

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 Rules

BILL: CS/CS/CS/SB 90

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; Ethics and Elections Committee; and Senator Baxley

SUBJECT: Election Administration

DATE: April 20, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Candeleria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Biehl</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 90 makes the following changes to the Election Code:

- Reduces the number of elections for which one request for a vote-by-mail (VBM) ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Limits a person’s lawful possession of a VBM ballot to his or her own, those of his or her immediate family, and two others, and expands the definition of “immediate family” to include a grandchild;
- Prohibits a governmental entity from mailing or otherwise providing a VBM ballot without a request;
- Requiring that a voter’s signature be verified against a signature within the preceding 4 years; if a hard copy signature is not available within that time frame, the verifier may use the most recent hard copy signature on record;
- Limits use of drop boxes to a county’s early voting hours of operation and requires drop boxes at all locations to be monitored in person;
- Creates additional security and accountability measures related to drop boxes;
- Conforms the distances for the two no-solicitation zones;
- Adds giving any item to a voter to the list of activities prohibited within the no-solicitation zone, except that supervisors’ staff may still provide needed items to voters within the no-solicitation zone;

- Improves security for voter registration and VBM ballot requests by requiring an additional identifier number for the elector and requiring additional risk assessments for the online voter registration system;
- Increases transparency by creating new requirements for real-time election data reporting, observers of canvassing processes, duplication of VBM ballots, notice regarding canvassing board members, and notice regarding drop box locations;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Subjects no-party-affiliation candidates to the same oath requirements as those for candidates affiliated with a party;
- Conforms provisions regarding the declaration of felon voting eligibility and third-party voter registrations to court orders; and
- Makes other, administrative changes intended to facilitate election administration.

Except as otherwise provided in the bill, the bill takes effect July 1, 2021.

II. Present Situation:

Please see “Effect of Proposed Changes.”

III. Effect of Proposed Changes:

Felon Declaration of Voting Eligibility (Sections 1, 3, and 6)

Present Situation

Until 2018, the Florida Constitution disqualified a person convicted of a felony from voting or holding office until his or her civil rights had been restored.¹ In the 2018 general election, Florida voters approved a state constitutional amendment to provide voting rights restoration to specified felons (Amendment 4). Specifically, the ballot language provided that “any disqualification arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.”² The provision excludes a “person convicted of murder or a felony sexual offense” from restoration of voting rights unless and until his or her civil rights are restored.³

In 2019, the Legislature passed statutory language implementing Amendment 4. The language included detailed changes to the requirements for the felon declaration of voter eligibility in the statewide voter registration application that were designed to more closely track the language of the amendment. Specifically, it provided three options as to whether the applicant:

- Had never been convicted of a felony;

¹ Article VI, s. 4, FLA. CONST. (2018).

² *Id.* See also Time, ‘Our Voice Will Count.’ *Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, Alejandro De Le Garza, November 7, 2018, available at <http://time.com/5447051/florida-amendment-4-felon-voting/> (last accessed on February 17, 2021).

³ The Department of State, Division of Elections, Proposed Constitutional Amendments and Revisions for the 2018 General Election, p. 10-11, <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf>. (last accessed on February 17, 2021).

- Had been convicted of a felony, but had his or her civil rights restored through executive clemency; or
- Had been convicted of a felony, but had his or her voting rights restored pursuant to Amendment 4.

After passage of the implementing legislation, certain felons and voting rights groups challenged the legislation in both state and federal courts. The federal district court judge noted in an order that the changes to the felon declaration of voter eligibility failed to reach felons whose rights had been restored in other states or through other methods, including executive pardons.⁴ During the litigation, the Secretary of State stated that every Florida supervisor of elections (supervisor) was accepting the prior felon voting declaration language.⁵

Effect of Proposed Changes

Section 1 addresses the order of the federal district court judge and conforms to the current practice of the Division of Elections (division) and supervisors in publishing and processing voter registration applications by reverting the statutes to the pre-2019 felon declaration of voting eligibility language.

Sections 3 and 6 make conforming changes, including the elimination of a public-records exemption specifically created for the application form's invalidated felon voting attestation requirements.

Voter Registration (Sections 2, 4, and 7)

Online Voter Registration System

Present Situation

Current law requires the division to maintain a website via which an applicant can submit a voter registration application, including both first-time applications and updates, and submit information necessary to establish an applicant's eligibility to vote.⁶ The online system must use a unique identifier for each applicant to prevent unauthorized persons from altering a voter's registration information.⁷ If an applicant has a Florida driver license or identification card number, that information must be compared with information maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).⁸

The division must, every two years, conduct a comprehensive risk assessment of the system. The assessment must comply with specified methodology for identifying security risks, determining the magnitude of such risks, and identifying areas that require safeguards.⁹

⁴ See, *Jones v. DeSantis*, 410 F. Supp. 3d 1284, 1308 (N.D. Fla. 2019).

⁵ *Id.* at 1308. Before the 2019 change, the statutes governing Florida's statewide voter registration form used to simply require an applicant to mark a checkbox affirming that he or she was not a convicted felon, or, if so, that he or she had his or her voting rights restored.

⁶ Section 97.0525(2), F.S.

⁷ Section 97.0525(3)(a), F.S.

⁸ Section 97.0525(4), F.S.

⁹ Section 97.0525(3)(b), F.S.

Effect of Proposed Changes

Section 2 makes a number of changes to system requirements that are intended to increase security, as follows.

The bill adds to the current requirement that a unique identifier be used to prevent unauthorized persons from altering a voter's registration information to require that for an applicant to update his or her voter registration record, he or she must provide his or her date of birth and:

- Either his or her Florida driver license number or Florida identification card number, or, if he or she has neither,
- The last four digits of his or her social security number.

Regarding new applicants for voter registration, the bill requires the applicant to provide:

- Either his or her Florida driver license number or identification card number, or, if he or she has neither,
- The last four digits of his or her social security number.

The bill provides conforming provisions for the verification of a social security number, if submitted by an applicant.

The bill creates additional requirements for the comprehensive risk assessment by requiring it to incorporate:

- Load testing and stress testing to ensure that the system has sufficient capacity to accommodate foreseeable use, including during specified periods of high volume;
- Screening of computers and networks used to support the system for malware and other vulnerabilities;
- Evaluation of database infrastructure in order to fortify defenses against cyberattacks; and
- Identification of any anticipated threats to the security and integrity of data collected, maintained, received, or transmitted by the system.

Required Identifiers for Changes to Registration Information

Present Situation

Current law provides the following requirements for changes to voter registration:

- For an address change within the state, the elector may notify the supervisor via telephone or electronic means, in which case the elector must provide his or her date of birth, or may submit the change on a voter registration application or other signed written notice.
- Other address changes must be submitted using the voter registration application.
- For a political party change or name change, the elector must notify the supervisor by using a signed written notice that contains the elector's date of birth or voter registration number.

Effect of Proposed Changes

As an additional security measure, Section 7 requires that for any medium by which a registration change is made, the elector must also provide one of the following identifier numbers:

- His or her Florida driver license number;
- His or her Florida identification card number; or
- The last four digits of his or her social security number.

Duties of Department of Highway Safety and Motor Vehicles

Present Situation

Current law requires the DHSMV to participate in specified agreements to verify voter registration information.¹⁰

Effect of Proposed Changes

Section 4 requires the DHSMV to assist the Department of State (DOS) in regularly identifying changes in residence address on the driver license or identification card of any voter and requires the DOS to report all such changes to the appropriate supervisors, who must update voters' registration records accordingly.

Third-Party Voter Registrations (Section 5)

A third-party voter registration organization is any person, entity, or organization that collects any voter registration application, but does not include:

- A person who seeks only to register to vote or collect a voter registration application from that person's spouse, child, or parent; or
- A person engaged in registering to vote or collecting voter registration applications as an employee or agent of the division, supervisor, DHSMV, or an official voter registration agency.¹¹

Florida Statutes and division rules govern activities of third-party voter registration organizations.

In 2012, a federal district court judge entered a permanent injunction ruling a number of statutory and rule provisions in violation of federal law.¹² The following changes are made to conform to the provisions of the injunction.¹³

Requirements for Registration Agents

Present Situation

Current law requires that before an organization engages in any voter registration activities, it must register and provide specified information to the Division of Elections, including, in part:

- The names, permanent addresses, and temporary addresses of each registration agent;¹⁴ and
- A sworn statement from each registration agent stating that he or she will obey all state laws and rules regarding the registration of voters.¹⁵

Effect of Proposed Changes

Section 5:

¹⁰ Sections 97.057(11)-(12), F.S.

¹¹ Florida Division of Elections, *Third-Party Voter Registration Organizations*, <https://dos.myflorida.com/elections/for-voters/voter-registration/third-party-voter-registration-organizations/> (last viewed April 20, 2021).

¹² *League of Women Voters of Florida v. Detzner*, case no. 4:11cv628-RH/WCS (signed August 30, 2012).

¹³ The DOS has already revised its rules to comply with the injunction.

¹⁴ Section 97.0575(1)(c), F.S.

¹⁵ Section 97.0575(1)(d), F.S.

- Provides that the identifying information requirement does not apply to persons who only solicit applications and do not collect or handle voter registration applications; and
- Deletes the sworn statement requirement.

Deadline for Submission of Completed Applications

Present Situation

Current law requires an organization to deliver a completed voter registration application to the Division of Elections or supervisor within 48 hours or on the next business day.¹⁶ The federal injunction provided that an organization must have 10 days at a minimum.

Effect of Proposed Changes

Section 5 extends the deadline to 14 days, except that it may not be after registration closes for the next ensuing election.

Information Provided to Applicant

Present Situation

Current law does not require organizations to provide specific information to voter registration applicants.

Effect of Proposed Changes

Section 5 requires an organization to notify each applicant that the organization may not deliver the application in less than 14 days or before registration closes for the next ensuing election and that the applicant may deliver his or her application in person or by mail. It also requires each organization to inform an applicant how to register online with the Division of Elections and how to determine whether his or her application has been delivered.

Division of Election Rules

Present Situation

Current law requires the Division of Elections to adopt rules to ensure the integrity of the registration process, including rules requiring organizations to account for all state and federal registration forms used by their registration agents.¹⁷

Effect of Proposed Changes

Section 5:

- Deletes the requirement that the rules require organizations to account for all state and federal registration forms; and
- Creates a new requirements that the rules include controls to ensure that all completed forms are promptly delivered to the Division of Elections of Supervisor.

Election Data Reporting (Section 8)

Present Situation

¹⁶ Section 97.0575(3)(a), F.S.

¹⁷ Section 97.0575(5), F.S.

Current law requires supervisors to submit to the Department of State precinct-level election results within 30 days after an election's certification by the Elections Canvassing Commission, except for ballot types for which fewer than 30 voters voted.¹⁸ There are no requirements regarding reporting of data related to voter turnout or vote-by-mail (VBM) ballots.

Effect of Proposed Changes

Section 8 requires each supervisor to publish on his or her website:

- Voter turnout data throughout the day on Election Day (at a minimum, at 8 a.m., 2 p.m., and 6 p.m.); and
- Daily updates on the number of VBM ballots requested, returned, and left to count.

Section 8 also clarifies current law regarding the ballot type or precinct subtotals which are exempted from precinct-level reporting requirements.

Candidate Oaths (Sections 9, 10, and 11)

Present Situation

Current law requires each candidate for any office other than a judicial office to take and subscribe to in writing a specified oath or affirmation.¹⁹ It also requires any person seeking to qualify for nomination as a candidate of any political party to, at the time of subscribing to the oath or affirmation, state in writing:

- The party of which the person is a member;
- That the person has not been a registered member of any other political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify; and
- That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.²⁰

Effect of Proposed Changes

Section 9 situates a person seeking to qualify for office as a candidate with no party affiliation similarly to those who are affiliated with a political party by requiring such a person to, at the time of subscribing to the oath or affirmation, state in writing that he or she:

- Is registered without any political party affiliation; and
- Has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

Sections 10 and 11 make conforming changes to items that must be submitted to the filing officer by the end of the qualifying period.

No-Solicitation Zones (Sections 14 and 24)

Present Situation

¹⁸ Section 98.0981(2), F.S.

¹⁹ Section 99.021(1)(a), F.S.

²⁰ Section 99.021(1)(b), F.S.

In 2019, the Legislature expanded the distance from the entrance to a polling place, polling room, early voting site, or certain supervisor of elections office within which solicitation of a voter is prohibited from 100 feet to 150 feet.²¹ “Solicitation” in that context is defined to include, but not be limited to:

- Seeking or attempting to seek any vote, fact, opinion, or contribution;
- Distributing or attempting to distribute any political or campaign material, leaflet, or handout;
- Conducting a poll except as pursuant to a specified exception;
- Seeking or attempting to seek a signature on any petition; and
- Selling or attempting to sell any item.²²

Another statutory provision prohibits solicitation of a voter in an effort to provide assistance to vote within 100 feet of the entrance of a polling place or early voting site.²³

Effect of Proposed Changes

Section 14 expands the distance from the entrance of a polling place or early voting site within which a person may not solicit a voter in an effort to provide assistance to vote from 100 feet to 150 feet. This change makes consistent the two no-solicitation zones.

Section 24 adds “giving or attempting to give any item to a voter” to the activities that are prohibited within the no-solicitation zone. It makes clear that an employee of or volunteer with the supervisor may still provide nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters.

Finally, Sections 14 and 25 add drop box locations to the types of locations that are covered by the no-solicitation zones.

Retention of Election Materials (Section 15)

Present Situation

Florida law requires all ballots, forms, and other election materials to be retained in the custody of the supervisor in accordance with the schedule approved by the Division of Library and Information Services of the DOS.²⁴

Federal law requires each election officer to retain and preserve all election materials for 22 months.²⁵

Effect of Proposed Changes

To conform Florida law to federal requirements, Section 15 revises the state’s required retention time period for election materials to specify that such materials must be maintained for a

²¹ Chapter 2019-162, s. 11, L.O.F.; codified at s. 102.031(4)(a), F.S.

²² Section 102.031(4)(b), F.S.

²³ Section 101.051(2), F.S.

²⁴ Section 101.545, F.S. The state retention schedule for election records is available at <https://files.floridados.gov/media/693583/g03.pdf> (last viewed April 20, 2021).

²⁵ 52 U.S.C. 20701.

minimum of 22 months after an election in addition to in accordance with the regular retention schedule.

Certification of Voting Systems (Section 16)

Present Situation

Current law requires the Department of State to examine and certify a voting system before it can be used in an election. The Department of State has 90 days from the date of submission of a voting system to approve or disapprove it.²⁶

Effect of Proposed Changes

Section 16 extends the deadline to 120 days from the date of submission.²⁷

Voter Identification at the Polls (Section 12)

Present Situation

Current law specifies requirements for use of voter identification at the polls.²⁸ There appears to be a conflict regarding use of the identification to confirm the voter's address. Specifically, the law provides both that:

- The address appearing on the identification presented by the voter may not be used as the basis to confirm or otherwise challenge a voter's legal residence; and
- When the address on the identification presented by a voter matches the address in the supervisor's records, the voter may not be asked to provide additional information or to recite his or her home address. This implies that additional information could be required if the addresses do not match.

Effect of Proposed Changes

To resolve the conflict, Section 12 deletes the provision that implies additional information could be required if the address on the identification presented by the voter does not match the address in the supervisor's records.²⁹

Request for Vote-by-Mail Ballot (Section 20)

Present Situation

Florida law allows an elector to request a VBM ballot to be used in lieu of voting at the polls during early voting or on Election Day. An elector does not need to provide a reason for a VBM ballot request.

An elector can request a VBM ballot in person, in writing, or by telephone.³⁰ In addition, a request for a VBM ballot can be made by the elector's legal guardian or, if directed by the

²⁶ Section 101.5605, F.S.

²⁷ This proposed change is part of the executive branch's 2021 legislative package.

²⁸ Section 101.043, F.S.

²⁹ This proposed change is included in the Florida supervisors of elections' (FSE's) 2021 legislative package.

³⁰ Sections 101.62(1)(a)-(b), F.S.

elector, a member of the elector's immediate family.³¹ The person making the request must disclose:

- The name of the elector for whom the ballot is requested;
- The elector's address;
- The elector's date of birth;
- The requester's name;
- The requester's address;
- The requester's driver license number, if available;
- The requester's relationship to the elector; and
- The requester's signature, if the request is made in writing.³²

If an elector requests a VBM ballot to be sent to an address not on file in the Florida Voter Registration System, the request must be made in writing and signed by the elector, unless the elector is an absent uniformed service voter or overseas voter.³³

Current law does not specifically prohibit a supervisor of elections (supervisor) from mailing or otherwise providing a VBM ballot without a request.

For each request for a vote-by-mail ballot received, the supervisor must record:

- The date the request was made;
- The date the vote-by-mail ballot was delivered to the voter or voter's designee³⁴ or to the post office or other carrier;
- The date the ballot was received by the supervisor;
- The absence of the elector's signature on the voter's certificate, if applicable; and
- Such other information he or she may deem necessary.³⁵

Effect of Proposed Changes

Section 20 requires one of the following additional identifiers for the elector when a written or telephonic request is made for a VBM ballot, when a request is made for a VBM ballot to be sent to an address not on file, or when a VBM ballot is requested by a designee:

- The elector's Florida driver license number;
- The elector's Florida identification card number; or
- The last four digits of the elector's social security number.

Section 20 also:

- Adds an identification card number or the last four digits of the requester's social security number to the types of acceptable identifiers for a requester.
- Adds "grandchild" to the definition of "immediate family."
- Adds to the types of information related to vote-by-mail ballots that supervisors must record to also include the identity of the voter's designee or the address to which the ballot was

³¹ "Immediate family" is defined to mean a spouse, parent, child, grandparent, or sibling (s. 101.62(4)(c)4., F.S.).

³² Section 101.62(1)(b), F.S.

³³ Section 101.62(1)(b), F.S.

³⁴ An elector may designate in writing a person to pick up the VBM ballot for the elector, in compliance with ballot possession limitations (s. 101.62(4)(c)4., F.S.).

³⁵ Section 101.62(3), F.S.

mailed, and whether the voter's certificate on a returned ballot contains a signature that does not match the elector's signature in the registration books or precinct register.³⁶

- Prohibits a county, municipality, or state agency from mailing or otherwise providing a VBM ballot unless a request is made.

Delivery of Vote-by-Mail Ballot (Section 21)

Present Situation

Current law requires a supervisor to enclose with each VBM ballot two envelopes:

- A secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and
- A mailing envelope, into which the absent elector shall then place the secrecy envelope.³⁷

Current law does not prohibit display of partisan information on the outside of VBM ballots or accompanying envelopes.

Effect of Proposed Changes

Section 21 provides that the outside of a VBM ballot and the secrecy and mailing envelopes may not display the party affiliation of the absent elector who has been issued such ballot or display any other partisan information.

Return of Vote-by-Mail Ballot (Sections 23 and 26)

Present Situation

Current law allows a voter to return a completed VBM ballot via mail or drop it off at an authorized site. It requires supervisors to allow voters to physically return completed VBM ballots by placing the envelope containing the marked ballot in a secure drop box.³⁸ Secure drop boxes must be placed at the main office of the supervisor, at each branch office of the supervisor, and each early voting site. Drop boxes may also be placed at any other site that would otherwise qualify as an early voting site if such site is staffed during the county's early voting hours of operation by an employee of the supervisor's office or a sworn law enforcement officer.³⁹

Current law makes it a first-degree misdemeanor for a person to provide or offer to provide, and for any person to accept, a benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two VBM ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member.⁴⁰

Effect of Proposed Changes

Section 23 does the following related to drop boxes:

³⁶ Section 98.461(2), F.S., requires a computer printout or electronic database to be used at the polls as a precinct register. The precinct register must contain the date of the election, the precinct number, specified information related to each registered voter, and spaces for the voter's signature and for the initials of the witnessing clerk or inspector.

³⁷ Section 101.64(1), F.S.

³⁸ Section 101.69(2), F.S.

³⁹ *Id.*

⁴⁰ Section 104.0616(2), F.S. The term "immediate family" means a person's spouse or the parent, child, grandparent, or sibling of the person or the person's spouse (s. 104.0616(1), F.S.).

- Retains currently authorized locations for drop boxes, but limits their use to a county’s early voting hours of operation and requires in-person monitoring by an employee of the supervisor.
- Eliminates sworn law enforcement officers from the categories of persons who may monitor drop boxes.
- Requires each supervisor to designate drop box sites at least 30 days before an election and prohibits a change of drop box locations once designated.
- Requires each drop box to be emptied at the end of early voting hours on each day of early voting and requires all ballots retrieved from the drop boxes to be returned to the supervisor’s office.
- Requires employees of supervisors to comply with statutory requirements for chain of custody of ballots.
- Creates a civil penalty of \$25,000 for a supervisor who leaves a drop box open outside of early voting hours.

Section 26 limits a person’s lawful possession of a VBM ballot to his or her own, those of his or her immediate family, and two others. It also expands the definition of “immediate family” to include a grandchild.

Effective Period for Vote-by-Mail Ballot Request (Section 20)

Present Situation

A general election is held on the first Tuesday after the first Monday in November of every even-numbered year – this means that a general election is held every two years.⁴¹ A primary election is held 11 weeks before each general election.⁴² The dates for the next primary election and general election are:

- Primary election – August 23, 2022; and
- General election – November 8, 2022.

Florida law provides that one request from an elector for a VBM ballot is sufficient to receive a VBM ballot for all elections through the end of the calendar year of the second ensuing regularly scheduled general election,⁴³ unless the elector indicates at the time of the request the elections for which he or she would like to receive a VBM ballot.⁴⁴ A request for a VBM ballot may be considered canceled when any first-class mail sent by the supervisor of elections (supervisor) to the elector is returned as undeliverable.⁴⁵

Since the establishment of Florida’s absentee/vote-by-mail program, the number of elections for which one request for a VBM ballot is sufficient has varied, including:

⁴¹ Article VI, s. 5(a), FLA. CONST.; and s. 100.031, F.S. A general election is held to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election.

⁴² Section 100.061, F.S. A primary election is held to determine party nominees to be on the ballot in the general election to fill each federal, state, county, or district office.

⁴³ For example, under the current law, if a voter makes a general request for a VBM ballot in February 2021, then he or she would receive VBM ballots for all elections through the end of 2024, because the next two general elections will be held in November 2022 and November 2024, respectively.

⁴⁴ Section 101.62(1)(a), F.S.

⁴⁵ *Id.*

- All elections held within a calendar year;⁴⁶
- All elections through the next regularly scheduled general election;⁴⁷
- All elections through the next two regularly scheduled general elections;⁴⁸ and
- All elections through the end of the calendar year of the second ensuing regularly scheduled general election.⁴⁹

In addition to Florida law, the federal Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) provides absentee voting requirements for federal offices for voters who are United States uniformed services members on active duty, Merchant Marine members, spouses or dependents thereof, or United States citizens residing outside of the United States.⁵⁰ In part, the UOCAVA requires establishment of an official post card form, known as the federal post card application (FPCA), to be used for voter registration application and absentee ballot application.⁵¹ The UOCAVA does not specify a length of time for which one FPCA request is effective. The Federal Voting Assistance Program, which is tasked with administrative responsibilities for the UOCAVA, currently provides guidance that the FPCA request allow an eligible voter to request an absentee ballot for all federal elections in the calendar year.⁵² The guidance further recommends that eligible voters send in a new FPCA request every January and each time they move.⁵³

Effect of Proposed Changes

Section 20 reduces the number of elections for which one request for a VBM ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election.⁵⁴ It specifies that a request received after November 6, 2018, and before July 1, 2021, will still be deemed sufficient through the end of the calendar year of the *second* ensuing regularly scheduled general election.

Starting Date for Vote-by-Mail Canvassing Period (Section 22)

Present Situation

Florida law allows county canvassing boards⁵⁵ to begin canvassing VBM ballots starting at 7 a.m. on the 22nd day before an election.⁵⁶ In 2019, the Legislature extended this starting period from 15 days before an election to 22 days before an election.⁵⁷

⁴⁶ See, e.g., the 2006 Florida Statutes.

⁴⁷ See, e.g., ch. 2010-167, s. 7, L.O.F.

⁴⁸ See, e.g., ch. 2007-30, s. 30, L.O.F.

⁴⁹ See, e.g., ch. 2011-40, s. 37, L.O.F.

⁵⁰ 52 U.S.C. 203.

⁵¹ 52 U.S.C. ss. 20301(b)(2) and 20302(a)(4).

⁵² Federal Voting Assistance Program, *Frequently Asked Questions about Absentee Voting*, available at <https://www.fvap.gov/guide/appendix/faq>, last accessed February 17, 2021.

⁵³ *Id.*

⁵⁴ For example, under the proposed changes, if a voter makes a request for a VBM ballot on August 1, 2021, then he or she would receive VBM ballots for all elections held through December 31, 2022, which is the end of the calendar year of the next regularly scheduled general election.

⁵⁵ A county canvassing board is composed of the supervisor of elections; a county court judge, who acts as chair; and the chair of the board of county commissioners (s. 102.141(1), F.S.).

⁵⁶ Section 101.68(2)(a), F.S.

⁵⁷ Chapter 2019-162, s. 19, L.O.F.

In 2020, at the request of the supervisors and in response to the COVID-19 pandemic, Governor Ron DeSantis issued an executive order suspending the 22-day timeframe and allowing each county canvassing board to begin canvassing VBM ballots as soon as the Logic and Accuracy (L&A) testing of the machines/equipment was completed.⁵⁸ The L&A tests are designed to ensure the integrity and accuracy of the tabulators and voting machines.⁵⁹ Because the timing of these L&A tests is tied to the beginning of early voting in each county,⁶⁰ which varies from 10 to 15 days before an election,⁶¹ in 2020 counties were generally able to start their VBM canvass 35 to 40 days before the primary election and general election, which is 13 to 18 days earlier than the 22 days that the current statute provides.

The media has credited the canvassing of VBM ballots prior to Election Day as one of the reasons Florida's 2020 general election went so smoothly and why results were available so much more quickly than for states, such as Pennsylvania, that had to wait until Election Day to start counting.⁶²

Effect of Proposed Changes

Section 22 allows a county canvassing board to begin canvassing VBM ballots as soon as the county finishes L&A testing. In practice, this means that:

- A county that begins early voting as soon as permitted under law (15 days before an election) may begin VBM canvassing as early as the 40th day before an election instead of the 22nd day before an election, providing an additional 18 days to count; and
- A county that waits until 10 days before an election to begin early voting will be permitted to begin VBM canvassing as early as the 35th day before an election instead of the 22nd day before an election, providing an additional 13 days to count.

This change will facilitate a more orderly election administration process and quicker reporting of results.

Duplication of VBM Ballots (Section 17)

Present Situation

Current law requires a duplicate to be made and substituted for any VBM ballot:

- That is physically damaged so that it cannot properly be tabulated by the voting system's automatic tabulating equipment;
- That contains an overvoted race; or
- In which every race is undervoted.⁶³

⁵⁸ Office of the Governor, Executive Order No. 20-149 (June 17, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-149.pdf, last accessed February 4, 2021.

⁵⁹ Section 101.5612(2), F.S.

⁶⁰ Each supervisor must complete an L&A test on any day up to 25 days before the start of early voting (*id.*).

⁶¹ *Id.*; *see also*, s. 101.657(1)(d), F.S. (counties *may* start early voting 15 days before an election, but *must* start no later than 10 days before).

⁶² *See, e.g.*, Tampa Bay News 10 (WTSP), *Florida Counted Votes Quickly in the 2020 Election – What Happened in the Other States?* (Nov. 18, 2020), available at <https://www.wtsp.com/article/news/politics/florida-2020-election-counting/67-33b47308-7571-4c70-8afc-cfa8b872bcca>, last accessed February 4, 2021.

⁶³ Section 101.5614(4)(a), F.S.

The duplicate copies must be made in the presence of witnesses and include all valid votes as determined by the canvassing board based on rules adopted by the division. Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof must be allowed to observe the duplicate of ballots.⁶⁴

Effect of Proposed Changes

Section 17:

- Requires duplicates of ballots to be made in an open and accessible room.
- Provides that a duplicate may not include a vote if the voter's intent in such race or on such measure is not clear.
- Requires a designated observer to be allowed to stand in close enough proximity to observe the markings on each ballot and the duplication taking place.
- Creates a process for resolving a reasonable objection by an observer to a duplicate of a ballot.

Signature Verification (Sections 13 and 22)

Present Situation – VBM Ballots

The mailing envelope in which an absent elector sends back a marked VBM ballot must bear on the back side a voter's certificate via which the elector must affirm with a signature that he or she is a qualified and registered voter of the relevant county and that he or she has not and will not vote more than one ballot in the election.⁶⁵

If an elector returns a VBM ballot that does not include a signature or contains a signature that does not match the one in the registration books or precinct register, the supervisor must notify the elector of the signature deficiency and direct the elector to the cure affidavit⁶⁶ and instructions on the supervisor's website.⁶⁷ Along with the cure affidavit, the elector must submit a copy of one of a specified list of acceptable identifications.⁶⁸

During canvassing of VBM ballots, a canvassing board must, if the supervisor has not already done so, compare the elector's signature on the voter's certificate or the ballot cure affidavit with the elector's signature in the registration books or the precinct register. A VBM ballot may only be counted if:

- The signature on the voter's certificate or the cure affidavit matches the signature in the registration books or precinct register;⁶⁹ or

⁶⁴ *Id.*

⁶⁵ Section 101.64(1), F.S.

⁶⁶ The VBM ballot cure affidavit requires the elector to affirm with a signature that he or she requested and returned the VBM ballot and has not and will not vote more than one ballot in the election (s. 101.68(4)(c), F.S).

⁶⁷ Section 101.68(4)(a), F.S. The supervisor may make the notification via email, text message, or telephone.

⁶⁸ Section 101.68(4)(d)3., F.S.

⁶⁹ In the case of a cure affidavit, the supporting identification must also confirm the identity of the elector.

- The cure affidavit contains a signature that does not match the signature in the registration books or precinct register, but the elector has submitted a current and valid “Tier 1 identification”⁷⁰ that confirms the identity of the elector.⁷¹

Present Situation – Provisional Ballots

Current law entitles a voter whose eligibility cannot be determined to vote a provisional ballot.⁷² A Provisional Ballot Voter’s Certificate and Affirmation must be signed by the voter and accompany the provisional ballot.⁷³

If it is determined that the voter was registered and entitled to vote at the precinct where the person cast a vote, the canvassing board must compare the signature on the voter’s certificate or the cure affidavit with the signature on the voter’s registration or precinct register. A provisional ballot may be counted only if:

- The signature on the voter’s certificate or the cure affidavit matches the elector’s signature in the registration books or the precinct register; or
- The cure affidavit contains a signature that does not match the signature in the registration books or precinct register, but the elector has submitted a current and valid “Tier 1 identification”⁷⁴ that confirms the identity of the elector.⁷⁵

If a provisional ballot does not include a signature or contains a signature that does not match the one in the registration books or precinct register, the supervisor must notify the voter of the signature deficiency and direct the voter to the cure affidavit⁷⁶ and instructions on the supervisor’s website.⁷⁷ Along with the cure affidavit, the elector must submit a copy of one of a specified list of acceptable identifications.⁷⁸

Effect of Proposed Changes

Section 13 creates a new procedure for signature verification. Specifically, it:

⁷⁰ “Tier 1 identification” means a current and valid identification that includes the elector’s name and photograph, including a Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; Florida license to carry a concealed weapon or firearm; of employee identification card issued by any branch, department, agency, or entity of the federal government, the state, a county, or a municipality (s. 101.68(4)(d)2., F.S.).

⁷¹ Section 101.68(2)(c)1., F.S.

⁷² Section 101.048(1), F.S.

⁷³ See ss. 101.048(2)-(3), F.S.

⁷⁴ “Tier 1 identification” means a current and valid identification that includes the elector’s name and photograph, including a Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; Florida license to carry a concealed weapon or firearm; of employee identification card issued by any branch, department, agency, or entity of the federal government, the state, a county, or a municipality (s. 101.048(6)(d)3.a., F.S.).

⁷⁵ Section 101.048(2)(b), F.S.

⁷⁶ The provisional ballot cure affidavit requires the elector to affirm with a signature that he or she voted the provisional ballot and has not and will not vote more than one ballot in the election (s. 101.048(5)(c), F.S.).

⁷⁷ Section 101.048(6)(a), F.S. The supervisor may make the notification via email, text message, or telephone.

⁷⁸ Section 101.048(6)(d)3., F.S.

- Defines “wet signature” to mean a signature that a voter physically signed on paper with a pen or other writing utensil.
- Provides that when a signature is verified with the voter’s signature in the registration records, the verifier shall only use a signature in the registration books or the precinct register from the preceding 4 years. If a wet signature is not available from the preceding 4 years, the verifier may use the most recent wet signature on record.

Section 22 provides that during the VBM ballot signature comparison process, the supervisor may not use any knowledge of the political affiliation of the voter whose signature is subject to verification.

Canvassing Boards (Section 25)

Present Situation

Current law provides that a county canvassing board is composed of the supervisor, a county court judge, and the chair of the board of county commissioners. Alternate canvassing board members may be appointed pursuant to statutory specifications.⁷⁹

Current law requires public notice of the time and place at which a county canvassing board will meet to canvass absent electors’ ballots and provisional ballots to be given at least 48 hours in advance by publication on the supervisor’s website and in one or more newspapers of general circulation in the county.⁸⁰ The canvassing board shall meet in a building accessible to the public in the county where the election occurred.⁸¹

Effect of Proposed Changes

Section 25:

- Requires the names of canvassing board members to be posted on the supervisor’s website before any VBM ballot is tabulated.
- Adds canvassing board members and alternates to the types of information that must be publicly noticed for canvassing board meetings.
- Specifies that during each meeting of a county canvassing board, each political party and candidate may have one watcher within a distance that allows him or her to directly observe ballots being examined for signature matching and other processes.

Post-Election Reports (Sections 18 and 19)

Present Situation

Current law requires the following post-election reports:

- *Audit Report* – Immediately after certification of each election, the county canvassing board must conduct an audit that must be completed no later than the seventh day following certification of the election. The county canvassing board must provide a report with the results of the audit to the DOS within 15 days after completion of the audit.⁸²

⁷⁹ Section 102.141(1), F.S.

⁸⁰ Section 102.141(2)(b), F.S.

⁸¹ Section 102.141(2)(a), F.S.

⁸² Section 101.591, F.S.

- *Overvotes/Undervotes Report* – No later than December 15 of each general election year, each supervisor must report to the DOS the total number of overvotes⁸³ and undervotes⁸⁴ in specified races, along with related specified information. Upon receipt of the information, the DOS must prepare a public report on the performance of each type of voting system and submit the report to the Governor, Senate President, and House Speaker by January 31 of the following year.⁸⁵

Effect of Proposed Changes

Sections 18 and 19 combine the audit report and the overvotes/undervotes report and require the combined report to be submitted to:

- The Department of State by December 15; and
- The Governor, Senate President, and House Speaker by February 15.

Effective Date of the Bill (Section 27)

Except as otherwise provided in the bill, the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. Bills that affect state or local elections are exempt from the requirements of Art. VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁸³ “Overvote” means that the elector marks or designates more names than there are persons to be elected to an office or designates more than one answer to a ballot question, and the tabulator records no vote for the office or question (s. 97.021(26), F.S.).

⁸⁴ “Undervote” means that the elector does not properly designate any choice for an office or ballot question, and the tabulator records no vote for the office or question (s. 97.021(41), F.S.).

⁸⁵ Section 101.595, F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The prohibition against mailing or otherwise providing a VBM ballot without a request may reduce supervisor costs to the extent that they are currently mailing ballots without request.

If the reduced time period for which one VBM ballot request is sufficient results in a higher total number of requests, supervisors are likely to experience additional workload and incur additional processing costs.

The following provisions may increase the workload of supervisors by an indeterminate amount:

- Requiring supervisors to record additional information related to VBM ballot requests.
- Creating additional requirements for monitoring drop boxes and retrieving ballots from drop boxes.
- Requiring an additional identifier number for electors for a VBM ballot request or registration change.
- Requiring new, real-time election data reporting.

The combination of post-election reports and extension of the deadline to approve or disapprove a voting system may facilitate work of the DOS.

VI. Technical Deficiencies:

The Legislature may wish to revise Section 13 to make clear that electronic signatures may be used in signature verification, particularly when there are no wet signatures on file.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.0525, 97.053, 97.057, 97.0575, 97.0585, 97.1031, 98.0981, 99.021, 99.061, 99.063, 101.043, 101.051, 101.545, 101.5605, 101.5614, 101.591, 101.595, 101.62, 101.64, 101.68, 101.69, 102.031, 102.141, and 104.0616.

The bill creates section 101.046, Florida Statutes.

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/CS by Rules on April 20, 2021:

The committee substitute adds the following new provisions to the bill:

- Returns to their pre-2019 form the statutory requirements for the felon declaration of voting eligibility on the uniform statewide voter registration application;
- Requires an additional identifier for an elector to request a change to his or her voter registration;
- Creates additional requirements related to identification of changes in residence address of a voter;
- Revises election data reporting requirements;
- Revises requirements for duplication of vote-by-mail ballots;
- Conforms distances in no-solicitation zones;
- Prohibits anyone other than an employee of or volunteer with a supervisor to give items to voters within the no-solicitation zone;
- Adds drop box locations to no-solicitation zones;
- Prohibits a supervisor from using any knowledge of the political affiliation of a voter whose signature is subject to verification;
- Creates new notice requirements related to canvassing board members;
- Revises provisions governing third-party voter registrations to comply with a federal injunction;
- Revises the retention period for election materials to comport with federal law; and
- Extends the deadline by which the Department of State must approve or disapprove a voting system.

The committee substitute revises previously included provisions related to:

- The effect on outstanding vote-by-mail ballot requests of the bill's change to the time frame for which one request is sufficient;
- Persons who may lawfully be in possession of a vote-by-mail ballot;
- Use of drop boxes;
- Providing a vote-by-mail ballot without a request;
- Signature matching; and
- Additional identifiers required to request a vote-by-mail ballot.

The committee substitute retains without revision previously included provisions related to:

- The time frame for which one vote-by-mail ballot request is sufficient;
- The starting time for canvassing vote-by-mail ballots; and
- Display of partisan information on the outside of vote-by-mail ballots or envelopes.

CS/CS by Governmental Oversight and Accountability on March 10, 2021:

The committee substitute makes the following changes:

- Reduces the number of elections for which one request for a vote-by-mail ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Limits persons who may lawfully be in possession of a vote-by-mail ballot to the voter and his or her immediate family;
- Prohibits the use of drop boxes for return of a vote-by-mail ballot;
- Prohibits a supervisor of elections from mailing or otherwise providing a vote-by-mail ballot without a request;
- Requires the signature on a voter's certificate or ballot cure affidavit to match the most recent one on file;
- Requires an additional identifier number when a written or telephonic request is made for a vote-by-mail ballot;
- Prohibits display of partisan information on the outside of vote-by-mail ballots or envelopes; and
- Requires supervisors of elections to record instances in which a signature on a completed vote-by-mail ballot does not match the one on file.

CS by Ethics and Elections on February 16, 2021:

As originally filed, the bill reduced the number of elections for which one VBM ballot request is sufficient to all elections held within a calendar year of the request. The committee substitute instead reduces the number to all elections through the end of the calendar year of the next regularly scheduled general election.

B. Amendments:

None.