

FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1355

FINAL HOUSE FLOOR ACTION:

79 Y's 37 N's

SPONSOR: Rep. Baxley

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/CS/SB 2086

SUMMARY ANALYSIS

CS/CS/HB 1355 passed the House on April 21, 2011. The bill was amended by the Senate on May 5, 2011, and subsequently passed the House on May 5, 2011. The bill was approved by the Governor on May 19, 2011, chapter 2011-40, Laws of Florida. Sections 1-4, 6-10, 12-23, and 25-80 took effect May 19, 2011. Section 5 of the bill is effective August 1, 2012. Sections 11 and 24 are effective July 1, 2012.

This bill is an omnibus elections bill that contains numerous changes to the Florida Elections Code. In part, the bill does the following:

- Revises requirements for third-party voter registration organizations.
- Establishes a process for revising legislatively proposed ballot titles or ballot summaries if the courts find the titles or summaries deficient.
- Provides uniform reporting requirements for committees of continuous existence and political committees.
- Revises timeframes and specifies formatting for submission of voter history and precinct data.
- Requires the Department to maintain sortable and downloadable databases with specified information.
- Moves the primary election from 10 weeks to 12 weeks before a general election.
- Revises early voting timeframes.
- Permits a supervisor of elections to provide early voting for elections not held in conjunction with state and federal elections and to have discretion in determining early voting hours for those elections.
- Provides that signatures on an initiative petition are valid for two years instead of four years.
- Creates a process for determining the date for the presidential preference primary.
- Creates provisions governing minor political parties.
- Provides a process and timeframes for filling a vacancy in nomination.
- Revises provisions regarding change of address at the polls.
- Deletes obsolete provisions in the Florida Elections Code.
- Provides for issuance of a new voter registration card to indicate polling place address.
- Revises provisions regarding absentee ballots.
- Revises polling place procedures.
- Provides for polls to determine viability of a potential candidate.
- Provides earlier canvassing of absentee ballots to improve the accuracy and efficiency of the count.
- Revises political advertisement requirements.

The fiscal impact is indeterminate. See "Fiscal Comments."

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Responsibilities of Secretary of State as Chief Election Officer

The Secretary of State is the chief election officer of the state and is statutorily given a variety of responsibilities. Those responsibilities include such things as obtaining and maintaining uniformity in the interpretation and implementation of the election laws; providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the supervisors of elections on voter education, election personnel training services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.¹

The bill requires the Secretary of State to provide written direction and opinions to the supervisors of elections on matters relating to their official duties with respect to the Florida Election Code² or rules adopted by the Department of State.

Voter Registration

Currently, if a voter registration applicant fails to provide any of the required information on the voter registration application form, the supervisor of elections must notify the applicant of the failure, by mail, within five business days after the information is available on the voter registration system.³ The applicant has an opportunity to complete the application form to vote in the next election up until the book closing time for the election. The supervisor of elections must notify the voter registration applicant of the application disposition.⁴ The notice sent to the voter must inform the voter if the application has been approved, is incomplete, has been denied, or is a duplicate. Certain information is sent to the applicant based upon the status of the application.

The bill requires the supervisor of elections to notify an applicant of the disposition of the voter registration application within five business days after voter registration information is entered into the statewide voter registration system.

Additionally, the bill gives a voter who has moved to another county the option to submit an address change update by telephone, e-mail, fax, or other signed writing, instead of a voter registration application form, provided that the change is provided directly to the supervisor of elections in the county to which he or she has moved. Otherwise, the change must be submitted on a voter registration application.⁵

Voter Information Cards

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must include the date of registration, full name of the elector, party affiliation, date of birth, legal residence address, precinct number, supervisor's name and contact information, and other information deemed necessary by the supervisor. Replacement cards are provided free of charge. New cards are automatically issued when a

¹ See s. 97.012, F.S., for a complete listing of responsibilities.

² The Florida Election Code encompasses chapters 97-106, F.S.

³ Section 97.052, F.S.,

⁴ Section 97.073, F.S.

⁵ See s. 97.1031(1) and (2), F.S.

voter's name, address, or party affiliation changes.⁶ Sixty-one counties include the polling place address on the voter information card.⁷

After August 1, 2012, the bill requires that voter information cards include the address of the polling place. The supervisor of elections must provide a new card to a voter if the polling place address changes.

Third-Party Voter Registration

Currently, before engaging in any voter registration activities, a third-party voter registration organization must name a registered agent in the state and submit certain required information to the Division of Elections (Division).⁸ On or before the 15th day of each calendar quarter, the organization must submit a report providing the date and location of any organized voter registration drives conducted in the prior calendar quarter. Penalties and fines are provided for specified acts of omission or commission.

The bill requires third-party voter registration organizations to register with the Division and provide certain information in an electronic format. It also requires all voter registration applications used by such organization to contain information identifying that organization. The bill provides that a third-party voter registration organization that collects voter registration applications serves as a fiduciary to the applicant, ensuring that any voter registration application entrusted to the organization or the agent is submitted as required in the section.

Applications collected by these organizations must be turned into the Division or supervisor of elections within 48 hours after the applicant completes the form or the next business day if the office is closed for that 48-hour period. The date on which the applicant signed the voter registration application is presumed to be the date on which the organization or agent collected the application. The bill allows for "force majeure" or impossibility of performance to be an affirmative defense to the requirement for the timeframe for turning in forms.

The bill authorizes the Secretary of State to refer any complaint to the Attorney General. The Attorney General may institute a civil action for a violation or to prevent a violation. Action for relief may include a permanent or temporary injunction or any other appropriate order.

The bill also does the following:

- Requires the Division to maintain a database of all third-party voter registration organizations and forms assigned to those organizations.
- Requires the supervisors of elections to provide the Division with specified information in a format and timeframe determined by the Division.
- Retains the civil fines currently in law.
- Provides for enhanced rulemaking authority.
- Provides that the new requirements are retroactive for any third-party voter registration organization registered with the Department on May 19, 2011, and must be complied within 90 days of notification by the Department.

⁶ Section 97.071, F.S.

⁷ Unofficial Survey, conducted by the Florida State Association of Supervisors of Elections (February 2010). The following six counties did not include the polling place address on the voter information card: Glades, Jefferson, Madison, Orange, Taylor and Volusia. Information on file with the House Government Operations Subcommittee.

⁸ See s. 97.0575, F.S.

Petition Signature Verification

Currently, a supervisor of elections is permitted to verify the names on petitions based on the least expensive and the most administratively feasible method of verification. A candidate or the proponent of an issue is required to pay the supervisor of elections a 10-cent, per signature fee in advance for the verification of petition signatures. Candidates or individuals for whom this would pose a severe hardship may file an undue burden oath, in which case the candidate or persons sponsoring the initiative petition are relieved of the costs.⁹

The bill clarifies that a supervisor of elections checks more than merely the signatures on petition forms to ensure that the signer is a registered voter and that the data on a petition applies to the voter whose signature appears on the form. It further clarifies that the rulemaking authority of the Department extends to all petitions, not just the random sample method of verifying petitions. The change also incorporates Florida case law, which holds that the random sampling method of petition verification may not be used for constitutional amendment petitions. Finally, the bill provides that an undue burden oath is no longer valid if persons are subsequently paid to solicit signatures on a petition and if monetary contributions are received. Those contributions first must be used to reimburse the supervisor of elections for any signature verification fees not paid due to the filing of a prior undue burden oath.

Voter Registration List Maintenance

For the purpose of maintaining accurate voter registration records, supervisors of elections must conduct a general registration list maintenance program that must be uniform, nondiscriminatory, and comply with several federal voting acts, including the Help America Vote Act of 2002. At least every odd numbered year, a supervisor must incorporate certain specified procedures in his or her biennial registration list maintenance program.

Currently, a supervisor of elections has the authority to remove deceased, registered voters from the statewide voter registration system when the supervisor receives a copy of a death certificate issued by a governmental agency authorized to issue such certificate. However, the supervisor must notify the registered voter of the action by mail within seven days after receipt of the death certificate, giving the voter an opportunity to establish that the death certificate is for another person with the same or a similar name.

The bill authorizes the automatic removal of registered voters who have been identified as deceased against a match with the nationwide Social Security death index. It also requires a supervisor of elections to automatically remove a deceased registered voter if the supervisor receives a copy of a death certificate. These changes will help to identify and remove registered voters who have died outside the state. The information is currently available in data received from the Department of Health.¹⁰

The bill updates the statutes to reflect that the Florida Parole Commission is now responsible for providing clemency data, and to ensure that other agencies, such as the Department of Corrections, provide data required by the Department of State, in order to better identify convicted felons and other ineligible persons who are registered to vote in the voter registration system.

⁹ Section 99.097, F.S.

¹⁰ See s. 98.075, F.S.

Voting History and Statewide Voter Registration System Information and Precinct-Level Information

Currently, the format of the voter history and precinct-level data is governed by Department rule. The timeframe for information sent to the Department of State by the supervisors of elections for both types of information is established in law.¹¹ In turn, the requirement for the Department to forward information to the Legislature is provided in law.¹²

Effective July 1, 2012, the bill codifies in law the format requirements for the voter history and precinct-level data reports. Additionally, it changes the timeframes for information to be sent by the supervisors to the Department from 45 days to 30 days, and by the Department to the Legislature from 60 days to 45 days. The days are tied to reporting information after certification by the Elections Canvassing Commission of specified elections. The changes also require each supervisor of elections to perform a reconciliation of information before submission by comparing the two data sets to ensure the integrity of the data.¹³ The changes will standardize the due dates for data due to the Department rather than having multiple due dates.

The bill also provides protection for voter ballot secrecy in precincts with a limited number of ballots cast.

The bill requires the Department of State to make certain information available on a searchable, sortable, and downloadable database via its website. Requirements for the database are delineated in the bill.

Current law requires that a supervisor of elections notify the Secretary of State in writing within 30 days after any precinct reorganization. Requirements are provided in law for precinct boundaries.¹⁴ Effective July 1, 2012, the bill requires the supervisor of elections to report decennial census information for the county, requires the Department to maintain a searchable database, and reduces the timeframe from 30 days to 10 days for reporting precinct reorganization.

Candidate Oaths, Disclosures, and Information Required

A printed copy of the oath or affirmation must be provided to the candidate by the officer before whom the candidate seeks to qualify.¹⁵ The oath requires the candidate to affirm that he or she has taken the oath required in ss. 876.05-876.10, F.S., which, in essence, has the candidate swearing to a public employee oath that is not applicable to a candidate. The language for the nonpartisan oath in chapter 105, F.S., contains the same requirements. The oath in s. 876.05, F.S., relating to public employees, is specifically required for all candidates for public office, excluding federal office. In addition to the candidate oath, a person seeking to qualify for nomination as a candidate of any political party must state in writing the party he or she is a member, and that he or she is not a registered member of another party nor has been a candidate for another party for a period of six months preceding the general election for which the person seeks to qualify.

¹¹ See ss. 98.0981(1) and (2), F.S.

¹² See s. 98.0981(1)(c), F.S.

¹³ The aggregate total of ballots cast in each precinct as reported in the precinct-level elections results are compared to the aggregate total number of voters with voter history for the election for each district.

¹⁴ Section 101.001(3), (4), F.S.

¹⁵ Section 99.021, F.S.

The bill provides that the qualifying officer is no longer required to provide a printed copy of the candidate's oath to every candidate, but makes the oath available for downloading. Making the oath form available for downloading avoids unnecessary expense since the qualifying officer does not know beforehand which oath the person needs--party, no party, or write-in. The requirement for swearing to language similar to the public employees' oath is deleted. In addition, the candidate swears to uphold the Constitutions of the United States and the State of Florida. The bill clarifies that candidates for the office of President and Vice President of the United States are not required to take the candidate's oath required by chapter 99, F.S., as presidential candidates are governed by chapter 103, F.S.

The bill revises the requirement for information to be provided by a candidate for a political party. The language is changed from the person not having been a member of nor a candidate in nomination for another party for six months to not having been a registered member of any other political party for 365 days prior to the beginning of qualifying prior to the general election for which the person seeks to qualify.

Currently, financial disclosures are not required to be notarized pursuant to s. 117.05, F.S., nor verification under oath or affirmation pursuant to s. 92.525(1)(a), F.S. Information regarding the appointment of a campaign treasurer and designation of campaign depository is not explicit in law as to what is to be included in such information.¹⁶

The bill requires financial disclosures to be verified under oath or affirmation pursuant to s. 92.525(1)(a), F.S. It also delineates information that must be provided regarding the campaign treasurer and designation of campaign depository.

The bill specifies that the qualifying check be made payable to the person or entity prescribed by the filing officer. It also requires the filing officer to immediately notify the candidate if the candidate's check is returned by the bank for any reason. The candidate has until the end of qualifying to pay with a cashier's check. Current law provides the candidate with 48 hours from the time notification is received, excluding Saturdays, Sundays, and legal holidays.¹⁷

The bill requires campaign finance office account reports and termination reports for individuals who file with the Division of Elections, to be filed electronically for consistency with other campaign finance filings, and to enhance public access.

The bill eliminates a requirement for candidates using debit cards as bank checks to submit a list of authorized users and deletes obsolete provisions relating to expiration of debit cards.¹⁸ It clarifies that the \$50 limit on contributions by cash and cashier's checks are in the aggregate, per election.¹⁹

Vacancy in Nomination²⁰

The bill amends current law to place responsibility with the applicable qualifying officer to notify the chair of the applicable party's executive committee when a vacancy in nomination exists, rather than the Secretary of State. The bill also provides a process and timeframes for filling a vacancy in nomination. It specifies when a person is not qualified for consideration to fill a

¹⁶ Section 99.061, F.S.

¹⁷ Section 99.061(7), F.S.

¹⁸ See s. 106.11(2)(a), F.S.

¹⁹ Section 106.09, F.S.

²⁰ See s. 100.111, F.S.

vacancy. Finally, it states a vacancy in nomination is not created until an order of a court becomes final.

Resign to Run

Currently, the resign-to-run law precludes persons from qualifying to run for more than one public office if the terms or any part thereof run concurrently, and prohibits officers from qualifying to run for another state, district, county, or municipal public office if the terms or any parts thereof run concurrently without resigning the office he or she presently holds.²¹ The name of any person who does not comply with the resign-to-run law may be removed from every ballot on which it appears when ordered by a circuit court upon petition of an elector or the Department.²²

The bill provides that a person is not qualified as a candidate for election if an order of a court that has become final determines that a person did not comply with the resign to run laws. Additionally, it provides that presidential and vice-presidential candidates do not have to meet certain requirements.

Filing Officers

The bill specifies that a filing officer performs a ministerial function and has no duty to look beyond the four corners of the qualifying papers. It also provides that the decision of the filing officer concerning whether a candidate is qualified is exempt from the provisions of chapter 120, F.S.

Initiative Petitions

Under s. 100.371, F.S., each signature is dated when made and is valid for a period of four years following the date. The sponsor must submit dated forms to the appropriate supervisor of elections for verification. The supervisor must verify the signature within 30 days of receipt of the petition forms and the payment of the fee required by s. 99.097, F.S. The supervisor can verify that a signature is valid only if it meets certain requirements. Signature forms must be retained for one year or until notified by the Division of Elections. An elector's signature on a petition form may be revoked within 150 days of the date on which he or she signed the petition form by submitting a signed petition-revocation form.

The bill changes the validity of the signature from four years to two years. Additionally, it revises the initiative petition section to eliminate the revocation process.²³ It provides direction to supervisors of elections when an initiative petition is misfiled in the wrong county. Finally, the bill provides that, for a petition to be valid, the voter must be a registered voter in the state both at the time the petition is signed and at the time it is verified. This change merely codifies current practice.

Ballots, Voting Methods, Voting Equipment, and Voting System Audits

Ballot Statements for Constitutional Amendments Proposed by the Legislature

The Florida Constitution (Constitution) authorizes the Legislature to propose amendments or revisions to the Constitution by a joint resolution approved by a 3/5 vote of the membership of each house. Joint resolutions may specify that the full text of a proposed amendment or a ballot

²¹ Section 99.012(2), (3), F.S.

²² Section 99.012(5), F.S.

²³ The Florida Supreme Court ruled the initiative petition revocation process unconstitutional, so its removal conforms to the court's decision in *Browning v. Florida Hometown Democracy*, 29 So.3d 1053 (Fla. 2010).

summary describing the proposed amendment be printed on the ballot. Typically, joint resolutions require placement of a title and ballot summary on the ballot. Generally, legal challenges to ballot language allege that the ballot title or ballot summary is misleading, or otherwise defective in violation of s. 101.161, F.S., or the implicit constitutional accuracy requirement applied by the Florida Supreme Court since 2000. From 2000 to date, nine legislatively proposed amendments have been reviewed by the judiciary. Of those, the Florida Supreme Court removed four from the ballot and invalidated one after approval by voters, all due to defective ballot titles or summaries. On several occasions since 1982, Justices of the Florida Supreme Court have asked the Legislature to amend the statute and create a process to address ballot deficiencies in order to avoid removal of proposed amendments from the ballot.

The bill amends s. 101.161, F.S., to address this issue by establishing a process for revising legislatively proposed ballot titles or ballot summaries if the courts find the titles or summaries deficient. The process is established to ensure that amendments proposed by the Legislature can be voted on by the people even if the court finds the legislatively proposed ballot language deficient. To that the end, the bill does the following:

- Expressly authorizes the Legislature to propose alternative ballot summaries that describe the chief purpose of a proposed amendment in clear and unambiguous language or require placement on the ballot of the full text of a proposed amendment;
- Creates a presumption that the full text of an amendment placed on the ballot is presumed to be a clear and unambiguous statement of the proposal that provides sufficient notice to voters;
- Requires legal challenges to ballot language to be filed within 30 days after the joint resolution is filed with the Secretary of State;
- Requires the Attorney General to revise the title or ballot summary within 10 days if the courts find the Legislature's title or each ballot summary insufficient, unless the joint resolution provides otherwise;
- Requires any challenge to a revised title or summary to be filed within 10 days after the Attorney General submits revised language;
- Requires the courts to prioritize cases challenging joint resolutions over other pending cases and render decisions as expeditiously as possible; and
- Requires challenges to joint resolutions passed in the 2011 Legislative Session to be filed within 30 days after a joint resolution is submitted to the Secretary of State or within 30 days after the changes to the statute become law, whichever is later.

To ensure voters are able to read the text of the summaries or the full text of a proposed constitutional amendment if placed on the ballot, the bill requires that by December 31, 2013, all voting systems used by voters during a state election must permit placement on the ballot of the full text of a constitutional amendment or revisions containing stricken or underlined language.

Provisional Ballot

Current law permits an elector who moves from one precinct, in which the elector is registered, to vote in the precinct to which he or she has moved his or her legal residence, provided that the elector completes an affirmation. The same is available to an elector who changes his or her name. Instead of an affirmation, the elector may fill out a voter registration form indicating the respective change. The information is presented at the precinct and, upon verification of the person being a registered voter, the person votes a regular ballot. If eligibility to vote cannot be determined, the person is entitled to vote a provisional ballot. Upon receipt of an affirmation

regarding address or name change, the supervisor of elections is required as soon as practicable to make the changes in the statewide voter registration system.²⁴

The bill amends s. 101.045, F.S., to provide that an elector may not change his or her address at a polling place by filing out an affirmation or a voter registration form and vote a regular ballot, unless the change of residence is within a county or is for an active uniformed services voter or a member of his or her family. An elector whose change of residence is from outside the county, may not change his or her legal residence at the polling place and vote a regular ballot; however, the elector is entitled to vote a provisional ballot, subject to the requirements of s. 101.048, F.S.

Appearance of Ballot and Ballot-on-Demand Technology²⁵

The bill revises the appearance of the ballot to clarify the order of offices on the ballot and eliminate header requirements that currently precede office titles. The bill also expands the use of ballot-on-demand technology to all counties without having to obtain pre-authorization beforehand from the Secretary of State.

Absentee Ballots²⁶

The bill provides the following:

- An absentee ballot request is good through the end of the calendar year of the next two regularly scheduled general elections.
- Information required to be provided to the Division must be forwarded by 8 a.m. each day instead of noon during week days.
- Requires the supervisor of elections to mail an absentee ballot to each absent voter, other than uniformed and overseas voters, between the 35th and 28th days before a presidential preference primary, primary, and general election.
- After the 28th day, requires the supervisor of elections to send an absentee ballot within two business days after receiving a request for such a ballot, unless the request meets other requirements provided in law.
- Updates reasons for requesting an absentee ballot to reflect current practice.
- Expands the absentee ballot instructions to put voters on notice that an absentee ballot will not count if the signature on record does not match the signature on the ballot certificate, and notifies the absentee voter of the end date for when they can update their signature on record in order for their ballot to count.
- Allows the county canvassing boards to begin canvassing absentee ballots on the 15th day before the election instead of on the sixth day before the election. According to the supervisors of elections, this canvassing would begin at the same time that early voting begins, allowing the supervisors and the canvassing boards to process the absentee ballots received during this earlier period, allowing for greater efficiency.

Voting Equipment²⁷

The bill clarifies that the testing of voting equipment must be done in accordance with state-adopted voting system standards rather than generic electronic industry standards. According

²⁴ National Voters Registration Act of 1993 (42 U.S.C. 1973gg-6(e)) provides direction for address changes at the polls. The federal law provides procedures for voters who go to the polls with address issues to still be able to vote a regular ballot under certain circumstances. One method that is permitted is an oral or written affirmation of change of address.

²⁵ See s. 101.151, FS.

²⁶ See ss. 101.62, 101.65, and 101.6923, F.S.

²⁷ See ss. 101.5605, 101.5606, and 101.5612, F.S.

to the Department, this change corrects the misperception or misunderstanding that electronic industry standards even exist. The standards to follow are the ones set by the state.²⁸

Additionally, the bill revises the number or percentage of touch screen systems that must be tested in the logic and accuracy test. According to the Department of State, this change reflects the state's switch from primarily touch screen voting systems to optical scan, and the current statutory limitation that the touch screen machines are to be made available and used solely by persons with disabilities.

Voting System Audits

Following the certification of each election, the county canvassing board or the local board responsible for certifying the election is required to conduct a manual audit of between one and two percent of the voting systems used in randomly selected precincts.²⁹ Procedures and timeframes are provided for purposes of conducting manual audits.³⁰ After completion of the audit, the county canvassing board or local board must provide a report to the Department detailing the results.³¹

The bill does not require a voting system audit if a manual recount is undertaken pursuant to s. 102.166, F.S.³²

Change in Primary Election and Early Voting Time Frames

Primary Election

Current law requires that the primary election be held 10 weeks before the general election.³³ The bill changes it to 12 weeks before the general election.

Early Voting

Currently, Florida's early voting law allows voters to vote in the main or permanent branch office of a supervisor of elections, a city hall, or a public library, beginning 15 days before and ending on the second day before an election. For special elections, the beginning of the early voting period begins eight days before the election. Early voting sites must be open for eight hours on the weekdays and a total of eight hours on the weekend within the hours of 7 a.m. and 7 p.m. The supervisor must designate each early voting site by no later than 30 days before an election. The supervisor also must designate an early voting area at each early voting site.³⁴

The bill does not change the sites designated for early voting. It does start early voting the 10th day before an election containing state or federal races and ends early voting on the third day before the election. Early voting must be provided for no less than six hours and no more than 12 hours per day, including weekends. No later than the 30th day before an election, each supervisor of elections must provide the Division with the early voting hours and sites. The bill removes the 7 a.m. to 7 p.m. restriction for the start and end time for early voting on any day. It

²⁸ Explanation of proposed changes to the Florida Election Code, Department of State, March, 2011. Information on file with the Government Operations Subcommittee.

²⁹ Section 101.591, F.S.

³⁰ See s. 101.591(2)-(5), F.S.

³¹ Section 101.591(5), F.S.

³² According to information received from the Florida State Association of Supervisors of Elections on April 6, 2011, the manual recount would be sufficient to carry out the intent of the voting system audit in s. 101.591. Information is on file with the House Government Operations Subcommittee.

³³ Section 100.061, F.S.

³⁴ Section 101.657, F.S.

also permits the supervisors of elections to set times for early voting for elections not containing a state or federal race. For those races, the supervisor of elections has the discretion to determine the hours of early voting operation.

Poll Watchers

Currently, a political party, political committee, and a candidate who requests to have poll watchers, must designate in writing such watchers for each polling room prior to noon of the second Tuesday preceding the election. Designations for early voting must be in writing and received by the supervisor at least two weeks before early voting begins. Supervisors have one week in which to approve such designations. The supervisor must furnish a list of such designees and the polling room or early voting area for which they were approved to the election board. Each party, committee, and candidate may have one watcher for each polling room or early voting area at any one time during the election.³⁵

The bill requires the Division of Elections to promulgate a form to designate poll watchers. It also provides a noon deadline 14 days before early voting begins for designation of poll watchers. This aligns the noon timeframe of early voting with the noon timeframe of election day. Poll watcher designations must be signed by the chair of the county executive committee of a political party, the chair of a political committee, or the candidate. All poll watchers are at-large poll watchers. Additionally, the supervisor of elections must provide poll watcher identification badges no later than seven days before early voting begins to designated poll watchers and the poll watchers must wear the badges when present at the polls.

Minor Political Parties

Currently, substantive provisions of law regarding organizing a “minor political party” are contained in the definition of a minor political party. No provisions are contained in chapter 103, F.S., relating to political party structure. According to the Division of Elections, due to the lax requirements for a group to become a political party, there has been at least one incidence of a person forming and being the chair of more than one minor political party to which the person is not even a registered member.³⁶

The bill removes substantive provisions from the definition³⁷ and relocates the provisions in chapter 103, F.S. It provides mechanisms to preclude the incident previously discussed. It requires certain information to be provided by a minor political party, provides when a minor political party status may be canceled, and provides for retroactive application.

Currently, a minor political party that is affiliated with a national party holding a national convention to nominate candidates for President and Vice President may have the candidate names printed on the general election ballot.³⁸ The bill revises current provisions to require the “national party” to state that the minor political party is registered with it and recognized by the Federal Election Commission prior to its candidate being placed on the ballot.

Presidential Preference Primary

The bill creates a Presidential Preference Primary Date Selection Committee (Committee) for the purpose of selecting a date for the primary. The composition of the Committee is as follows: three persons selected by the Governor, no more than two of whom can be from the same

³⁵ Section 101.131, F.S.

³⁶ Information obtained from meetings with staff of the Division of Elections, Department of State, March, 2011.

³⁷ Section 97.021(18), F.S.

³⁸ See s. 103.021(4)(a), F.S.

party; three persons selected by the Speaker of the House of Representatives, no more than two of whom can be from the same party; three persons selected by the President of the Senate, no more than two of whom can be from the same party; and the Secretary of State, who shall serve as the nonvoting chair. The Committee may not meet later than October 1 of the year before the presidential preference primary to select a date. The time parameter for the date selection is provided. Any party rule directing the vote of delegates at a national convention must reasonably reflect the results of the presidential preference primary.

The bill removes the need for a Presidential Candidate Selection Committee and provides a specified time for a list of candidates to be prepared and submitted to the Secretary of State.

Definitions in Chapter 106, F.S.

The bill clarifies the definition of "candidate" to ensure that expenditures made by state or county party executive committees or made by affiliated party committees for potential candidate polls are not contributions or expenditures for the purpose of determining whether a person is a "candidate." The definitions of "contribution," "independent expenditure," and "unopposed candidate" are amended to incorporate technical changes.

Political Advertising

Political advertisements that are circulated prior to an election and paid for by the candidate must prominently state certain information such as: the name of the candidate, the party affiliation, and the office sought.³⁹ Any other political advertisement is required to be marked as a paid political advertisement and must provide information such as who paid for the advertisement, sponsorship, who approved of the advertisement, name, party affiliation, and office sought by a candidate. Current law does not address statements that must be featured on the advertisements of write-in candidates nor on advertisements made by in-kind contributions of political parties.⁴⁰

If a candidate is running for partisan office, any political advertisement must feature the name of the political party for which the candidate is seeking nomination or is the nominee. If a candidate is running for a partisan office but is running with no party affiliation, any political advertisements must state that the candidate is running with no party affiliation. "Approved by" disclaimers are not required for certain campaign messages.

Tickets and advertisements for campaign fundraisers must abide by the same requirements as those for political advertisements.⁴¹

The bill does the following:

- Requires that a write-in candidate use a specified disclaimer for political advertisements;
- Removes the requirement for statement of sponsorship of the advertisement in political advertisements, but retains the requirement for identification of who paid for the advertisement;
- Provides a specified disclaimer for political advertisements made as in-kind contributions by a political party;
- Allows political advertisements paid for by political parties or affiliated party committees to use names and abbreviations as required under s. 103.081, F.S., in the disclaimer;

³⁹ Section 99.0955, F.S.

⁴⁰ See s. 106.143, F.S., regarding requirements for political advertisements.

⁴¹ Section 106.025, F.S.

- Prohibits a candidate running for nonpartisan office from campaigning based on party affiliation, clarifies that such candidate may not state his or her party affiliation, and allows such a candidate to state his or her partisan-based experience in an advertisement; and
- Exempts tickets or advertising for campaign fundraisers from disclaimer requirements under s. 106.143, F.S.

Miscellaneous Advertisements⁴²

Current law states that any advertisement, other than a political advertisement, independent expenditure, or electioneering communication that is on billboards, bumper stickers, radio, television or in other forms of media that is intended to influence public policy or the vote of a public official is required to specify the sponsor of the advertisement. The section does not apply to editorials.

The bill provides that an expenditure made for or in the furtherance of a miscellaneous advertisement is not considered a candidate contribution and does not constitute an independent expenditure. The expenditures are not subject to the limitations applicable to independent expenditures.

Canvassing

The bill clarifies that the county canvassing board (board) is not an indispensable party unless it was the board that canvassed the local election, and that the Elections Canvassing Commission is an indispensable party in all judicial elections, except elections for county court judges. In any contest requiring a review of the board's decision on the legality of an absentee ballot pursuant to s. 101.68, F.S., based upon a comparison of the signature on the voter's certificate and the signature of the elector in the registration records, the circuit court may not review or consider any evidence other than the signature on the voter's certificate and the signature of the elector in the registration records. The reviewing court can only determine if the board abused its discretion in making its decisions.

Additionally, the bill requires each county canvassing board to report all early voting and all tabulated absentee ballot results to the Department of State within 30 minutes after the close of polls. Then the board must report updated precinct election results every 45 minutes until all results are reported. If the results cannot be reported, the supervisor of elections must immediately notify the Department of circumstances preventing the notification.

Finally, the bill authorizes the county canvassing board to begin canvassing of absentee ballots on the 15th day rather than the sixth day before the election, allowing for earlier processing and greater efficiency in processing.

Polls and Surveys Relating to Candidacies

Current law provides that a candidate, political committee, committee of continuous existence, electioneering communications organization, or state or county executive committee of a political party may authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for public office provided that complete jurisdiction over the poll is maintained by the person or entity.⁴³

⁴² Section 106.1437, F.S.

⁴³ See s. 106.17, F.S.

The bill amends the law to provide that a state or county executive committee of a political party or an affiliated party committee may authorize and conduct political polls for determining viability of a potential candidate. The results of the poll may be shared with the potential candidate under certain circumstances. Expenditures incurred by the committees do not constitute contributions to such potential candidates.

Political Parties, Committees of Continuous Existence, and Electioneering Communications Organizations

The bill does the following:

- Provides that a political committee, committee of continuous existence (CCE), or electioneering communications organization (ECO) filing of the appointment of a registered agent and registered office be with the same filing officer that the entity registered with originally;
- Requires all reports filed by CCEs include certain information in a certain format to conform to the functionality of the Division's electronic filing system, clarifies all report due dates, and clarifies procedure for imposition of fines against CCEs;
- Requires political committees to file reports in a certain manner, provides notification of what is needed to complete reports, conforms requirements for certain reports, and methods of reporting to that used for CCEs to make reporting more uniform;
- Provides timeframes for a group to register as an ECO based upon expenditure limits and statutory timeframes for expenditure of funds;
- Provides that registration as a political committee is based upon the receipt or expenditure of \$500 in the aggregate in a calendar year;
- Provides that an ECO or political committee that would be required to file a statement of organization in two or more locations need only file a statement with the Division; and
- Removes obsolete language relating to ECOs and adds ECO to certain penalty provisions for consistency.

Florida Elections Commission

The Florida Elections Commission (Commission) enforces the campaign finance laws. In addition, the Commission investigates alleged violations upon receipt of a legally sufficient, sworn complaint. The Commission is created as a separate budget entity within the Department of Legal Affairs, Office of the Attorney General.

The bill changes the current processes for and authority of the Commission as follows:

- Requires that a respondent has 14 days from receipt of a complaint to file a response prior to the executive director's determination of legal sufficiency.
- Authorizes the Commission to enter into a consent order with a respondent without requiring the respondent to admit to having violated a provision of law under the jurisdiction of the Commission.
- Prohibits the Commission from determining what constitutes "willfulness" by its rules or to further define the term "willful" for purposes of chapters 104 or 106, F.S.
- Requires the Commission to file a complaint in the circuit court where the witness, who has failed to respond to the lawful subpoena of the Commission, resides.

The bill reverses the current default procedure whereby alleged election law violations are transferred to the Division of Administrative Hearings (DOAH), unless the party charged with the offense elects to have a hearing before the Commission. It requires the alleged violator to affirmatively request a hearing at DOAH within 30 days after the Commission's probable cause

determination, or the Commission will hear the case either formally or informally. The bill also authorizes the DOAH judge to impose civil penalties.

Other Provisions

The bill amends several other provisions of law to do the following:

- Provides that the photo ID required at the polls is solely for the purpose of verifying the identity of the person present to vote.
- Allows certain funds to flow directly to the Florida Elections Commission instead of having to flow through the Department of State.
- Eliminates the state mandate for a municipal election to have a 14-day candidate qualifying period when it moves its election to coincide with a state or county election.
- Authorizes reimbursement for a candidate who made a loan to his or her campaign, and reported it as required, at any time when the account has sufficient funds to repay the loan and meet other obligations.
- Revises the amount of specific surplus funds a candidate can donate to a political party.
- Deletes provisions relating to removal of certain county executive members.
- Clarifies when it is an offense for an inspector or other election official to deny a person to observe ballot accounting at polls.
- In a year of apportionment, permits individuals seeking county-wide office to obtain petition signatures county-wide.
- Eliminates the requirement to file a duplicate, printed copy of a form if an electronic copy of the information is required for filing.
- Excludes contributions or expenditures reported pursuant to federal election law from the definition of the term "gift" in s. 112.312, F.S., and from the definition of the term "expenditure" in s. 112.3215, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The legislation has an indeterminate fiscal impact on state government. The Department of State has stated there would be no fiscal impact due to the voter history and information and precinct databases and reports required of the Department. There will be some cost savings related to certain pamphlets and oaths being offered online versus being printed. The exact amount of savings is not known.

The legislation has an indeterminate fiscal impact on local governments. The change in ballot styling requirement might provide cost-savings to those counties with multi-style ballot precincts who would only have to produce ballots as needed. Also, the bill could potentially provide a cost savings to the supervisors of elections if they are reimbursed for certain verification fees. Other efficiency measures proposed by the supervisors of elections included in the bill could provide some cost savings.

There are potential costs to local governments regarding changes in timeframes for required information on voter history and precincts, as well as other areas, and the possible costs for the change in timeframe for mailing absentee ballots to absentee voters who are not uniformed and overseas voters. The impact of the changes to early voting requirements is indeterminate. The maximum total number of hours for early voting is the same; however, the local supervisors have the flexibility of being open no fewer than six hours per day or more than 12 hours per day during the timeframe allotted for early voting.