission of county returns to the Department of State. [amending s. 102.112, F.S.]**

- a. Requires the county canvassing board to certify at the time it submits official returns that the board has reconciled the number of persons who voted with the number of ballots counted, and that the certification includes all valid votes cast in the election.
- b. Permits the Department of State to correct typographical errors, including the transposition of numbers, in returns submitted by counties.

**Section 59. County canvassing board; duties. [amending s. 102.141, F.S.]**

- a. Deletes the requirement that the certificates of the inspectors be signed and filed with the county-court judge.
- b. Changes the deadline for the first unofficial returns from Thursday at noon to Friday at noon for a primary election and from Thursday at noon to Sunday at noon for a general

- election. Requires the returns to include all results except provisional ballots, which will be submitted on the official returns.
- c. Requires the Elections Canvassing Commission to order federal, state, and multi-county recounts.
  - d. Changes the deadline for reporting results of machine recounts from noon on Friday after the election until 3 p.m. on Sunday for primary elections, and 3 p.m. on Wednesday for general elections.
  - e. Modifies the information required in the report from the canvassing board on the conduct of the election. The report must include a description of equipment or software malfunction, all election definition errors, all ballot printing or ballot supply errors, all staffing shortages or procedural violations, all instances of insufficient staffing or equipment, and any additional information.
  - f. Requires the supervisor to file an amended report disclosing newly discovered information within ten days after the discovery of the information.
  - g. Requires the supervisor to file a copy of, or an export file from, the results database of the county's voting system and other statistical information required by the Department of State, the Legislature, or the Election Assistance Commission.

**Section 60. Manual recounts. [amending s. 102.166, F.S.]**

- a. Prohibits a manual recount from being ordered if the number of overvotes, undervotes, and provisional ballots is fewer than the number of votes needed to change the outcome of the election.
- b. Removes the provision allowing a candidate who was defeated by between one-quarter and one-half of one percent of the votes from requesting a manual recount.
- c. Deletes language relating to hardware or software certification prior to 2002.

**Section 61. Contest of election. [amending s. 102.168, F.S.]**

Provides that the county canvassing board is an indispensable party defendant in county and local elections, and that the Elections Canvassing Commission is an indispensable party defendant in federal, state, and multi-county races.

**Section 62. Nomination for presidential electors. [amending s. 103.021, F.S.]**

- a. Requires the state executive committee of each political party to recommend presidential electors by resolution, and to deliver a certified copy to the Governor prior to September 1 of the election year.

- b. Defines the phrase “national party” to mean a political party established and admitted to the ballot in at least one state other than Florida.

**Section 63. Congress sets meeting dates of electors. [amending s. 103.051, F.S.]**

Removes the requirement that presidential electors meet at noon, and permits the Governor to set the time for the meeting.

**Section 64. Meeting of electors and filling of vacancies. [amending s. 103.061, F.S.]**

Permits the Governor to set the time for the meeting of the presidential electors.

**Section 65. Powers and duties of executive committees. [amending s. 103.121, F.S.]**

- a. Deletes provisions relating to party executive committee officers furnishing adequate bonds.
- b. Deletes provisions relating to party endorsements and the remittance of party assessments.

**Section 66. Qualification; filing fee; candidates' oath; items required to be filed. [amending s. 105.031, F.S.]**

- a. Clarifies terminology relating to the petition process.
- b. Corrects a provision relating to write-in candidates for school board.
- c. Codifies in the election code an ethics code provision that allows a public officer who has filed his or her financial disclosure statement with the Commission on Ethics or the supervisor of elections to file a copy of that disclosure at the time of qualifying.
- d. Permits a qualifying officer to accept and hold qualifying papers submitted no more than 14 days prior to the beginning of qualifying to be processed and filed during the qualifying period.

**Section 67. Petition process of qualifying for certain judicial offices and the office of school board member. [amending s. 105.035, F.S.]**

- a. Modifies language relating to the petition process for judicial and school board candidates to comport with other changes in the committee substitute.
- b. Prohibits candidates from obtaining signatures on petitions until the candidate has filed the appointment of campaign treasurer and designation of campaign depository.
- c. Requires candidates to submit petitions to the supervisors no later than 28<sup>th</sup> day before the first day of qualifying.

- d. Requires the supervisor to certify the submitted petitions no later than the seventh day before the first day of qualifying.

**Section 68. Appointment of a registered agent; duties. [creating s. 106.022, F.S.]**

- a. Requires each political committee, committee of continuous existence, or electioneering communications entity to have a registered agent, and a registered office, in the state, and to file an appointment for the registered office and agent with the division.
- b. Permits a registered agent to resign his or her appointment by executing a written statement of resignation and filing it with the Division.
- c. Prohibits an entity without a registered agent from making expenditures or accepting contributions.

**Section 69. Florida Elections Commission; membership; powers; duties. [amending s. 106.24, F.S.]**

Inserts language from s. 106.24 into s. 106.08, F.S., and makes technical and conforming amendments.

**Section 70. Disposition of surplus funds by candidates. [amending s. 106.141, F.S.]**

Makes conforming change to term “petition process” pursuant to changes made to s. 99.095, F.S.

**Section 71.**

Transfers and renumbers s. 98.122, F.S., as s. 106.165, F.S.

**Section 72. Duties of the Division of Elections. [amending s. 106.22, F.S.]**

- a. Deletes provisions relating the annual report to the President of the Senate and Speaker of the House concerning activities of the division and recommending improvements in the election code.
- b. Deletes provision relating to preliminary investigations into fraud allegations. This language is moved to s. 97.012, F.S.

**Section 73. Office of Statewide Prosecution. [amending s. 16.56, F.S.]**

Authorizes the statewide prosecutor to investigate and prosecute any crime involving voter registration, voting, or candidate or issue petition activities.

**Section 74. Inspection and copying of records; photographing public records; fees; exemptions. [amending s. 119.07, F.S.]**

Conforms language relating to inspection of ballots following elections.

**Section 75. Supervisor of elections. [amending s. 145.09, F.S.]**

Requires the Department of State to adopt rules to establish the certification requirements for supervisors of elections.

**Section 76. Voter intimidation or suppression prohibited; criminal penalties. [creating s. 104.0615, F.S.]**

- a. Prohibits a person from, directly or indirectly, using or threatening to use force, violence, intimidation, or any tactic of coercion or intimidation to induce or compel an individual to:
  - i. Vote or refrain from voting;
  - ii. Vote or refrain from voting for any particular individual or ballot measure;
  - iii. Refrain from registering to vote; or
  - iv. Refrain from acting as a legally authorized election official or poll watcher.
  - v. Such conduct would be punishable by a third degree felony.
  
- b. Prohibits a person from knowingly using false information to:
  - i. Challenge an individual's right to vote;
  - ii. Induce or attempt to induce an individual to refrain from voting or registering to vote; or
  - iii. Induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.
  - iv. Such conduct would be punishable by a third degree felony.
  
- c. Prohibits a person from knowingly destroying, mutilating, or defacing a voter registration form or election ballot, or obstructing or delaying the delivery of a voter registration form or election ballot. Such conduct would be punishable by a third degree felony.

**Section 77. Repeals.**

Repeals ss. 98.095, 98.0979, 98.181, 98.481, 101.253, 101.653, 102.061, 106.085, and 106.144, Florida Statutes. These sections have either become obsolete due to the advent of new technology, or have been ruled unconstitutional by the courts.

**Section 78. Severability.**

Provides that if any provision of this act is held to be invalid, the act can be given effect without the invalid provision, and that the provisions of the act are severable.

**Section 79. Effective date.**

Except as otherwise expressly provided in the act, and except for this section, which shall take effect on July 1, 2005, this act shall take effect January 1, 2006.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

In 1992, the United States Supreme Court upheld a Tennessee statute that created a 100-foot “campaign-free zone.” A plurality of the Court held that while this zone clearly affected fundamental first amendment rights, Tennessee’s interest in protecting against voter intimidation and election fraud was sufficiently compelling and that the law was sufficiently narrowly tailored to achieve this objective.<sup>1</sup> The Court determined that, “[t]he only way to preserve the secrecy of the ballot is to limit access to the area around the voter.”<sup>2</sup> With respect to the choice of making the zone 100 feet, the Court did not set forth a bright line rule to differentiate valid from invalid restrictions. The Court did note, however, that “the state of Tennessee has decided that the last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible. We do not find that this is an unconstitutional choice.”<sup>3</sup>

The Burson case demonstrates that a state may legitimately create a no-solicitation zone if there is a compelling government interest in doing so, and if the statute is narrowly-tailored to further that interest. Given the problems regarding solicitation and voter interference at the polls that have been reported by the supervisors of elections, it appears that Florida could argue that it has a compelling interest in creating a no-solicitation zone that can be uniformly applied. By adopting the 100-foot restricted zone approved in Burson, the state could legitimately argue this statute is narrowly tailored to serve the compelling interest of protecting voters from interference and harassment at the polls.

---

<sup>1</sup> Burson v. Freeman, 112 S.Ct. 1846 (1992).

<sup>2</sup> Id. at 1856.

<sup>3</sup> Id. at 1857.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---



## **VIII. Summary of Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---