

**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 Judiciary Committee

BILL: CS/CS/SB 866

INTRODUCER: Judiciary Committee, Ethics and Elections Committee, and Senator Constantine

SUBJECT: Elections

DATE: April 18, 2008

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	Fav/CS
2.	Maclure	Maclure	JU	Fav/CS
3.			TA	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill is an omnibus elections measure that contains numerous changes to the Florida Elections Code. Some of the significant provisions include:

- Allowing pre-registration upon a person's 16<sup>th</sup> birthday.
- Revising the notification procedures for the verification for voter registration applications.
- Removing buyer's club identification and employee badge identification from certain identification provisions to conform to legislation enacted in 2007.
- Allowing changes to a person's party affiliation for an upcoming election after the book closing deadline if the upcoming election is not a primary election.
- Revising registration list maintenance procedures and creating new list maintenance forms to facilitate these procedures.
- Allowing supervisors to remove the name of a deceased voter from the statewide voter registration system if presented with a copy of the voter's death certificate, but also requiring supervisors to send notice to the deceased voter notifying him or her of the ineligibility to vote.

- Revising the precinct-level reporting and voter information requirements to, among other changes, shorten the time frame in which supervisors must report voter history information to the Department of State from 75 days to 45 days after a general election.
- Providing that a person cannot run for a federal office and another office if the terms of those offices overlap.
- Clarifying that local governments do not have to offer early voting for a bond referendum if it is not held at the same time as a county or state election.
- Revising the municipal and charter county recall provisions.
- Providing that initiative petitions may not be bundled with other petitions when they are circulated among the public for signature.
- Providing that a person may submit a petition-revocation form directly to the supervisor.
- Removing the requirement that supervisors record initiative petition and initiative petition revocation information in the statewide voter registration system.
- Providing that in order to lodge a voter challenge, the elector or poll watcher must be from the same county as the challenged voter.
- Providing that if a challenge is filed in advance of Election Day, the supervisor must provide a copy of the challenger's oath to the election board in the challenged voter's precinct.
- Removing some election inspector duties that may conflict with a voter's ability to vote a provisional ballot.
- Removing some outdated references to ballot stubs.
- Giving authority to the Governor to call for a mail ballot election upon issuing an executive order declaring a state of emergency or impending emergency.
- Allowing municipalities to change, by ordinance, their election dates to coincide with a statewide or countywide election.
- Revising poll worker disability training requirements.
- Providing that, for purposes of the 100-ft. no-solicitation zone, the term "solicit" does not include exit polling.
- Providing that supervisors must compare rather than reconcile the number of persons who voted with the number of ballots counted.
- Streamlining the qualifying process for certain special district candidates in accordance with changes made legislation enacted in 2007.
- Allowing local governments to require electronic filing for local officers and candidates if those requirements do not conflict with the electronic filing requirements for candidates who must file with the Department of State.
- Providing that the expenditure of funds for such electronic filing is a valid public purpose.
- Eliminating a requirement for candidates to file a copy of their campaign treasurer information with the local supervisor of elections, when they have already qualified with the Department of State for an office other than a statewide office.
- Repealing a provision that prohibits Agriculture Commissioner candidates from accepting a contribution of more than \$100 from certain businesses.
- Providing for a shorter sponsorship disclaimer for telephone banks distributing electioneering communications, and exempting those communications from needing to have a candidate's written approval.

- Making the Florida Elections Commission the agency head of the commission for all purposes, instead of the commission director.

This bill creates section 98.0655, Florida Statutes, and substantially amends the following sections of the Florida Statutes: 97.012, 97.041, 97.053, 97.0535, 97.055, 98.065, 98.075, 98.0981, 99.012, 99.021, 100.221, 100.361, 100.371, 101.041, 101.045, 101.111, 101.23, 101.51, 101.5608, 101.6102, 101.6923, 101.733, 101.75, 102.014, 102.031, 102.112, 103.101, 106.021, 106.07, 106.147, 106.24, and 190.006. This bill repeals sections 101.573 and 106.082, Florida Statutes.

## II. Present Situation:

### Investigatory Authority of the Secretary of State

Currently, the Secretary of State has the responsibility and authority to “[c]onduct preliminary investigations” of fraud “involving voter registration, voting, or candidate or issue petition activities.”<sup>1</sup>

### Pre-Registration

An individual may register to vote in accordance with Florida law if he or she is at least 18 years old, a United States citizen, a legal resident of Florida, and a legal resident of the county in which he or she seeks to register. However, individuals who are otherwise qualified to register to vote but are not yet 18 may pre-register to vote on or after the individual’s 17<sup>th</sup> birthday or upon obtaining a valid Florida driver’s license.<sup>2</sup>

### Voter Registration Applications

The Department of State is required to verify an applicant’s driver’s license number, Florida ID card number, or the last four digits of a social security number that the applicant provides on the voter registration application before accepting the application as valid. If a completed application is received by the book-closing deadline; but the identifier provided by the applicant cannot be verified before the applicant attempts to vote, the applicant must be notified that the application is incomplete and that he or she must provide evidence to verify the number. If the number is verified, the applicant becomes a registered voter. If the number is not verified prior to voting, the applicant must vote a provisional ballot, which is counted only if the application is verified by either the end of the canvassing period, or evidence is presented by the applicant to the supervisor that is sufficient to verify the number on the application. The applicant has until 5:00 p.m. of the second day after the election within which to present this evidence.<sup>3</sup> In *Florida State Conference of the N.A.A.C.P. v. Browning*,<sup>4</sup> a preliminary injunction was granted enjoining the Division of Elections (division) from enforcing these provisions on various grounds, including that these provisions conflict with the Help America Vote Act (HAVA).<sup>5</sup> Recently, the

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<sup>1</sup> Section 97.012(15), F.S.

<sup>2</sup> Section 97.041(1)(b), F.S.

<sup>3</sup> Sections 97.053(6) and 101.048, F.S.

<sup>4</sup> Case No. 4:07CV-402-SPM/WCS (N.D. Fla. December 18, 2007).

<sup>5</sup> *Id.* at 10-13.

Eleventh Circuit Court of Appeals overturned the district court's ruling enjoining the division from enforcing these provisions, finding that the federal statutes at issue, including HAVA, do not conflict with s. 97.053(6), F.S.<sup>6</sup>

### **Identification**

Last year, the Legislature passed Council Substitute for House Bill 537 (CS/HB 537), which was approved by the Governor on May 22, 2007. In CS/HB 537, two forms of identification were removed from the list of acceptable forms of identification to be presented at the polls: buyer's club identification and employee badge or identification.<sup>7</sup> However, voter registration applicants who register by mail, have never previously voted in Florida, and have not been issued a current and valid Florida driver's license, Florida identification card, or social security number must present either a copy of their identification when they register, or present identification prior to voting in person or by absentee ballot. Buyer's club identification and employee badge or identification remain on the list of acceptable forms of identification for these voter registration applicants.<sup>8</sup>

### **Change of Name, Address, and Party Affiliation**

Currently, only name, address, and signature changes are permitted after the book closing deadline for an upcoming election. Party affiliation changes and voter registration applications are still accepted; however, the change or application becomes effective for the next, subsequent election.<sup>9</sup>

### **Registration List Maintenance**

For the purpose of maintaining accurate voter registration records, supervisors of elections must conduct a general registration list maintenance program, which must be uniform, nondiscriminatory, and must comply with several federal voting acts, including the Help America Vote Act of 2002.<sup>10</sup> At least every odd numbered year,<sup>11</sup> a supervisor must incorporate one of the following methods in the supervisor's list maintenance program:

- Use of change of address information given by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed;
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable address confirmation requests mailed to every registered voter

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<sup>6</sup> *Florida State Conference of the N.A.A.C.P. v. Browning*, No. 07-15932, 2008 WL 880569 \*20 (11<sup>th</sup> Cir. April 3, 2008) (reversing the district court's decision granting plaintiffs a preliminary injunction and remanding for further proceedings).

<sup>7</sup> See s. 26, ch. 2007-30, L.O.F.

<sup>8</sup> Sections 97.0535(3)(a) and 101.6923(2), F.S.

<sup>9</sup> Sections 97.055 and 101.045, F.S.

<sup>10</sup> Section 98.065(1), F.S.

<sup>11</sup> Section 98.065(3), F.S.

who has not voted in the last two years and who did not make any written request to update his or her registration record during that two-year period.<sup>12</sup>

The program must be completed at least 90 days before any federal election, and all actions must be entered, tracked, and maintained in the statewide voter registration system.<sup>13</sup>

If a supervisor receives change of address information from one of the methods listed above, jury notices, the Department of Highway Safety and Motor Vehicles, or from other sources which reveals that a registered voter's legal address might have changed, the supervisor must send the voter an address confirmation notice by forwardable, return-if-undeliverable mail, to the old address. This notice must contain specific information as outlined in the statute so that the voter can send the notice back indicating if his or her legal residence has either moved outside the state, has moved inside the state, or has not changed. The form must be returned within 30 days after the date of the notice.<sup>14</sup>

Voters who are sent this notice and do not return the form within 30 days of receipt, along with voters for whom a notice has been returned as undeliverable, must be designated by the supervisor as inactive. Voters on the inactive list may not be used to calculate the number of signatures needed on a petition. An inactive list voter can be restored to active status by updating his or her voter registration, requesting an absentee ballot, or appearing to vote. If no update occurs, or no request for an absentee ballot is made, and the voter does not vote by the second general election after receiving inactive status, the voter's name will be removed from the statewide voter registration system. Thus, in order to vote again, the voter will have to reregister to vote.<sup>15</sup>

### **Deceased Electors**

While the statutes authorize that a voter may be removed from the statewide voter registration system if the voter dies,<sup>16</sup> the supervisor must wait to receive this information from the Department of State through the statewide voter registration system before removing the deceased voter.<sup>17</sup> The Department of State receives this information from the Department of Health, which provides a list of information each month to the Department of State regarding deceased persons 17 years of age or older.<sup>18</sup> The current procedure does not allow a supervisor to remove deceased voters from the voter registration system when he or she is presented with information from sources other than the Department of Health or the Department of State, such as a copy of the deceased voter's death certificate. Prior to January 1, 2006, a supervisor could remove the name of a deceased voter from the registration books if the supervisor received information of the voter's death from other sources and verified the information received.<sup>19</sup>

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<sup>12</sup> Section 98.065(2), F.S.

<sup>13</sup> Section 98.065(3), F.S.

<sup>14</sup> Section 98.065(4), F.S.

<sup>15</sup> Section 98.065(4)(c), F.S.

<sup>16</sup> Section 98.045(2)(a), F.S.

<sup>17</sup> Section 98.075(3), F.S.

<sup>18</sup> Section 98.093(2)(a), F.S.

<sup>19</sup> See s. 24, ch. 2005-278, L.O.F.; s. 98.093(5), F.S. (2004).

## **Qualification for Office**

### ***Federal Office***

Council Substitute for HB 537 removed the resign-to-run law for persons seeking federal office. However, CS/HB 537 also removed the prohibition in s. 99.012(2), F.S. (2006), which prohibited persons seeking a federal office from qualifying for two offices at the same time when the offices have overlapping terms.<sup>20</sup> Thus, currently, persons seeking any federal public office may qualify for two offices at the same time even if the offices have overlapping terms.

### ***Special District Office***

Special district candidates must qualify for office pursuant to the provisions of s. 99.061, F.S., which requires a qualifying fee of \$25.00 or qualifying by the petition process in s. 99.095, F.S. The qualification process for special district office was standardized in CS/HB 537;<sup>21</sup> however, the offices for a community development district's board of supervisors were not included in CS/HB 537. Currently, candidates for these offices must qualify by paying a qualifying fee of 3 percent of \$4,800 or the maximum annual compensation provided. The election assessment is 1 percent of the maximum annual compensation provided.<sup>22</sup>

## **Initiative Petitions**

### ***Addresses on Petitions***

Current law provides that, if a voter, when signing a petition, lists an address that does not correspond with the voter's legal residence address where the voter is registered to vote, the supervisor must treat the voter's signature as if the voter had listed his or her legal residence where he or she is registered to vote.<sup>23</sup>

### ***Recording Petition Information***

The law requires the supervisor of elections to record in the statewide voter registration system certain information relating to initiative petitions, such as the date petition forms are received and the date the signature on each petition form is determined to be valid.<sup>24</sup> This recording requirement also exists for each valid and verified petition-revocation form.<sup>25</sup> The information recorded in the system is relied upon by the Secretary of State when making his determination if the required number and distribution of valid signatures has been obtained.<sup>26</sup> Within the past

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<sup>20</sup> See s. 14, ch. 2007-30, L.O.F.; s. 99.012(2), (4), F.S. (2006).

<sup>21</sup> Sections 16, 52, 53, and 54, ch. 2007-30, L.O.F.

<sup>22</sup> Section 190.006, F.S.

<sup>23</sup> Section 99.097(3)(b), F.S.

<sup>24</sup> Section 100.371(3), F.S.

<sup>25</sup> Section 100.371(6)(d), F.S.

<sup>26</sup> Section 100.371(4), F.S.

year, problems were identified relating to the system's ability to accurately record petition signature information.<sup>27</sup>

### ***Petition Revocation***

The law allows an elector's signature on a petition to be revoked within 150 days from the date the elector signed the petition by submitting a signed petition-revocation form to the supervisor. The law specifically provides that the manner in which petition-revocation form signatures are obtained, submitted, and verified must be subject to the same relevant requirements and timeframes as petition forms.<sup>28</sup>

### ***Petition Bundling***

Currently, the Division of Elections (division) has a rule that prohibits the bundling of petitions.<sup>29</sup> However, in *Fairdistrictsflorida.org v. Dept. of State*,<sup>30</sup> an administrative law judge deemed this rule to be "an invalid exercise of delegated legislative authority." The division filed a notice of appeal in this case on March 28, 2008.

### **Early Voting and Bond Referenda**

Section 100.221, F.S., specifies that the laws governing general elections are also applicable to bond referenda. However, s. 101.657(1)(e), F.S., specifically provides municipalities with the option of early voting for municipal elections that are not held in conjunction with county or state elections.

### **Charter County and Municipal Recall**

Currently, municipal or charter county electors<sup>31</sup> may choose to remove any municipal or charter county government official, respectively.<sup>32</sup> However, a recall petition may not be filed until the municipal official has served at least one-fourth of his or her term of office.<sup>33</sup> The recall petition procedure is briefly summarized below:

#### ***Petitions***

First, a recall petition must be prepared containing the name of the person sought to be recalled and a statement of grounds for recall,<sup>34</sup> which must be limited to the following: malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official

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<sup>27</sup> See Paige St. John, *State warned of signatures glitch*, FLORIDATODAY.COM, Jan. 14, 2008, available at <http://www.floridatoday.com/apps/pbcs.dll/article?AID=/2008114/NEWS01/801140327/> (last visited Jan. 14, 2008).

<sup>28</sup> Section 100.371(6), F.S.

<sup>29</sup> Rule 1S-2.009(8), F.A.C., states: "Bundling. No initiative petition form circulated for signature may be bundled with or attached to any other petition form."

<sup>30</sup> Case No. 07-5665RX (Fla. Division of Administrative Hearings February 28, 2008).

<sup>31</sup> A municipality or charter county is referred to as a "municipality." Section 100.361(1), F.S.

<sup>32</sup> Section 100.361(1), F.S.

<sup>33</sup> Section 100.361(6), F.S.

<sup>34</sup> Section 100.361(1)(a), F.S.

duties, and conviction of a felony involving moral turpitude.<sup>35</sup> Upon request, the proponent of the petition should provide the content of the petition in alternative formats. The law specifically lists the number of signatures required for the petition based on the greater of either the municipality's current number of electors or the number of electors at the municipality's preceding municipal election. The electors making the charges in the statement of grounds for recall and the electors signing the petition are referred to as the "committee." A specific person must be designated in the petition to serve as chair of the committee.<sup>36</sup>

### ***Signatures***

Section 100.361(1)(c), F.S., sets forth the requirements necessary for signatures and witness oaths. All signatures must be obtained within 30 days, and the petition must be filed within 30 days after the first signature is obtained.<sup>37</sup> The chair of the committee must file the petition with the municipality or charter county clerk. Once the petition is filed with the clerk, the petition and all subsequent papers and forms filed with the clerk must be made available in alternative formats upon request. The petition cannot be amended after it is filed with the clerk. The clerk must then give the petition to the supervisor of elections who must determine if the petition contains the required number of valid signatures within 30 days. The committee or persons seeking verification of the signatures must pay the supervisor 10 cents for each name checked.<sup>38</sup>

### ***Right to have Signature Removed***

Any elector who signs a recall petition has the right to request in writing that his or her name be stricken from the petition. This written demand must be signed by the elector and must be filed with the clerk. The clerk shall then strike the elector's name from the petition and certify this change by placing his or her initials next to the name stricken. However, no signature may be stricken after the clerk delivers the "Recall Petition and Defense," described below, to the supervisor for signature verification.<sup>39</sup>

### ***Signature Determination***

If a determination is made that the petition does not contain the required number of signatures, the clerk must certify this fact to the governing body of the municipality or charter county and file the petition. Any further action will not be taken, and additional names may not be added to the petition. The petition may not be used again.<sup>40</sup>

### ***Recall Petition and Defense***

If a determination is made that the petition contains the required number of signatures, the clerk must serve a certified copy of the petition upon the official facing recall. The official has five days after service within which to file a defensive statement with the clerk. The clerk, within five

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<sup>35</sup> Section 100.361(1)(b), F.S.

<sup>36</sup> Section 100.361(1)(a), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Section 100.361(1)(d), F.S.

<sup>39</sup> Section 100.361(1)(g), F.S.

<sup>40</sup> Section 100.361(1)(e), F.S.



days, must prepare a sufficient number of copies of the petition and defensive statement, and copies of the names, addresses, and oaths on the original petition. The clerk must deliver these copies to chair of the committee and obtain a receipt from the chair. The clerk's prepared copies are referred to as the "Recall Petition and Defense."<sup>41</sup>

The "Recall Petition and Defense" must be signed by at least 15 percent of the electors.<sup>42</sup> The chair has 60 days from the delivery of the "Recall Petition and Defense" to obtain signatures and file the petition with the clerk. The clerk, after assembling the petitions and checking witness oaths, must deliver the petition to the supervisor, who verifies signatures, purges all names stricken, and certifies within 30 days if the petition contains the requisite number of signatures. The supervisor must report his or her findings to the governing body. The supervisor is also paid 10 cents for each name checked by the committee requesting verification.<sup>43</sup>

If the required signatures are not obtained, the clerk must report this fact to the governing body, file the petitions, and terminate the proceedings. The petitions cannot be used again. If, however, the required signatures are obtained, the clerk must serve notice on the official being recalled and deliver to the governing body a certificate stating the percentage of qualified voters who signed.<sup>44</sup>

Current law provides specific procedures for the recall election<sup>45</sup> and the filling of vacancies.<sup>46</sup> It also provides specific provisions that must be followed if an official being recalled resigns from office.<sup>47</sup> Prohibited offenses with regard to recall include impersonating another, forging names on a petition, providing false information on a petition, or signing any paper knowing you are not a registered elector of the municipality. Expenditures for campaigns for or against the officer being recalled cannot be made until the date the recall election is publicly announced. A person may not employ or pay someone else to accept employment or payment to circulate or witness recall petitions. Any person who violates any provision of s. 100.361, F.S., commits a second-degree misdemeanor.<sup>48</sup>

## **Ballots**

Section 101.041, F.S., currently provides for voting to be by secret ballot "printed and distributed." However, not all ballots are "printed and distributed." Also, s. 101.5608, F.S., currently makes outdated references to "ballot stubs."

## **Challenging Voters**

Any elector or poll watcher may challenge the right of a voter to vote on election day. The challenger must file a completed oath with the clerk or inspector. Prior to election day, any

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<sup>41</sup> Section 100.261(1)(f), F.S.

<sup>42</sup> Section 100.361(1)(g), F.S.

<sup>43</sup> Section 100.361(1)(h), F.S.

<sup>44</sup> Section 100.361(1)(i), F.S.

<sup>45</sup> Section 100.361(2), F.S.

<sup>46</sup> Section 100.361(4), F.S.

<sup>47</sup> Section 100.361(5), F.S.

<sup>48</sup> Section 100.361(7), F.S.

elector or poll watcher may challenge a voter if the challenge is made no earlier than 30 days prior to the election. The challenger must file a completed copy of the oath required for making such a challenge with the supervisor's office. The challenged voter must be given a copy of the completed oath registering the challenge, and may vote a provisional ballot. Electors or poll watchers who file challenges shall not be held liable for any good faith action; however, if the challenge is frivolous, the elector or poll watcher commits a first-degree misdemeanor.<sup>49</sup>

### **Election Emergencies**

The Governor has the power to suspend or delay elections upon the issuance of an order declaring a state of emergency or impending emergency.<sup>50</sup> "Emergency" is defined as any accidental, natural, or manmade accident, or threat of accident, which either results or may result in substantial injury or harm to the public or substantial damage to or loss of property to the extent it will prohibit an election official from conducting an election.<sup>51</sup>

The Governor must reschedule an election suspended or delayed due to an emergency within 10 days after the date of the original date of the election, or as soon as practicable. Notice of the election must be published at least once in a newspaper of general circulation in the affected area, and if possible, broadcast on radio and television as a public service announcement, at least one week prior to the election date.<sup>52</sup>

### **Poll Workers: Duties and Training**

Currently, election inspectors must prevent any person from voting if: the person is not a qualified elector, has become disqualified in the precinct to vote, or has already voted. Furthermore, they can prevent anyone from spending more than five minutes casting a ballot.<sup>53</sup>

When an elector presents himself or herself to vote and no impediment to voting arises (such as a challenge or no evidence of the elector's name on the voting register) a poll worker must announce the name of the voter and allow him or her to enter the voting booth to cast a ballot.<sup>54</sup>

Poll workers are required to receive mandatory training prior to working each election. This training must include at least one hour of disability training, which is designed to train poll workers on etiquette and sensitivity issues regarding disabled voters.<sup>55</sup>

### **Exit Polling**

Current law prohibits any individual or group from soliciting voters inside the polling place or within 100 feet of the entrance to any polling place. The term "solicit" is defined to include

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<sup>49</sup> Section 101.111, F.S.

<sup>50</sup> Section 101.733(1), F.S.

<sup>51</sup> Section 101.732(3), F.S.

<sup>52</sup> Section 101.733(2), F.S.

<sup>53</sup> Section 101.23(2), F.S.

<sup>54</sup> Section 101.51(1), F.S.

<sup>55</sup> Section 102.014, F.S.

conducting polls.<sup>56</sup> However, in *CBS Broadcasting, Inc. v. Cobb*,<sup>57</sup> a federal court determined that the 100-foot no-solicitation zone was unconstitutional as applied to exit polling.

### **Presidential Preference Primary**

Currently, a presidential preference primary candidate may request that the selection committee place his or her name on the ballot if it does not appear on the list submitted by the Secretary of State. If a request is made, the selection committee must reconvene to reconsider placing the candidate's name on the ballot.<sup>58</sup> This process was ruled unconstitutional in *Duke v. Smith*.<sup>59</sup>

## **III. Effect of Proposed Changes:**

This bill is an omnibus elections measure that contains numerous changes to the Florida Elections Code.

### **Investigatory Authority of Secretary of State (Section 1)**

The bill clarifies that the Secretary of State has authority to conduct preliminary investigations into fraud or irregularities with regard to candidate petition activities.

### **Pre-Registration (Section 2)**

The bill changes the triggering event for individuals otherwise qualified to pre-register to vote by allowing individuals to pre-register on or after the individual's 16<sup>th</sup> birthday, rather than the 17<sup>th</sup> birthday, or upon obtaining a valid Florida driver's license.

### **Voter Registration Applications (Section 3)**

The bill amends the acceptance process of voter registration applications by providing that when a completed voter registration application is received by the book-closing deadline but the driver's license number, Florida ID card number, or the last four digits of the applicant's social security number cannot be verified, the applicant shall be notified that the number cannot be verified rather than receiving notification that his or her application is incomplete. Moreover, rather than the applicant providing verification of the authenticity of the number provided on the application, the applicant can provide verification of either his or her driver's license number, Florida ID card number, or the last four digits of his or her social security number regardless of which number was provided on the application. These changes are effective upon becoming law. Currently, a case is pending in federal court regarding s. 97.053(6), F.S., the subsection of law that these changes would affect. Recently, the division was enjoined from enforcing s. 97.053(6),

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<sup>56</sup> Section 102.031(4), F.S.

<sup>57</sup> 470 F. Supp. 2d 1365 (S.D. Fla. 2006).

<sup>58</sup> Section 103.101(2), F.S.

<sup>59</sup> 13 F.3d 388 (11<sup>th</sup> Cir. 1994).

F.S.<sup>60</sup> However, on April 3, 2008, the Eleventh Circuit Court of Appeals overturned the district court's ruling enjoining the division from enforcing these provisions.<sup>61</sup>

### **Identification (Sections 4 and 23)**

The bill removes employee badge or identification and buyer's club identification from the list of acceptable forms of identification that must be provided at the time of registering or prior to voting for voter registration applicants who wish to vote in-person or by absentee and who registered by mail, have never previously voted in Florida, and have not been issued a current and valid Florida driver's license, Florida identification card, or social security number. This change complies with CS/HB 537 (2007 Reg. Sess.), which removed these forms of identification from the list of acceptable forms of identification that must be presented to vote at the polls.<sup>62</sup>

### **Change of Name, Address, and Party Affiliation (Sections 5 and 16)**

The bill allows an elector to change his or her party affiliation after the book closing deadline for the impending election if the impending election is not a nominating election. If the impending election is a nominating election, the elector may submit the change; however, the change will not take effect until the next, subsequent election. **(Section 5)**

The bill makes technical changes to s. 101.045, F.S. **(Section 16)**

### **Registration List Maintenance (Sections 6 and 7)**

The bill requires a supervisor, who receives information that a registered voter has changed his or her legal residence within the state, to change the registration records to reflect the new address. The supervisor must then send the registered voter an address change notice. The notice is sent by forwardable mail to the new address. This allows the supervisor to update the record first and then notify the voter instead of having to send notice to the voter and wait 30 days before updating the record. The new language also provides that if the supervisor receives information that a registered voter has moved his or her legal residence outside the state, the supervisor must send an address confirmation final notice by forwardable mail to the registered voter at his or her new address. Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days or for whom the notice is returned as undeliverable are designated as inactive. **(Section 6)**

The bill requires the Department of State to develop registration list maintenance forms that must include an address confirmation request, an address change notice, and an address confirmation final notice. The bill requires the inclusion of specific information on the address request form

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<sup>60</sup> *Florida State Conference of the N.A.A.C.P. v. Browning*, Case No. 07-00402-CV-1-SPM-WCS (N.D. Fla. December 18, 2008) (granting plaintiffs' request for a preliminary injunction enjoining the Division of Election from enforcing s. 97.053(6), F.S., on various grounds, including that subsection (6) conflicts with the Help America Vote Act (HAVA)).

<sup>61</sup> *Florida State Conference of the N.A.A.C.P. v. Browning*, No. 07-15932, 2008 WL 880569 (11<sup>th</sup> Cir. April 3, 2008) (reversing the district court's decision granting plaintiffs a preliminary injunction and remanding for further proceedings).

<sup>62</sup> See s. 26, ch. 2007-30, L.O.F.

and address confirmation final notice. It also requires that the notices be sent by forwardable mail. The address confirmation final notice instructs the voter to return the form included with the notice within 30 days after the date of the notice if his or her legal residence has not changed or has changed within the state. If the form is not returned, the voter will be designated as inactive. If the voter's legal residence has moved to a location outside the state, the voter should return the form because it serves as a request to be removed from the registration books. The bill also provides that the voter who has moved his or her legal residence outside the state will be provided with information on how to register to vote in his or her new jurisdiction. **(Section 7)**

### **Deceased Registered Electors (Section 8)**

The bill gives supervisors of elections the authority to remove deceased, registered voters from the statewide voter registration system when supervisors receive a copy of a death certificate issued by a governmental agency authorized to issue such certificates. This change becomes effective on July 1, 2008. However, the supervisor must notify the registered voter of the action by mail within 7 days after receipt of the death certificate, thus giving the voter an opportunity to establish that the death certificate is for another person with the same or a similar name.

### **Voting History Information/Precinct-Level Results (Sections 9 and 21)**

The bill amends s. 98.0981, F.S., to shorten the time frame in which supervisors must report voting history information to the department – to 45 days from 75 days after a general election. The report must be in a uniform electronic format specified by the department, with updated voting history information for each qualified voter who voted. The department then must transmit its report within 60 days after the general election to the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader.

The bill repeals the existing statute governing precinct-level reporting (s. 101.573, F.S.) and prescribes revised requirements in s. 98.0981(2), F.S. Within 45 days (compared to 35 in current law) of an election, the supervisors shall submit to the department precinct-level election results in a uniform electronic format. The bill eliminates a requirement in existing law for such results to be submitted following a municipal election or runoff. The bill requires the data to include the aggregate total of all ballots cast.

Further, the department must compile statistical information regarding each precinct after the book-closing deadline. The bill specifies that the public may access the reports relating to voting history, precinct-level results, and precinct-level book-closing statistics.

### **Qualification for Office (Sections 10, 11, and 35)**

### ***Federal Office***

The bill makes the provisions of s. 99.012, F.S., applicable to persons seeking federal office by removing an exception to this section for these persons. It also specifically prohibits persons seeking a federal office from qualifying for two offices at the same time when the offices have overlapping terms. **(Section 10)**

The bill removes language in the federal candidate oath that refers to a candidate's requirement to resign from an office pursuant to s. 99.012, F.S., since the resign-to-run law for federal candidates was removed in CS/HB 537.<sup>63</sup> **(Section 11)**

### ***Special District Office***

The bill removes the specific qualifying fee and assessment provisions for candidates seeking a position on a community development district's board of supervisors. Instead, candidates for these offices must pay a \$25 qualifying fee or qualify by the petition process in s. 99.095, F.S. This change is a continuation of the changes made in CS/HB 537 that standardized the qualifying process for special district candidates.<sup>64</sup> **(Section 35)**

### **Initiative Petitions (Section 14)**

#### ***Petition Bundling***

Effective July 1, 2008, the bill prohibits an initiative petition form circulated for signature from being attached to or coupled with another initiative petition form. Currently, the division has a rule that prohibits the bundling of petitions.<sup>65</sup> However, in *Fairdistrictsflorida.org v. Dept. of State*,<sup>66</sup> this rule was deemed to be "an invalid exercise of delegated legislative authority." The division filed a notice of appeal in this case on March 28, 2008.

#### ***Recording Petition Information***

Given the recent problems with recording initiative petition information in the statewide voter registration system,<sup>67</sup> the bill removes the requirement that the supervisors record initiative petition information in the statewide voter registration system. Rather, it allows for the Department of State to prescribe the manner in which this information must be recorded. Since supervisors must no longer record this information in the statewide voter registration system, the bill removes the requirement that the Secretary of State base his or her determination of verified and valid signatures and the distribution of such signatures upon information contained in the statewide voter registration system. This change becomes effective July 1, 2008.

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<sup>63</sup> See s. 14, ch. 2007-30, L.O.F.; s. 99.012(2), (4), F.S. (2006).

<sup>64</sup> Sections 16, 52, 53, and 54, ch. 2007-30, L.O.F.

<sup>65</sup> Rule 1S-2.009(8), F.A.C., states: "Bundling. No initiative petition form circulated for signature may be bundled with or attached to any other petition form."

<sup>66</sup> Case No. 07-5665RX (Fla. Division of Administrative Hearings February 28, 2008).

<sup>67</sup> Paige St. John, *supra* note 27.

Furthermore, the bill provides that an elector may complete and submit a standard petition-revocation form directly to the supervisor. This language clarifies any perceived ambiguity that a person must form a political committee before he or she can submit a petition-revocation form revoking his or her initiative petition. This change becomes effective July 1, 2008. **(Section 14)**

### **Early Voting and Bond Referenda (Section 12)**

The bill provides that a county, district, or municipality does not have to offer early voting for a bond referendum if the election is not held in conjunction with a state or county election.

### **Charter County and Municipal Recall (Section 13)**

The bill clarifies the charter county and municipal recall provisions of the election code. It provides that each signed and dated petition form must be filed simultaneously and no later than 30 days after the first signature is obtained. The supervisor of elections must verify signatures in accordance with s. 99.097, F.S. The bill clarifies that the supervisor must determine in writing if the requisite number of signatures is obtained for the purposes of the recall petition and the recall petition and defense. The bill clarifies that the clerk must make the petition and all subsequent forms and papers available in alternative formats when requested. The bill removes the prohibition from existing subsection (7) [subsection (10) under the bill] that prohibited any campaigning for or against the officer facing recall before the date of the election is announced to the public.

### **Ballots (Sections 15 and 20)**

Since all ballots are no longer “printed and distributed,” the bill removes this phrase from s. 101.041, F.S. **(Section 15)**

The bill removes outdated references to ballot stubs in s. 101.5608, F.S. This change becomes effective July 1, 2008. **(Section 20)**

### **Voter Challenges (Section 17)**

The bill gives registered electors and poll workers the right to challenge a voter in a specific county if the poll watcher or registered elector lodging the challenge is of that same county. The bill clarifies that a challenge can be lodged at either the polling place on the day of election or in advance with the supervisor. If the challenge is lodged in advance, the bill provides that the supervisor must provide a copy of the challenge to the election board in the challenged voter’s precinct.

### **Poll Workers (Sections 18, 19, and 26)**

The bill removes language in s. 101.23(2), F.S., allowing an election inspector to keep a voter from spending more than five minutes casting a ballot. The bill also removes the following election inspector duties contained in s. 101.23(2), F.S., that appear to conflict with s. 101.048, F.S.:

- Preventing a voter from voting a second time when the inspector has a reasonable belief that the voter has already cast a ballot; and
- Preventing any person from voting if he or she is not qualified or has become disqualified to vote.

According to s. 101.048, F.S., if an election official determines that a voter is not eligible to vote or the voter's eligibility cannot be determined, the voter shall be allowed to cast a provisional ballot. **(Section 18)**

The bill revises the procedures of an election official when an elector votes. It removes the requirement that the election official determine if the voter's name is on the election register and that there are no sustained challenges regarding that elector before allowing that elector to vote. It also removes the requirement that the election official announce the name of the elector before allowing the elector to enter the voting booth. This change becomes effective on July 1, 2008. **(Section 19)**

The bill requires that each poll worker must complete disability training prior to working each election cycle, rather than prior to working each election. The bill removes the one-hour requirement for poll worker disability training. It also removes the requirement that each supervisor certify to the Department of State whether each poll worker has completed disability training. This change becomes effective on July 1, 2008. **(Section 26)**

### **Elections During an Emergency (Sections 22 and 24)**

The bill makes a technical, conforming cross-reference change. **(Section 22)**

The bill changes the notice requirements for an election rescheduled due to an emergency. Currently, notice of an election suspended or delayed due to an emergency must be provided by publication in a newspaper and, where practicable, broadcast on radio and television as a public service announcement, at least one week before the election. The bill removes the mandatory language for publication, and allows notice to be provided in any reasonable manner, which can include if practicable, publication or a broadcasted public service announcement, at least one week prior to the election. This change becomes effective on July 1, 2008. **(Section 24)**

The bill also allows the Governor, instead of suspending or delaying an election, to hold an election by mail upon issuing an executive order of a state of emergency or impending state of emergency. This would allow the Governor to utilize a mail ballot election in situations where it would be a danger for persons to congregate in large crowds, such as a pandemic situation. The bill also gives the Department of State rulemaking authority to provide procedures for a mail ballot election when an emergency exists. This change becomes effective on July 1, 2008. **(Section 24)**

### **Municipal Elections (Section 25)**

The bill gives municipalities the ability to change, by ordinance, election dates to correspond to any statewide or countywide election. The bill also removes date specific language regarding the



ability of municipalities to move any scheduled March 2008 election to concur with the presidential preference primary election. This change becomes effective on July 1, 2008.

### **Exit Polling (Section 27)**

The bill provides that the terms “solicit” and “solicitation” are synonymous and that these terms shall not be construed to prohibit exit polling. This change is made in accordance with the ruling of *CBS Broadcasting, Inc. v. Cobb*<sup>68</sup> and becomes effective on July 1, 2008.

### **Canvassing Returns (Section 28)**

The bill requires that the canvassing board “compare” rather than “reconcile” the number of persons who voted with the number of ballots counted. This change becomes effective on July 1, 2008.

### **Presidential Preference Primary (Section 29)**

The bill removes the ability of a presidential candidate to request that the selection committee reconsider placing his or her name on the ballot when it does not appear on the list submitted by the Secretary of State. This change conforms to the 11<sup>th</sup> Circuit Court of Appeals’ decision in *Duke v. Smith*.<sup>69</sup>

### **Candidate Electronic Filing (Section 31)**

The bill allows local governments to develop electronic filing requirements for local officers and candidates that do not conflict with the current electronic filing process for candidates who file reports with the Division. The bill also provides that the expenditure of public funds for electronic filing requirements is a valid public purpose.

### **Campaign Treasurers (Section 30)**

Currently s. 106.021, F.S., requires each candidate for nomination or election to office and each political committee to appoint a campaign treasurer. Each candidate who qualifies with the Department of State for an office that is not voted upon statewide (e.g., legislators, multi-county officers) shall file contact information for the campaign treasurer with the supervisors in the county where the candidate resides. The bill eliminates the requirement for those particular candidates to file the contact information.

### **Commissioner of Agriculture; Contribution Limits (Section 32)**

Generally, a person may not make a contribution in excess of \$500 for an election candidate.<sup>70</sup> Section 106.082, F.S., however, provides that a business licensed as a food outlet or convenience store under ch. 500, F.S.; a director, officer, or lobbyist for such a business; or a committee of

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<sup>68</sup> 470 F.Supp.2d 1365 (S.D. Fla. 2006).

<sup>69</sup> 13 F.3d 388 (11<sup>th</sup> Cir. 1994).

<sup>70</sup> Section 106.08(1)(a), F.S.

continuing existence representing the interests of such a business may not make a contribution in excess of \$100 to a campaign for the position of Commissioner of Agriculture. The bill repeals the \$100 limitation on these contributions to Commissioner of Agriculture candidates, thus subjecting them to the \$500 limit applicable to other candidates.

### **Telephone Solicitation (Section 33)**

Under s. 106.147, F.S., a telephone call in support of or opposition to a candidate, elected public official, or ballot proposal must identify the sponsor of the call with a “paid for by” or “paid for on behalf of” statement. The bill amends this statute to include electioneering communication telephone calls within this requirement. The effect of this change is that telephone banks distributing electioneering communications will have a slightly shorter sponsorship disclaimer.<sup>71</sup> In addition, the bill provides exempts these communications from needing to have written approval of the candidate that the call supports.

### **Florida Elections Commission (Section 34)**

The Florida Elections Commission enforces the campaign finance laws. In addition, the Commission investigates alleged violations upon receipt of a legally sufficient, sworn complaint.<sup>72</sup> The Commission is created as a separate budget entity within the Department of Legal Affairs, Office of the Attorney General. Section 106.24(1)(a), F.S., specifies that the Commission’s director is the agency head for all purposes. This bill makes the Commission the agency head rather than the director.

### **Effective Date (Section 36)**

The bill specifies that – except as otherwise provided with specific provisions – the bill shall take effect January 1, 2009.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>71</sup> Generally, electioneering communications are governed by s. 106.1439, F.S., which requires name *and* address information.

<sup>72</sup> For additional information, see the Commission’s website, <http://www.fec.state.fl.us/>.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The ability of municipalities to change their election dates by ordinance to coincide with a statewide or countywide election may have some indeterminate cost savings for municipalities. Furthermore, providing that counties, municipalities, and special districts do not have to provide early voting for bond referenda not held in conjunction with a county or state election may also provide an indeterminate cost savings for local governments.

Supervisors of elections may incur expenses related to the provisions of the bill:

- Requiring supervisors to send certain registered voter an address change notice;
- Requiring supervisors to comply with registration list maintenance forms developed by the Department of State; and
- Requiring that voters who have moved out of the state be provided information on how they can register to vote in their new jurisdictions. (**Sections 6 and 7**)

The bill eliminates a requirement for supervisors to record initiative petition information in the statewide voter registration system. (**Section 14**)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on April 16, 2008:**

The committee substitute differs from the prior committee substitute by:

- Removing a provision that would have prevented a petition from being counted if the voter gave a different address on the petition other than his or her legal residence where he or she is registered to vote;

- Requiring that the supervisor of elections notify a voter if the supervisor receives information suggesting the person is deceased and the supervisor plans to remove the name of a deceased voter from the statewide voter registration system;
- Shortening the time frame in which supervisors must report voter history information to the Department of State;
- Repealing existing provisions governing precinct-level reporting and prescribing revised requirements;
- Eliminating a requirement for candidates to file a copy of their campaign treasurer information with the local supervisor of elections, when they have already qualified with the Department of State for an office other than a statewide office;
- Repealing a provision that limits Agriculture Commissioner candidates from accepting no more than \$100 from certain businesses;
- Providing for a shorter sponsorship disclaimer for telephone banks distributing electioneering communications, and exempting those communications from needing to have a candidate's written approval; Making the Florida Elections Commission the agency head of the commission for all purposes, instead of the commission director.

### **CS by Ethics and Elections on April 1, 2008:**

The committee substitute is an omnibus elections measure that contains numerous changes to the Florida Elections Code, most of which were recommended by the Division of Elections (division). The committee substitute differs from the original bill (which was a "shell" bill expressing the intent of the Legislature to revise elections laws) in that it:

- Allows pre-registration upon a person's 16<sup>th</sup> birthday.
- Revises the notification procedures for the verification for voter registration applications.
- Removes buyer's club identification and employee badge identification from certain identification provisions in accordance with the removal of these forms of identification from the list of acceptable forms of identification for presentation at the polls in CS/HB 537 which passed last year.
- Allows changes to a person's party affiliation for an upcoming election after the book closing deadline if the upcoming election is not a primary election.
- Revises registration list maintenance procedures and creates new list maintenance forms to facilitate these procedures.
- Allows supervisors to remove the name of a deceased voter from the statewide voter registration system if presented with a copy of the voter's death certificate.
- Provides that a person cannot run for a federal office and another office if the terms of those offices overlap.
- Provides that a petition will not be counted if the voter gives a different address on the petition other than the legal residence where he or she is registered to vote.
- Clarifies that local governments do not have to offer early voting for a bond referendum if it is not held at the same time as a county or state election.
- Revises the municipal and charter county recall provisions.

- Provides that initiative petitions may not be bundled with other petitions when they are circulated among the public for signature.
- Provides that a person may submit a petition-revocation form directly to the supervisor.
- Removes the requirement that supervisors record initiative petition and initiative petition revocation information in the statewide voter registration system.
- Provides that in order to lodge a voter challenge, the elector or poll watcher must be from the same county as the challenged voter.
- Provides that if a challenge is filed in advance of election day, the supervisor must provide a copy of the challenger's oath to the election board in the challenged voter's precinct.
- Gives authority to the Governor to call for a mail ballot election upon issuing an executive order declaring a state of emergency or impending emergency.
- Allows municipalities to change, by ordinance, their election dates to coincide with a statewide or countywide election.
- Revises poll worker disability training requirements.
- Provides that, for purposes of the 100-foot no-solicitation zone, the term "solicit" does not include exit polling.
- Provides that supervisors must compare rather than reconcile the number of persons who voted with the number of ballots counted.
- Streamlines the qualifying process for certain special district candidates in accordance with changes made in CS/HB 537, which passed last year.
- Allows local governments to require electronic filing for local officers and candidates if those requirements do not conflict with the electronic filing requirements for candidates who must file with the Department of State.
- Provides that the expenditure of funds for electronic filing is a valid public purpose.
- Specifies that, except as specifically provided, the effective date is January 1, 2009.

B. Amendments:

None.