

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Ethics and Elections

BILL: SPB 7066

INTRODUCER: Ethics and Elections Committee

SUBJECT: Ballot Processes

DATE: March 6, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts		EE Submitted as Comm. Bill/FAV

I. Summary:

SPB 7066 contains mostly technical fixes to pre- and post-election ballot processing issues identified in the 2018 General Election. Major provisions of the bill include:

- Uniform Ballot Design:** Mandates rulemaking to prescribe a single location for ballot instructions, to address the ballot situation in the U.S. Senate race in Broward County.
- Voting Systems:** Prohibits voting systems that cannot simultaneously count and sort ballot overvotes and undervotes in multiple races (Palm Beach County's system).
- Primary Election Day:** Moves the primary election back from 10 to 11 weeks before the general election, to provide more time for ballot cure and to redress possible glitches.
- Certification/Timelines:** Provides an additional week to certify *general election* recount contests; provides for an additional Elections Canvassing Commission meeting to certify such results, if necessary; modifies periodic reporting deadlines, to conform.
- VBM Ballots/deadlines & cure:** Extends the cure deadline for defective VBM ballot signatures from 5 p.m. on the day *before* the election to the 11th day after the election; creates additional phone and electronic notice requirement for late-received ballots.
- Provisional Ballots/deadlines & cure:** Creates a notification and signature cure process that significantly mirrors the Vote-By-Mail ("VBM") cure process and deadlines, as amended.
- Voter Registration Signature Updates:** Creates a process to use accepted provisional and VBM ballot cure affidavits to immediately update voter signatures.
- Vote-by-Mail Ballot ("VBM") Requests:** Moves the last day for voters to request VBM ballots from 6 to 10 days before an election, and prohibits supervisors from mailing out such ballots less than 8 days before the election (currently four days).
- Domestic VBM Mailing Dates:** Allows supervisors flexibility to bulk mail *domestic* and overseas VBM ballots together, for purposes of cost-savings and efficiency.
- VBM Ballot Canvassing Period:** Moves the earliest canvassing starting date from 15 to 22 days before an election, to allow larger counties more processing time.

The bill takes effect January 1, 2020.

II. Present Situation:

The 2018 General Election was, to put it mildly, *extraordinary*: three (3) simultaneous, statewide election recounts with razor-thin margins, two requiring a manual recount. The state had never even seen *one* statewide recount before. Not to mention that certain counties had other legislative and local recounts to sort out, too. By most objective measures, however, Florida's post-2000 recount reforms performed admirably.

A November 2018 *FloridaToday* article, published while the manual recount was still in progress, provides some meaningful context for a discussion of the bill's proposed clean-up measures:

New state laws written after 2000 set uniform statewide standards for how and when to conduct recounts. That remedied most of the issues that 2000's court battles focused on. ...

In the end, the process worked largely as it was supposed to, though with some notable glitches. ... [And] a manual review of ballots showing no or too many votes was proceeding without drama. ...

Susan MacManus, a professor at the University of South Florida who became "the world's most quoted political scientist" *during the 2000 recount, said the difference between the two was "night and day," despite what casual observers might think. ...*

But she also said the drama of the last week and a half still exposed some weaknesses in how we conduct elections. *She also notes similar or worse problems could have easily happened in just about any other state, but came to light here because Florida is the one state in the union that regularly has whisker-thin margins in statewide elections. ...*

"We fixed things and other states followed," MacManus said of the changes made following the 2000 election. "And this time around we will probably fix things and other states will follow."¹

(emphasis added).

Ballot Design

Prior to 2000, local supervisors were free to design their county primary and general election ballots as they saw fit.

The dangers of this inconsistent patchwork of ballot designs were laid bare by Palm Beach County's infamous "butterfly ballot" in the 2000 presidential recount—a punch-card ballot design that utilized bigger-than-normal text for ease of reading in an open-book style that placed some candidates on the left side of the selection area and others on the right side.

¹ John McCarthy, FloridaToday, "Florida Recount: Things Smoother Than in 2000, But Fixes Needed; Gillum Ends Campaign" (November 17, 2018), available at <https://www.floridatoday.com/story/news/politics/elections/2018/11/17/florida-recount-some-fixes-still-needed-florida-elections/2024542002/> (last accessed Feb. 6, 2019).

The Legislature immediately addressed the ballot design issue in the *2001 Election Reform Act*, mandating that the Department of State adopt rules “prescribing a *uniform* primary and general election ballot for each certified voting system”² (*emphasis added*). Further, the law provided that the rules:

- (a)...[P]rescribe additional matters and forms that include, without limitation:
1. Clear and unambiguous ballot instructions and directions;
 2. Individual race layout; and
 3. Overall ballot layout.³
- (b) The department rules shall graphically depict a sample uniform primary and general election ballot form for each certified voting system.⁴

So what happened with Broward County’s 2018 General Elections ballot design — where an unusually high percentage of voters apparently skipped or overlooked the premier U.S. Senate race located underneath the ballot instructions in the far left column of the ballot? The problem appears not to be one of law, but of implementation.

The Department of State’s rule implementing this “uniform” ballot requirement allows the ballot title and instructions for this type of optical scan voting system to be located *EITHER* centered across the top of the ballot *OR* in the flush-left column.⁵ While the term “uniform” is not defined in law, the common meaning of the term suffices. The Merriam-Webster dictionary defines “uniform” to mean:

- 1: [H]aving always the same form, manner, or degree : not varying or variable // uniform procedures ...
- 4: [P]resenting an unvaried appearance of surface, pattern, or color // uniform red brick houses...⁶

It is difficult to envision a credible argument where a ballot with a title and instructions centered across the top with races beginning below and one with the title in the leftmost column with a single, individual race immediately beneath it could be viewed as having the same “form” or “manner,” or presenting an “unvaried appearance of ... pattern.” This conclusion is self-evident when you compare both ballots side-by-side; the Department’s rule for a “graphic depiction of

² Ch. 2001-40, s.7, LAWS OF FLA. (currently codified at s. 101.151(9), F.S.)

³ *Id.*

⁴ *Id.*

⁵ Rule 1S-2.032(4)(b),(5) F.A.C. (effective 1.1.2017) (“The ballot title and the ballot instructions may be centered or aligned to the left on the page or column.”). Prior to this change, the rule appeared to mandate that the ballot title and instructions appear across the top of an optical scan ballot. Rule 1S-2.032 (2),(3), F.A.C. (amended Feb 18, 2016 and effective until Jan. 1, 2017); Rule 1S-2.032 (2),(3), F.A.C. (amended July 12, 2004), all rules available at <https://www.flrules.org/gateway/RuleNo.asp?title=ELECTIONS&ID=1S-2.032> (last visited Feb 7., 2019). NOTE: Prior ballot design forms were not available online, so it’s possible that there was some variance in the location of the ballot title and instructions for certain voting systems notwithstanding the language of the rule.

⁶ Merriam Webster Dictionary Online (“uniform”), available at <https://www.merriam-webster.com/dictionary/uniform> (last visited Feb. 7, 2018).

ballots” for this type of optical scan general election ballot, however, only includes a picture of one with top center instructions.^{7,8}

Finally, the current rule does NOT prohibit locating single election contests directly beneath left-column ballot instructions, notwithstanding a longstanding concern that voters might overlook such a race — as highlighted by a 2007 U.S. Election Assistance Commission’s Report on best ballot-design practices for optical scan ballots⁹:

Ballot instructions, running either vertically or horizontally, must be self-contained and separated from contest data. Vertical instruction treatments **cannot** share column space with contests—test voters often overlooked races located immediately beneath vertical instructions. Horizontal instructions running atop vertically placed contests in columns require the voter to read across (instructions) and then down-up (contests), which adds a slight learning challenge compared to an all-vertical layout.

In this respect, the department’s rule merely states that the “contest title” must appear after the instructions and that election contests be listed under the ballot title.¹⁰

Voting System/ballot sorting and counting

The Florida Election Reform Act of 2001, enacted in direct response to the 2000 U.S. presidential recount, completely revamped Florida’s voting systems. Among other major changes (i.e., the elimination of hand-count, lever machine, and punch card ballot systems), the requirements with respect to manual recounts included:

...(a) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State as part of the voting system pursuant to s. 101.015. Any such hardware or software must be capable of simultaneously counting votes.

...

⁷ See DE-DS 207_GEN, incorporated by reference in Rule 1S-2.034(15)(a)8., F.A.C. (effective Jan. 1, 2017). Current version available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-06441> (6.20.16_ PDF) (last visited Feb. 7, 2019).

⁸ The text of Rule subsection (15), entitled “Graphic depiction of ballots,” merely reiterates the option with regard to where to locate the ballot title and instructions, but provides no graphic depiction to inform supervisors as to how the ballot should appear. Rule 1S-2.032 (15)(a), F.A.C. (effective Jan. 1, 2017). The text of the rule further authorizes supervisors to “adapt” the sample ballots for their specific needs through “the insertion of timing marks and barcodes on the ballot, precinct designations, vote targets being of a different type, or vote targets being at a different location on the ballot”). *Id.* First, these ancillary adjustments are primarily “technology driven” — differences that might be necessary to accommodate a certain voting system or the specifics of a particular election; they do NOT represent a ballot design option like where to locate ballot title and instructions which necessarily alters the overall appearance of the ballot. Second, giving supervisors a *choice* of where to locate the ballot title and instructions and then only showing them one option clearly misses the point of mandating a rule that contains sample ballot designs: to show supervisors what the final ballots *are* supposed to look like, instead of the other way around.

⁹ U.S. Election Assistance Commission, *Effective Designs for the Administration of Federal Elections*, p.3.11 (June 2007) (Chapter 3, Optical Scan Ballots). Contributors to this report consisted of an army of experts: accessibility experts (8); election officials (from 23 states, including the Committee’s current staff director, Dawn Roberts, representing Florida); language/readability experts (13); researchers, designers, and election design experts (10); manufacturers and printers contacted (12); and, an 11-member core project team. *Id.* At 8.3 (Appendix).

¹⁰ Rule 1S-2.032 (6), (7), F.A.C. (effective Jan. 1, 2017).

(c) Overvotes and undervotes shall be identified and sorted while recounting ballots pursuant to s. 102.141, if the hardware or software for this purpose has been certified or the department's rules so provide.¹¹

Note that there is NO requirement that the system be able to count and sort *multiple races* simultaneously, thereby allowing the processing of multiple recounts at the same time. Notwithstanding, by the 2018 election cycle every county had voluntarily upgraded its' voting system to provide for this capability — except for Palm Beach County.

Primary Election Day

Florida primary election is currently held 10 weeks before the general election. This is NOT a magic date; it has been shuffled around quite a bit in recent years. From 1983 to 2006, the primary election was held 9 weeks before the general election.¹² In 2007, the election was pushed back to 10 weeks before the general, to avoid the Labor Day holiday weekend.¹³ In 2011, it was pushed back to 12 weeks before the general election so as not to coincide with the 2012 Republican National Convention in Tampa.¹⁴ In 2013, the primary date was moved back to 10 weeks before the general election.¹⁵

Certification of Ballot Results/Timelines

Florida's current primary and general election certification deadlines and associated interim reporting deadlines for federal, state, and multicounty races are as follows:

Final (a/k/a "Hard") Deadlines (in reverse chronological order)

- 9th Day; 9 a.m. (after primary election)/14th Day; 9 a.m. (after general election): State Election Canvassing Commission certifies the final results of all races.¹⁶
- 7th Day; 5 p.m. (after primary election)/12th Day; noon (after general election): Local county canvassing boards file the official, certified county returns with the Department of State.¹⁷ The department ignores any county returns received after this deadline, and certifies the county's prior results on file absent a statutory emergency¹⁸ (in which case the State Elections Canvassing Commission makes the call).¹⁹

¹¹ Chapter 2001-40, s. 42, LAWS OF FLA. (currently codified at s. 102.166, F.S.[2018]).

¹² For most of that time, it was called the "*first* primary election," as Florida held a second primary several weeks after the first primary until the 2002 election cycle.

¹³ Ch. 2007-30, s. 22, LAWS OF FLA.; *see*, Florida Senate Transportation and Economic Development Appropriations Committee, *Bill Analysis for CS/CS/SBs 960 and 1010* at p. 22 (April 24, 2007), available at <http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s0960.ta.pdf> (last visited Feb 19, 2019).

¹⁴ Ch. 2011-10, s. 20, LAWS OF FLA.

¹⁵ Ch. 2013-57, s. 3, LAWS OF FLA.

¹⁶ Section 102.111(2), F.S.

¹⁷ Section 102.112, F.S.

¹⁸ "Emergency" is defined for purposes of the Elections Emergency Act as "any occurrence, or threat thereof, whether accidental, natural, or caused by human beings, in war or in peace, that results or may result in substantial harm to the population or substantial damage to or loss of property to the extent it will prohibit an election officer's ability to conduct a safe and orderly election." Section 101.732(3), F.S.

¹⁹ Section 102.112(3), F.S.

Primary and General Election Interim (a/k/a “Soft”) Counting/Reporting Deadlines (in chronological order)

- **MON before /7 p.m.:** Supervisors must upload the results of all early voting and VBM ballots canvassed and tabulated by the end of the early voting period to the county’s election management system.²⁰
- **General Election Night (preliminary results; not to be relied on):**
- **First 30 minutes after the polls close (7 p.m. local time):** County canvassing boards must upload to the department all early voting and tabulated VBM ballot results.²¹
 - **Every 45 minutes thereafter:** Canvassing boards must report/update all precinct results, except provisional ballots, until all precinct results are completely reported.²²
 - **2 a.m. on WED after election:** Canvassing boards should complete reporting of all precinct returns.²³
- **3rd Day; noon (after primary)/4th Day; noon (after general election) — (initial results; fairly complete):** Canvassing boards must report to the department the First Set of Unofficial Results, consisting of completed precinct results, completed provisional ballot counts, and all VBM ballots canvassed at that time. Only VBM ballots received by Election Day that remain uncanvassed for some reason (i.e., high volume, equipment problems) or certain unreceived VBM *general election* ballots from overseas voters (who can submit up to 10 days after the election if postmarked by Election Day) should be excluded from the count. If the margin of victory in any individual race is within 0.5%, the Secretary of State orders a “machine recount” — where all the ballots in that race are fed back through the tabulators for re-counting and sorting of overvotes and undervotes, should they be necessary for a manual recount.²⁴
- **5th Day; 3 p.m. (after primary)/9th Day; 3 p.m. (after general election) — (second set of initial results; near complete):** Canvassing boards report to the department the Second Set of Unofficial Results, consisting of the *machine recount results* for recounted races along with any other updated returns from the First Set of Unofficial Results.²⁵ If the margin of victory in any individual race is 0.25% or less, the Secretary of State orders a “manual recount” of the overvotes and undervotes in that race, unless the number of overvotes and undervotes is insufficient to change the outcome of the race or the candidate within the recount margin requests in writing that the recount not be made.²⁶

Vote-by-Mail Ballot Cure Deadline

Voters may cure defective — that is, non-matching or missing — signatures on VBM Ballot Voters’ Certificates by submitting a cure affidavit by 5 p.m. on the Monday before an election.²⁷ During the 2018 General Election, U.S. Federal District Judge Mark Walker ruled that this deadline was inadequate, and ordered an extension of several days for voters to correct their

²⁰ Section 102.141(4)(a), F.S. Vote results, however, may not be released until the close of the polls on Election Day. *Id.*

²¹ Section 102.141(4)(b), F.S.

²² *Id.*

²³ Section 101.141(3), F.S.

²⁴ Section 102.141(5),(7), F.S. Candidates eliminated by 0.5% or less can waive their right to a machine recount. Section 102.141(7), F.S.

²⁵ *Id.*

²⁶ Section 102.166(1), F.S.

²⁷ Section 101.68(4)(a), F.S.

ballots; the U.S. Court of Appeals for the Eleventh Circuit essentially signed-off on that decision in mid-February.²⁸ Note that 2018 General Election VBM ballots were mailed as late as *four days before the election* which the bill would double to eight days, thereby providing additional time for ballots to be received and signatures cured in addition to any additional time afforded by moving the current cure deadline.

Vote-by-Mail Voter's Certificate

Each voter submitting a vote-by-mail ballot must sign the voter's certificate located on the back of the mailing envelope.²⁹ The voter's certificate also asks the voter to fill in the date, although that information is only taken into account in the case of certain presidential preference primary and general election absentee ballots received after election day.³⁰ The voter's certificate does not request any other voter identifying information.

Provisional Ballots/deadlines & cure

The ballot of a voter who fails to sign the Provisional Ballot Voter's Certificate and Affirmation, or that contains a signature that does not match the voter's registration signature, will not be counted; there is no process in law to fix the defective signature.

When a poll worker cannot affirmatively confirm the eligibility of a person who presents himself or herself to vote at an early voting location or at a polling precinct on Election Day, the person is entitled to vote a "provisional," or conditional, ballot.³¹

In such case, the precinct clerk who is in charge of polling place operations generally works with the voter to complete the Provisional Ballot Voter's Certificate and Affirmation, making sure that all necessary information is filled out correctly including:

- The voter's signature;
- His or her printed name;
- Party registration;
- Residential address;
- Mailing address; and
- Driver's license number or the last four (4) digits of the voter's social security number.³²

The Provisional Ballot Voter's Certificate and Affirmation must be sworn or affirmed before an election official, who must sign the attestation.³³

²⁸ *Dem. Exec. Comm. of Fla. v. Detzner*, 347 F.Supp.3d 1017 (N.D. Fla.)(Nov. 15, 2018), approved *Dem. Exec. Comm. of Fla. v. Lee*, 2019 WL 638722 (11th Cir. 2019)(denying motion to stay preliminary injunction). In a footnote, Judge Walker "suggested" that Florida could remedy its mismatched signature timetable by adopting Oregon's 14-days-AFTER-the-election cure deadline. *See id.* at p. 19, fn.4 (citing Oregon statute). Of course, that would butt right up against Florida's current 14-day general election certification period.

²⁹ Section 101.64, F.S.

³⁰ *Id.*; s. 101.6952(7), F.S.

³¹ Section 101.048(1), F.S.

³² *Id.* at (3).

³³ *Id.*

The official gives the provisional voter written instructions about his or her right to provide the Supervisor of Elections with written evidence of eligibility by 5:00 p.m. on the second day after the election.³⁴ The official also gives the provisional voter a numbered stub and directions on how to access a free system to find out if the provisional ballot was counted in the final tally or not, and if not, the reason why it was not counted.³⁵ The Division of Elections Polling Place Procedures Manual, which election officials use at every precinct, details additional procedures.³⁶

Vote-by-Mail and Provisional Ballots/standards for signature verification

As part of the canvassing process, county canvassing boards routinely determine, by majority vote, whether a signature on a provisional or vote-by-mail voter's certificate, or vote-by-mail cure affidavit, matches the voter's signature in the registration records. With respect to the vote-by-mail voter's certificate on the back of the ballot envelope, which constitutes the *overwhelming* majority of ballots/signatures processed, this canvassing board review is only required for a very small percentage of ballots. Vote-by-mail voter's certificate signatures are initially reviewed by supervisor's office staff; only those signatures that the staff cannot confirm as a match are "bumped up" to the canvassing board for review.

There currently are no specific statutory standards for the canvassing board to use in making signature matching determinations. The current practice of canvassing boards, however, is generally to find a signature match wherever possible and to err on the side of validity — given the paramount importance of the constitutional right to vote. Notwithstanding, the federal courts are unconvinced. The U.S. Court of Appeals for the Eleventh Circuit recently upheld a preliminary injunction granted in the 2018 general election with language strikingly reminiscent of the U.S. Supreme Court's main holding in *Bush v. Gore*³⁷ — that counties must have uniform standards for recounting ballots:

...[F]lorida allows each county to apply its own standards and procedures for executing the signature-match requirement, virtually guaranteeing a crazy quilt of enforcement of the requirement from county to county. (*citation omitted*). While some counties may make Herculean efforts to ensure that legitimate vote-by-mail or provisional votes, or both, are counted, other counties may do very little to ensure even and accurate application of the signature match requirements. (*citation omitted*). Florida's scheme prohibits neither.³⁸

³⁴ *Id.* at (1).

³⁵ *Id.* at (5) and (6)

³⁶ See Florida Department of State, Division of Elections, *Polling Place Procedures Manual*, pp.14-16 (June 2014) available via link at <https://www.flrules.org/Gateway/reference.asp?No=Ref-04186> (last visited February 20, 2019).

³⁷ 531 U.S. 98 (2000).

³⁸ *Dem. Exec. Comm. of Fla. v. Lee*, 2019 WL 638722 (Feb. 15, 2019). The court was also concerned with the fact that canvassing boards did not receive any formal training in handwriting analysis, though testimony by representatives of the Florida State Association of Supervisors of Elections before the Ethics and Elections Committee suggests that such measures could result in the *invalidation* of significant numbers of voters. *Id.* The court's language on signature training constitutes non-binding *dicta*, since it was discussed in the context of a review of a preliminary injunction extending the time for certain voters to cure deficient vote-by-mail and provisional ballot signatures in the 2018 general election. As such, the issue may not have been fully briefed for the federal district court and they may not be aware of the *disenfranchisement* component of

Voter Registration Signature Updates

A voter seeking to update his or her signature on file in the statewide voter registration system:

- **Must submit a voter registration form** to an election official,
- That is received no later than the start of the canvassing of VBM ballots in the voter's county of residence (which may be up to 15 days before an election).³⁹

That signature on file is then used in verifying the voter's signature on VBM and provisional ballot certificates.⁴⁰

Beginning in 2014⁴¹ (for missing VBM ballot signatures) and revised and expanded in 2017⁴² (to include mismatched signatures), Florida law allows voters to correct defective VBM ballot signatures *during* the front-end of the canvassing process to enable their votes to be counted. However, due to the oversight of failing to enact any conforming change to the law governing signature updates when enacting these cure provisions, supervisors must still *mail post-election notices* with voter registration cards to voters to change their signature *on file for the next election*⁴³ — notwithstanding that election officials reviewed and approved a *different* voter signature on a cure affidavit to validate their VBM ballot.

Vote-by-Mail Ballot Request and Mailing Deadlines

The supervisors stop accepting requests for VBM ballots at 5 p.m. on the sixth day before an election.⁴⁴ Supervisors are required to mail out VBM ballots for valid requests no later than the fourth day before an election.⁴⁵ Every election cycle, thousands of ballots arrive after the close of the polls on election day and are not counted.⁴⁶

The Florida State Association of Supervisors of Elections (“FSASE”) has advised committee staff that in the past few years, the United States Postal Service has been systematically closing numerous regional processing centers due to budgetary constraints. This has resulted in delays of several days, in some cases, in moving VBM ballots from Point A to Point B.⁴⁷ Cutting off the mailing of absentee ballots a few days earlier may result in some inconvenience to voters, but

this approach. For that reason and others, prudence dictates waiting for additional guidance from the courts before mandating formal signature training measures for canvassing boards.

³⁹ Section 98.077, F.S.

⁴⁰ *Id.*

⁴¹ Chapter 2013-57, s. 15, LAWS OF FLA. (codified at s. 101.68(4), F.S.)

⁴² Chapter 2017-45, s. 1, LAWS OF FLA. (codified at s. 101.68, F.S.)

⁴³ Section 101.68(4)(f), F.S.

⁴⁴ Section 101.62 (2), F.S.

⁴⁵ *Id.*

⁴⁶ *See e.g.*, Gary Fineout, AP News, “Thousands of Mailed Ballots in Florida Were Not Counted” (Dec. 10, 2018) (6,670 ballots mailed ahead of the Nov. 6 election were not counted because they were not received by Election Day [excluding ballots in Palm Beach and Polk counties]), available at <https://www.apnews.com/8488a401807045fcb642ea2cdf81fc29> (last visited Feb. 8, 2019).

⁴⁷ Bruce Alpert, New Orleans Times Picayune, “New Orleans Mail Processing Center Is One of 223 Being Closed by U.S. Postal Service” (Feb 23, 2012), reprinted at https://www.nola.com/politics/index.ssf/2012/02/new_orleans_mail_processing_ce.html (last visited Feb 8, 2019).

will help reduce the number of ballots that arrive late and are not counted. It will give voters an opportunity to vote early or on Election Day, to *ensure* that their ballots count.

Domestic Vote-by-Mail Mailing Period

Overseas VBM ballots must be mailed at least 45 days prior to an election; *domestic* VBM ballots must be mailed between the 28th and 35th day, for all valid requests on file.⁴⁸

The FSASE has requested that the domestic VBM deadline be revised to “not later than 28 days before” an election, to allow for combined, bulk mailing of overseas and domestic VBMs for purposes of ease of administration, cost-savings, and voter-convenience measures (domestic ballots will arrive earlier).

Vote-by-Mail Ballot Canvassing Period/starting date

Currently, local county canvassing boards and supervisors may begin “canvassing” VBM ballots up to 15 days prior to an election.⁴⁹ That means that they can review signatures, open valid ballots, put them through the electronic tabulators, tabulate results at the end of the early voting period, etc. This time saver has become incredibly important over the past decade or so, as *millions* of Floridians have chosen the convenience of VBM voting over in-person early voting or Election Day balloting.

The FSASE notes that this head start is especially important for large counties that may be processing tens or hundreds of thousands of VBM ballots per election, and that even more time would help with the speed and accuracy of returns. For this reason, their legislative package seeks a week’s extension to begin processing VBM ballots.

III. Effect of Proposed Changes:

SPB 7066 is the 2018 General Election recount glitch bill. It streamlines procedures and activities relating to the mailing, receipt, processing, reporting, counting, and recount of ballots.

Section-by-Section Analysis

Section 1. (*technical/conforming*) Amends s. 98.077, F.S., relating to methods for updating voter registration signatures, to conform to the new provisional and VBM ballot cure affidavit signature update process.

Section 2. (*technical/conforming*) Amends s. 99.063, F.S., relating to candidates for Lieutenant Governor; adjusts the deadline from 5 p.m. on the 9th day to the 14th day after the primary election for a successful gubernatorial candidate to select and qualify a running mate, to conform to the new 14-day primary certification deadline.

⁴⁸ Section 101.62 (4)(a),(b), F.S.

⁴⁹ Section 101.68(2)(a), F.S.

Section 3. Amends s. 100.061, F.S., moving the **primary election date** from 10 to 11 weeks before the general election; allows more time for counting, recounting, and curing defective provisional and VBM ballots; creates more room for error in the event of a recount; enhances both the appearance and actuality of a more organized vote-counting process.

Section 4. Amends s. 101.048, F.S., relating to **provisional ballots**; creates a provisional ballot signature cure and canvassing process that in large measure mirrors the current and revised VBM signature cure process (i.e., creates a signature cure affidavit and instructions, provides for voter submission of supporting TIER 1 or TIER 2 identification, creates standards for local canvassing boards to process ballots using the cure affidavit and supporting information); for canvassing purposes, requires canvassing boards to find by majority vote and beyond a reasonable doubt that a signature on a voter's certificate or cure affidavit DOES NOT match the signature in the registration records; modifies the Provisional Ballot Voter's Certificate and Affirmation to include requests for additional phone and electronic contact information; requires supervisors, as soon as practicable, to provide phone and electronic notice by e-mail and text message to voters who have previously provided the supervisor with such information, otherwise by first-class mail; requires supervisors to follow-up with first-class mail notice to the voter within 48 hours if they can't reach him or her by phone, text, or e-mail; gives a voter until 5 p.m. on the 11th day *after* the election to submit a signature cure affidavit along with supporting identification; just as the bill does with VBM ballots, creates a process to immediately update voter registration signatures with the signature on a valid provisional ballot cure affidavit; adopts the current VBM requirement that supervisors provide voters with a post-election notice and voter registration card to update signatures for voters whose ballots were rejected due to defective signatures.

Section 5. Amends s. 101.151, F.S., relating to **ballot design**; limits ballot title and instructions to a single location on the ballot, top center or leftmost column — but expressly prohibits listing individual races below instructions in the leftmost column unless the ballot is single-column (which negates the voters' tendency to skip the race). This change is intended to directly address the Broward ballot design issue in the 2018 U.S. Senate race.

Section 6. Amends s. 101.62, F.S., relating to **requests for VBM ballots**.

- Moves the last day for voters to request VBM ballots from 8 to 10 days before an election, and prohibits supervisors from mailing out such ballots less than 8 days prior to the election (currently 4 days), to reflect new postal timelines resulting from the closing of numerous regional processing centers.
- Allows supervisors added flexibility to mail *domestic* VBM ballots “not later than” 28 days before an election instead of in a one-week window from the 35th to the 28th day, thereby allowing for earlier bulk mailing with *overseas* ballots (that must be sent by the 45th day before an election).

Section 7. (*technical*) Amends s. 101.64, F.S., relating to requirements for the VBM Voter's Certificate, requesting additional voter contact information (e-mail address, home phone number, mobile phone number) for the limited purpose of correcting signature deficiencies, to conform.

Section 8. (*technical/conforming*) Amends s. 101.65, F.S., relating to VBM ballot instructions, to conform to the new canvassing period (as early as 22 days before an election).

Section 9. Amends s. 101.68, F.S., relating to the **canvassing of VBM ballots**.

- Clarifies that supervisors must immediately compare the signature when they receive a VBM ballot and notify the elector of any deficiencies.
- Moves the earliest start date for canvassing VBM ballots from 15 to 22 days before an election, to allow larger counties additional processing time to handle their outsized numbers of VBM ballots.
- Extends the deadline for curing defective VBM ballot signatures from 5 p.m. on the *day before* the election to 5 p.m. of the 11th day *after* a primary or general election.
- For canvassing purposes, requires canvassing boards to find by majority vote and beyond a reasonable doubt that a signature on a voter's certificate or cure affidavit DOES NOT match the signature in the registration records.
- Creates a new signature-deficiency notification process for timely-received VBM ballots starting 4 days before an election (for domestic ballots) or 10 days before an election (for overseas ballots); mandates phone and electronic voter notification within the first 48 hours or until voter contact is established, time permitting, followed by physical notice by first-class mail (in-county ballots) or expedited delivery (all other ballots), if necessary.
- Creates a process to immediately update voter registration signatures with the signature on a valid VBM ballot cure affidavit, and makes conforming changes to the post-election voter notification/signature update request for voters whose ballots were rejected due to defective signatures.
- (*technical*) Makes conforming changes to VBM voter instructions to incorporate the new 22 day canvassing period.

Section 10. (*technical/conforming*) Amends s. 101.6923, F.S., relating to VBM ballot instruction for certain first-time voters, to conform to the new canvassing period (as early as 22 days before the election).

Section 11. Amends s. 102.111, F.S., relating to the **State Elections Canvassing Commission**; marries the certification deadlines for the primary election and most general election races to 9 a.m. of the 14th day after the election for federal, state, and multicounty office; provides for an additional Commission meeting 21 days after a *general election* to certify the results of *recounted races*, if necessary.

Section 12. (technical/conforming) Amends s. 102.112, F.S., relating to deadlines for submitting county returns to the Department of State; unifies the reporting schedule for county canvassing boards to report primary and non-recount general election race results for federal, state, and multicounty office (12th day after the election; 5 p.m.); provides that county canvassing commissions also certify the results of general election races subject to a recount by one week later (19th day after the election; noon), to conform to the new 21-day certification deadline for *general election* recount races.

Section 13. Amends s. 102.141, F.S., relating to **county canvassing board duties**.

- Requires county canvassing boards to report results hourly on election night (instead of every 45 minutes) until 2 a.m., and thereafter hourly every day from 9 a.m. to 8 p.m. until all results are reported, to cut down on sleep deprivation and not work employees and volunteers around-the-clock. This should enhance the accuracy of the counting process/procedures, and provide for better media optics.
- **(quasi-conforming)** Gives county canvassing boards an extra day in a *primary election* to report their initial, *first set of unofficial results* to the Department; pushes back the deadline from noon of the third day to noon of the *fourth* day (corresponds with the general election deadline).
- **(quasi-conforming)** For *primary elections*, provides 3 extra days for canvassing boards to complete *machine* recounts and an extra day to complete *manual* recounts (same reporting schedule as *non-recount general election* races, which maintain the same reporting schedule). For *general election races subject to recount*, provides 3 extra days to complete machine recounts and 4 extra days for manual recounts.

Sections 11, 12, and 13 (chart). The chart on the page below contains expanded information regarding the revised certification and reporting deadlines:

Event (reverse chronological order)	Election/races	Current (days <i>after</i> election)	Proposed (days <i>after</i> election)	Net Gain
Election Date	General	NOV. 2-8	same	
	Primary	10 wks. (b4 election)	11 wks. (b4 election)	+1 (wk.)
Certification Deadline <i>(final results)</i>	General (recount races)	14	21	+7
	General (non-recount)	14	14	
	Primary (ALL races)	9	14	+5
County Canvassing Board Certified Results <i>(manual recount tally for recount races)</i>	General (recount races)	12	19	+4 ⁵⁰
	General (non-recount)	12	12	
	Primary (ALL races)	7	12	+1 ⁵¹
Second Unofficial Results <i>(machine recount tally for recount races)</i>	General (recount races)	9	12	+3 ⁵²
	General (non-recount)	9	9	
	Primary (ALL races)	5	9	+3 ⁵³
First Unofficial Results	General (recount races)	4	4	
	General (non-recount)	4	4	
	Primary (ALL races)	3	4	+1

⁵⁰ The bill proposes **7 days** for county canvassing boards to complete a manual recount, from the 12th day after the election (deadline for second set of unofficial results) until the 19th day (when the canvassing boards certify results to the Department of State). Under the current schedule, canvassing boards have only **3 days** for the manual recount (from the 9th day, when the second set of unofficial results are due, until the 12th day, when the boards certify results to the Department of State.) This results in a **net gain of 4 days** to conduct the manual recount.

⁵¹ The bill proposes **3 days** for county canvassing boards to complete a manual recount, from the 9th day after the election (deadline for second set of unofficial results) until the 12th day (when the canvassing boards certify results to the Department of State). Under the current schedule, canvassing boards have only **2 days** for the manual recount (from the 5th day, when the second set of unofficial results are due, until the 7th day, when the boards certify results to the Department of State.) This results in a **net gain of 1 day** to conduct the manual recount.

⁵² The bill proposed **8 days** for county canvassing board to complete a machine recount, from the 4th day after the election (deadline for first set of unofficial results) until the 12th day (when the second set of unofficial results are due). Under the current schedule, canvassing boards have only **5 days** for the machine recount (from the 4th day, when the first set of unofficial results are due, until the 9th day, when the second set of unofficial results are reported). This results in a **net gain of 3 days** to conduct the machine recount.

⁵³ The bill proposed **5 days** for county canvassing board to complete a machine recount, from the 4th day after the election (deadline for first set of unofficial results) until the 9th day (when the second set of unofficial results are due). Under the current schedule, canvassing boards have only **2 days** for the machine recount (from the 3rd day, when the first set of unofficial results are due, until the 5th day, when the second set of unofficial results are reported). This results in a **net gain of 3 days** to conduct the machine recount.

Section 14. Amends s. 102.166, F.S., relating to **manual recounts**; updates legacy language from the 2001 Election Reform Act to prohibit voting systems that cannot *simultaneously* count and sort overvotes and undervotes in *multiple races*; effectively de-certifies Palm Beach County's legacy voting system used in the 2018 elections, notwithstanding that the County is already in the process of replacing that system for the 2020 election cycle.⁵⁴

Section 15. The bill takes effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

County supervisors of elections may incur additional staffing and mailing costs to comply with the new notification requirements for signature-defective provisional and VBM ballots; some or all of these costs, however, may be offset by cost-savings by providing

⁵⁴ Jeff Ostrowski, Palm Beach Post, "After Election Debacle, Palm Beach County to Spend \$16M on Voting Machines for 2020" (Feb. 5, 2019), available at <https://www.palmbeachpost.com/news/20190205/after-election-debacle-palm-beach-county-to-spend-16m-on-voting-machines-for-2020> (last visited Feb. 6, 2019).

some notices by phone, e-mail, or text message that otherwise would have required mailing. The costs are indeterminate, and will vary depending on the number of signature-defective ballots received, the number of voters that can be noticed by phone or electronic means, and the extent to which supervisors' current staffing will be able to process the additional required notices.

County supervisors may also incur some additional costs to reprint provisional and VBM voter's certificates on ballot envelopes that request additional voter contact information, and ballot and cure voter instructions. The precise costs are unknown and will depend on the size of the county and the extent to which they have already pre-printed ballot envelopes.

Finally, county supervisors should be able to realize an undetermined amount of cost savings from being able to bulk mail overseas and early-requested domestic absentee ballots together at least 45 days before an election; the cost savings will vary by county, should they choose to adopt this procedure.

VI. Technical Deficiencies:

Section 102.168(8), F.S., should be amended to allow the court to review signatures on a provisional voter's certificate and on a provisional/vote-by-mail cure affidavit, along with any supporting identification submitted thereto, in any election contest that requires a review of the canvassing board's decision on the legality of a vote-by-mail or provisional ballot based on signature validity.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 98.077, 99.063, 100.061, 101.048, 101.151, 101.62, 101.64, 101.65, 101.68, 101.6923, 102.111, 102.112, 102.141, 102.166.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.