

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 1372

INTRODUCER: Judiciary Committee; Ethics and Elections Committee; and Senator Brandes

SUBJECT: Elections

DATE: February 20, 2020

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

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Mitchell</u> | <u>Roberts</u> | <u>EE</u> | <b>Fav/CS</b> |
| 2. | <u>Stallard</u> | <u>Cibula</u>  | <u>JU</u> | <b>Fav/CS</b> |
| 3. | _____           | _____          | <u>RC</u> | _____         |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1372 makes election administration changes that the Florida State Supervisors of Elections Association (FSE) recommends for the 2020 general election cycle. The bill:

- Removes a prohibition against using the address on a voter's identification presented at the polls as the basis for confirming an elector's legal residence.
- Authorizes the testing of vote-tabulating equipment as early as 25 days before early voting begins, rather than 10 days before early voting begins as under current law.
- Eliminates the duplication and substitution of vote-by-mail ballots that contain overvotes, which occurs when a voter makes too many selection in a given race.
- Authorizes the initial mail-out date for domestic ballots in an all-mail, local referendum election to conform with domestic vote-by-mail ballots in other elections.
- Allows a qualifying office with the Department of State or supervisors of elections to accept and hold qualifying papers submitted by a state or county political party executive committee person candidate 14 days before the beginning of the qualifying period.
- Requires a poll watcher to be a qualified and registered elector of the state, broadening the current requirement to be a qualified and registered elector of the county.
- Prohibits for-pay distribution or collection of vote-by-mail ballots, subject to exceptions such as the delivery of the ballot of an immediate family member or other ballot-handling that is expressly authorized in statutory vote-by-mail procedures. The bill also authorizes a warrantless arrest for a violation of this provision.
- Preempts local governmental entities from enacting or adopting any limitation or restriction involving contributions to a political committee or electioneering communications

organization or expenditures for an electioneering communication or an independent expenditure.

## II. Present Situation:

### “Technical” Election Administration Component of the FSE’s 2020 Legislative Package<sup>1</sup>

#### *Voter ID at the Polls*

Section 101.043, F.S., governs voter intake at the polls on Election Day and during early voting, including such items as voter identification, signing-in the voter, signature verification, address verification, confirming the voter’s precinct, issuance of the proper ballot, etc.

The FSE’s 2020 legislative package identifies a conflict between the following two paragraphs of subsection (1) of that section.<sup>2</sup>

*(b) If the (voter’s) picture identification does not contain the signature of the elector,<sup>3</sup> an additional identification that provides the elector’s signature shall be required. The address appearing on the identification presented by the elector may not be used as the basis to confirm an elector’s legal residence or otherwise challenge an elector’s legal residence. ...*

*(c) When an elector presents his or her picture identification to the clerk or inspector and the elector’s address on the picture identification matches the elector’s address in the supervisor’s records, the elector may not be asked to provide additional information or to recite his or her home address.*

The FSE proposes eliminating the underlined language above from paragraph (b).<sup>4</sup>

#### *Logic & Accuracy Testing; Voting Tabulators*

Each county election supervisor publicly tests the voting tabulating equipment for proper operation within 10 days before the start of early voting in the county.<sup>5</sup> Since each supervisor has the discretion to begin early voting from the 10<sup>th</sup> to the 15<sup>th</sup> day before the election,<sup>6</sup> supervisors must conduct logic and accuracy testing sometime between the 20<sup>th</sup> and 25<sup>th</sup> days before an election.

In 2019, the Legislature’s major election administration reform act moved up by one week the earliest starting date to canvass vote-by-mail ballots from the 15<sup>th</sup> to the 22<sup>nd</sup> day before the start

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<sup>1</sup> FSE, *2020 Legislative Priorities and Issues* (on file with the Senate Committee on Ethics and Elections) [hereinafter, *FSE 2020 Legislative Package*]. Note that the change conforming the initial mail-out date for ballots in all-vote-by-mail-ballot elections is not specifically mentioned in the FSE’s written package.

<sup>2</sup> Section 101.043(1)(b) and (c), F.S.

<sup>3</sup> The statute enumerates 12 acceptable types of voter IDs with pictures, some of which may not contain a voter’s signature. Section 101.043(1)(a), F.S.

<sup>4</sup> *FSE 2020 Legislative Package*, *supra* note 1.

<sup>5</sup> Section 101.5612 (1) and (2), F.S.

<sup>6</sup> Section 101.657(1)(d), F.S.

of an election.<sup>7</sup> The act's oversight in not conforming the overlapping logic and accuracy testing dates, however, means that supervisors who don't start early voting until the 10<sup>th</sup>, 11<sup>th</sup>, or 12<sup>th</sup> day before an election will have to delay starting their vote-by-mail canvass by a couple of days in order to complete logic and accuracy testing.

The FSE's 2020 Legislative Package recommends moving the date for the start of vote-by-mail canvassing to 25 days before the election.<sup>8</sup>

### ***Defective Ballot Duplication***

Current law requires poll workers to duplicate two types of defective ballots in the presence of witnesses and to substitute the duplicate ballot for the original:<sup>9</sup>

- Physically damaged ballots that cannot be properly counted by the tabulators; and
- Overvoted and completely undervoted ballots, including all valid votes as determined by the canvassing board based on rules adopted by the Division of Elections.

The FSE's position is that, "(T)his duplication (of overvoted ballots) is very time consuming and completely wasteful."<sup>10</sup>

### ***All-Mail-Ballot, Local Issue Elections***

While not well-known or often implemented, Florida law does authorize the conduct of local referendum elections through an all-mail-ballot process (the "Mail Ballot Election Act").<sup>11</sup> Domestic all-mail ballots may not be sent to voters before the 20<sup>th</sup> day before the election.<sup>12</sup>

In 2019, the Legislature adopted a major election administration reform act that moved up the authorization date to begin mailing domestic vote-by-mail ballots in candidate elections, from 35 to 40 days before the election.<sup>13</sup> No corresponding change, however, was made to the initial ballot mailing date for all-mail-ballot elections.

### ***Political Party Committeeperson Qualifying Dates***

Candidates for major political party executive committeepersons may qualify at the same time as most state and local partisan candidates, from noon on the 71<sup>st</sup> day before the primary election through noon on the 67<sup>th</sup> day before the primary election.<sup>14</sup> The FSE asserts that this qualifying period is "a very busy week for every SOE (supervisor of elections)."<sup>15</sup>

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<sup>7</sup> Section 101.68(2)(a), F.S.

<sup>8</sup> *FSE 2020 Legislative Package*, *supra* note 1.

<sup>9</sup> Section 101.5614(4)(a), F.S.

<sup>10</sup> *FSE 2020 Legislative Package*, *supra* note 1.

<sup>11</sup> See generally §§ 101.6101-101.6107, F.S.

<sup>12</sup> Section 101.6103(1), F.S.

<sup>13</sup> Section 101.62(4)(b), F.S.

<sup>14</sup> Section 103.091(4), F.S.; *see s. 99.061(3)*, F.S.

<sup>15</sup> *FSE 2020 Legislative Package*, *supra* note 1.

## Other Aspects of Florida’s Election Law

### *Poll Watchers*

Section 101.131, F.S., sets forth election day requirements for watchers at polls, including:

- Limitations on the number of watchers per political party, candidate, or political committee;
- Delineations of polling place areas accessible to poll watchers; and
- Necessity for poll watchers to register with supervisors of election.

Current law requires each poll worker to be a qualified and registered elector of the county in which he or she serves.<sup>16</sup>

### *Preemption of Local Government Enactments or Adoptions*

Limitations on contributions in elections are governed by s. 106.08, F.S. There are no current statutory preemptions of local governmental entities regarding the adoption by local governments of limitations on contributions to political committees or electioneering communications organizations or on expenditures by those entities.

On November 9, 2017, the St. Petersburg City Council adopted Ordinance No. 306-H, which became effective January 1, 2018. The ordinance amended the St. Petersburg City Code to:

- Impose limits on contributions related to municipal elections from super PACs and foreign-influenced entities; and
- Require increased disclosure of independent expenditures, expenditures for electioneering communications, and other campaign finance matters related to municipal elections.<sup>17</sup>

### Constitutional Law Relating to Warrantless Arrests

Under the Fourth Amendment to the United States Constitution, a person has the right to be free from an unreasonable search or seizure, including an unreasonable arrest.<sup>18</sup> To be “reasonable,” an arrest in a public place must be based on probable cause, though no arrest warrant is required.<sup>19</sup> To make an arrest in a home, an officer generally also needs an arrest warrant. However, the courts have recognized a number of exceptions to this warrant requirement, such as “exigent circumstances” or when the officer has consent to enter the home.<sup>20</sup>

<sup>16</sup> Section 101.131(1), F.S.

<sup>17</sup> Ordinance No. 306-H, St. Petersburg City Code (2018).

<sup>18</sup> U.S. CONST. amend. IV.

<sup>19</sup> *State v. Ramos*, 378 So. 2d 1294 (Fla. 3d DCA 1979).

<sup>20</sup> See e.g., *U.S. v. Standridge*, 810 F.2d 1034 (11 Cir. 1987) (citing *Payton v. New York*, 445 U.S. 573 (1980)). The court set forth the factors that indicate exigent circumstances:

(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief that the suspect is armed; (3) probable cause to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

*Id.* at 1037 (citing *Dorman v. United States*, 435 F.2d 385, 392–93 (D.C.Cir.1970) (en banc); *United States v. Campbell*, 581 F.2d 22, 25–27 (2d Cir.1978); *United States v. Newbern*, 731 F.2d 744, 748–49 (11th Cir.1984); *United States v. Roper*, 681 F.2d 1354, 1357 n. 1 (11th Cir.1982) (dictum), *cert. denied sub nom. Newton v. United States*, 459 U.S. 1207, 103 S.Ct. 1197, 75 L.Ed.2d 440 (1983)).

Section 901.15, F.S., is not an exception and does not supersede the constitutional requirements for a lawful arrest.<sup>21</sup> Accordingly, courts have held the statute unconstitutional *as applied* in situations in which s. 901.15, F.S., was proffered as a basis for a warrantless arrest in a home.<sup>22</sup>

### III. Effect of Proposed Changes:

The bill makes election administration changes that the Florida State Supervisors of Elections Association (FSE) recommends for the 2020 general election cycle. The bill:

- Removes a prohibition against using the address on a voter's identification presented at the polls as the basis for confirming an elector's legal residence.
- Authorizes the testing of vote-tabulating equipment as early as 25 days before early voting begins, rather than 10 days before early voting begins as under current law.
- Eliminates the duplication and substitution of vote-by-mail ballots that contain overvotes, which occurs when a voter makes too many selection in a given race.
- Authorizes the initial mail-out date for domestic ballots in an all-mail, local referendum election to conform with domestic vote-by-mail ballots in other elections.
- Allows a qualifying office with the Department of State or supervisors of elections to accept and hold qualifying papers submitted by a state or county political party executive committee person candidate 14 days before the beginning of the qualifying period.
- Requires a poll watcher to be a qualified and registered elector of the state, broadening the current requirement to be a qualified and registered elector of the county.
- Prohibits for-pay distribution or collection of vote-by-mail ballots, subject to exceptions such as the delivery of the ballot of an immediate family member or other ballot-handling that is expressly authorized in statutory vote-by-mail procedures. The bill also authorizes a warrantless arrest for a violation of this provision.
- Preempts local governmental entities from enacting or adopting any limitation or restriction involving contributions to a political committee or electioneering communications organization or expenditures for an electioneering communication or an independent expenditure

The bill takes effect July 1, 2020.

### IV. Constitutional Issues:

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

None. Laws that affect state or local elections are exempt from Article VII, section 18 of the Florida Constitution.

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

None.

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<sup>21</sup> See e.g., *Bratt v. Genovese*, 660 Fed Appx. 837 (11th Cir. 2016).

<sup>22</sup> See e.g., *State v. Perez*, 277 So. 2d 778 (Fla. 1973).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could result in greater participation and contributions from individuals and political committees in local government elections.

C. Government Sector Impact:

Supervisors of elections may realize some cost savings with respect to mailing vote-by-mail ballots in all-mail-ballot, local referenda elections at the same time as partisan candidates. Such savings are expected to be minimal, and will not impact state revenues since such elections are paid for by the local counties and any savings will accrue thereto.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 101.043, 101.131, 101.5612, 101.5614, 101.6103, 103.091, 104.0616, 106.08, and 901.15.

**IX. Additional Information:**

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

**CS/CS by Judiciary on February 19, 2020:**

The committee substitute prohibits for-pay distribution or collection of vote-by-mail ballots, subject to exceptions such as the delivery of the ballot of an immediate family member or other ballot-handling that is expressly authorized in statutory vote-by-mail procedures. Additionally, the committee substitute authorizes a warrantless arrest for a violation of this provision. Finally, the committee substitute expands the bill's provisions that prohibit local regulations on political contributions.

**CS by Ethics and Elections on February 3, 2020:**

The Committee Substitute:

- Instead of removing a prohibition against using the address on a voter's identification presented at the polls as the basis for both confirming and challenging an elector's legal residence as contained in the underlying bill, the CS just removes the prohibition against using the address to confirm an elector's legal residence.
- Requires a poll watcher to be a qualified and registered elector of the state, broadening the current statutory language which requires a poll watcher to be a qualified and registered elector of the county in which he or she serves.
- Allows a qualifying office with the Department of State or supervisors of elections to accept and hold qualifying papers submitted by a state or county political party executive committee person candidate as much as 14 days before the beginning of the qualifying period, to be processed and filed during the qualifying period, instead of language in the underlying bill which would have allowed candidates to qualify to run for office any time before the current deadline of noon on the 67<sup>th</sup> day preceding the primary election.
- Preempts local governmental entities from enacting or adopting any limitation or restriction involving contributions to a political committee or electioneering communications organization or expenditures for an electioneering communication or an independent expenditure.

- B. **Amendments:**

None.