

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1355 Elections

**SPONSOR(S):** Government Operations Subcommittee; Baxley and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	9 Y, 4 N, As CS	McDonald	Williamson
2) State Affairs Committee			

### SUMMARY ANALYSIS

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

- Revises requirements for third-party voter registration organizations.
- Prohibits any person, political committee, committee of continuous existence, or other group or organization from soliciting any voter who is in line to vote at any polling place or early voting site.
- Requires committees of continuous existence (CCEs) and political committees (PCs) who participate in local elections to file campaign finance reports on the same schedule as local candidates, in addition to filing that information on required periodic reports with the Division of Elections.
- Makes report requirements for CCEs and PCs more uniform.
- Requires revised timeframes and specifies the format for supervisors of elections and the Department of State to submit information on state voter history and precinct data.
- Requires the Department of State to maintain a sortable and downloadable databases with specified information.
- Creates provisions governing Minor Political Parties.
- Deletes obsolete provisions in the Florida Elections Code.
- Provides for issuance of a new voter registration card to indicate precinct number.
- Revises requirements for registration of third-party voter organizations.
- Revises absentee voter procedures to provide a timeframe for absentee ballots to be sent to non-uniformed and overseas voters.
- Increases the penalty for CCEs, PCs, and electioneering communications organizations that repeatedly late-file reports.
- Revises polling place procedures.
- Provides for polls and surveys to determine viability of a potential candidate and for a potential candidate "testing the waters" to determine whether to become a candidate.
- Revises absentee ballot procedures to allow an absentee ballot request to be good for 2 years, and to provide additional information to absentee voters to encourage making needed changes in voter information.
- Revises political advertisement requirements, including adding requirements for a write-in candidate and political advertisement paid for by in-kind contributions.
- Eliminates the duty of the Department of State to provide funds from the Election Campaign Financing Trust Fund when a nonparticipating candidate exceeds the expenditure limit.

Unless otherwise specifically provided, the bill takes effect July 1, 2011.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Responsibilities of Secretary of State as Chief Election Officer**

The Secretary of State is the chief election officer of the state and is statutorily given a variety of responsibilities. Those responsibilities include such things as obtaining and maintaining uniformity in the interpretation and implementation of the election laws; providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the supervisors of elections on voter education, election personnel training services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.<sup>1</sup>

The bill requires the Secretary of State to provide direction and opinions to the supervisors of elections on matters relating to their official duties with respect to the Florida Election Code<sup>2</sup> or rules adopted by the Department of State.

##### **Voter Registration**

Currently, if a voter registration applicant fails to provide any of the required information on the voter registration application form, the supervisor of elections must notify the applicant of the failure, by mail, within 5 business days after the information is available on the voter registration system.<sup>3</sup> Additionally, the applicant has an opportunity to complete the application form to vote in the next election up until the book closing time for the election. The supervisor of elections must notify the voter registration applicant of the application disposition.<sup>4</sup> The notice sent to the voter must inform the voter if the application has been approved, is incomplete, has been denied, or is a duplicate. Certain information is sent to the applicant based upon the status of the application.

The bill requires the supervisor of elections to notify an applicant of the disposition of the voter registration application within 5 business days after voter registration information is entered into the statewide voter registration system. The bill clarifies the notice of disposition and imposes timeframes for noticing applicants. It also clarifies what information must be sent to the applicant. Disposition of a duplicate registration is to be processed as if it were an update to registration and a new voter registration card must be sent to the applicant.

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

##### **Voter Information Cards**

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

New cards are automatically issued when a voter's name, address, or party affiliation changes. Sixty-one counties include the polling place address on the voter information card.

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<sup>1</sup> See s. 97.012, F.S., for a complete listing of responsibilities.

<sup>2</sup> The Florida Election Code encompasses Chapters 97-106, F.S.

<sup>3</sup> Section 97.052, F.S.,

<sup>4</sup> Section 97.073, F.S.

<sup>5</sup> See s. 97.1031(1) and (2), F.S.

The bill requires the voter information card to include the address of the polling place. If an elector's address of legal residence or polling place address changes, the supervisor of elections must send the elector a new voter information card. After September 1, 2011, the supervisor of elections must include the polling place address on the voter information card for any elector who registers to vote or who is issued a new voter information card.

### **Third-Party Voter Registration**

Currently, before engaging in any voter registration activities, a third-party voter registration organization must name a registered agent in the state and submit certain required information to the Division of Elections (Division).<sup>6</sup> On or before the 15th day of each calendar quarter, the organization must submit a report providing the date and location of any organized voter registration drives conducted in the prior calendar quarter. Penalties and fines are provided for specified acts of omission or commission.

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

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

The bill also does the following:

- Retains the civil fines currently in law.
- Requires the Secretary of State to refer any complaint to the Attorney General. The Attorney General may institute a civil action for a violation or to prevent a violation. Action for relief may include a permanent or temporary injunction or any other appropriate order.
- Provides for enhanced rulemaking authority.

### **Petition Signature Verification**

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

These changes are primarily clarifying and a codification of existing practice and case law. The signature update provision is a service to the voter to permit an address change when the voter affirmatively indicates on the petition that the voter's address has changed. The bill precludes persons from filing an undue burden oath indicating that they have insufficient resources to pay the 10 cents per signature verification fee, then collecting contributions or paying for petition circulators and never paying any signature verification fees.

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<sup>6</sup> See s. 97.0575, F.S.

## **Voter Registration List Maintenance**

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

Currently, a supervisor of elections has the authority to remove deceased, registered voters from the statewide voter registration system when the supervisor receives a copy of a death certificate issued by a governmental agency authorized to issue such certificate. However, the supervisor must notify the registered voter of the action by mail within 7 days after receipt of the death certificate, giving the voter an opportunity to establish that the death certificate is for another person with the same or a similar name.

The bill authorizes the automatic removal of registered voters who have been identified as deceased against a match with the nationwide Social Security death index. It also requires a supervisor of elections to automatically remove a deceased registered voter if the supervisor receives a copy of a death certificate. These changes will help to identify and remove registered voters who have died outside the state. The information is currently available in data received from the Department of Health.<sup>7</sup>

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

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

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

Effective July 1, 2012, the bill places in law the format requirements required for the voter history and precinct-level data reports. Additionally, it changes the timeframes for information to be sent by the supervisors to the Department. The days are tied to reporting information after certification by the election canvassing commission of specified elections. The changes also add a reconciliation comparing the two data sets to ensure the integrity of the data. The changes will speed up how fast the data is reported and standardize all the dates the data is due to the Department rather than having multiple due dates. The bill also creates a \$50 fine for each day a report is late or is not complete. The fine is levied against the supervisor of elections and must be paid from his or her personal funds. Fines are remitted to the Department of State, which transmits the fines for deposit in the General Revenue Fund.

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

Current law requires that a supervisor of elections notify the Secretary of State in writing within 30 days after any precinct reorganization. Requirements are provided in law for precinct boundaries. Effective July 1, 2012, the bill requires the supervisor of elections to report decennial census information for the county, requires the Department of State to maintain a searchable database, and reduces the timeframe from 30 days to 10 days for reporting precinct reorganization. The bill also requires that the cost of the searchable database be financed proportionally by each county based on the number of registered voters in each county by a time certain.

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<sup>7</sup> See s. 98.075, F.S.

### **Candidate Oaths; Disclosures; Information Required**

A printed copy of the oath or affirmation must be provided to the candidate by the officer before whom the candidate seeks to qualify.<sup>8</sup> The oath requires the candidate to affirm that he or she has taken the oath required in ss. 876.05-876.10, F.S., which, in essence, has the candidate swearing to a public employee oath that is not applicable to a candidate. The language for the nonpartisan oath in chapter 105, F.S., contains the same requirements. The oath in s. 876.05, F.S., relating to public employees, is specifically required for all candidates for public office, excluding federal office.

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

Currently, financial disclosures are not required to be notarized pursuant to s. 117.05, F.S. Information regarding the appointment of a campaign treasurer and designation of campaign depository is not explicit in law as to what is to be included in such information.

The bill requires financial disclosures to be notarized pursuant to s. 117.05, F.S. It also delineates information that must be provided regarding the campaign treasurer and designation of campaign depository.

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

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

The bill eliminates a requirement for candidates using debit cards as bank checks to submit a list of authorized users.

The bill clarifies that the \$50 limit on contributions by cash and cashier's checks are in the aggregate, per election.

### **Vacancy in Nomination**

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

### **Resign to Run**

The bill prohibits any person not complying with the resign to run laws from qualifying as a candidate for election. Such person cannot be on the ballot. Additionally, the bill provides that presidential and vice-presidential candidates do not have to meet certain requirements.

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<sup>8</sup> See s. 99.021, F.S.

## **Filing Officers**

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

## **Initiative Petitions**

Under s. 100.371, F.S., each signature is dated when made and is valid for a period of 4 years following the date. The sponsor must submit dated forms to the appropriate supervisor of elections for verification. The supervisor must verify the signature within 30 days of receipt of the petition forms and the payment of the fee required by s. 99.097, F.S. The supervisor can verify that a signature is valid only if it meets certain requirements. Signature forms must be retained for 1 year or until notified by the Division of Elections. An elector's signature on a petition form may be revoked within 150 days of the date on which he or she signed the petition form by submitting a signed petition-revocation form.

The bill changes the validity of the signature from 4 years to 2 years. Additionally, the bill revises the initiative petition section to eliminate the revocation process.<sup>9</sup> The bill provides direction to supervisors of elections when an initiative petition is misfiled in the wrong county. Finally, changes provide that, for a petition to be valid, the voter must be a registered voter in the state both at the time the petition is signed and at the time it is verified. This represents a codification of current practice.

## **Ballots; Voting Methods; Voting Equipment**

### Provisional Ballot

Current law permits an elector who moves from one precinct, in which the elector is registered, to vote in the precinct to which he or she has moved his or her legal residence, provided that the elector completes an affirmation. The same is available to an elector who changes his or her name. Instead of an affirmation, the elector may fill out a voter registration form indicating the respective change. The information is presented at the precinct and, upon verification of the person being a registered voter, the person votes a regular ballot. If eligibility to vote cannot be determined, the person is entitled to vote a provisional ballot. Upon receipt of an affirmation regarding address or name change, the supervisor of elections is required as soon as practicable to make the changes in the statewide voter registration system.<sup>10</sup>

The bill amends s. 101.045, F.S., to provide that an elector is not permitted to vote in any election precinct or district other than the one in which the person has his or her legal residence and in which the person is registered. It provides that, if an elector's eligibility to vote cannot be determined, he or she is entitled to vote a provisional ballot, subject to the requirements of s. 101.048, F.S. The bill removes the ability for someone to change his or her name or address at the precinct and vote a regular ballot.

### Appearance of Ballot; Ballot-on-Demand Technology<sup>11</sup>

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

### Absentee Ballots<sup>12</sup>

The bill provides the following:

- An absentee ballot request is good for 2 years;

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<sup>9</sup> The Florida Supreme Court ruled the initiative petition revocation process unconstitutional, so its removal conforms to the court's decision.

<sup>10</sup> National Voters Registration Act of 1993 (42 U.S.C. 1973gg-6(e)) provides direction for address changes at the polls. The federal law provides procedures for voters who go to the polls with address issues to still be able to vote a regular ballot under certain circumstances. One method that is permitted is an oral or written affirmation of change of address.

<sup>11</sup> See s. 101.151, FS.

<sup>12</sup> See ss. 101.62, 101.65, and 101.6923, F.S.

- Information required to be provided to the Division of Elections must be forwarded by 8 a.m. each day, instead of noon during week days;
- Requires the supervisor of elections to begin mailing absentee ballots to non-uniformed and overseas voters between the 30th and 35th day of an election; and
- Expands the absentee ballot instructions to put voters on notice that an absentee ballot will not count if the signature on record does not match the signature on the ballot certificate, and notifies the absentee voter of the end date for when they can update their signature on record in order for their ballot to count.

### Voting Equipment

The bill clarifies that the testing of voting equipment must be done in accordance with state-adopted voting system standards rather than generic electronic industry standards. According to the Department of State, this change corrects the misperception or misunderstanding that electronic industry standards even exist. The standards to follow are the ones set by the state.<sup>13</sup> Additionally, the bill revises the number or percentage of touch screen systems that must be tested in the logic and accuracy test. According to the Department of State, this change reflects the state's switch from primarily touch screen voting systems to optical scan, and the current statutory limitation that the touch screen machines are to be made available and used solely by persons with disabilities.

### **Poll Watchers**

A political party, political committee, and a candidate who requests to have poll watchers, must designate in writing such watchers for each polling room prior to noon of the second Tuesday preceding the election. Designations for early voting must be in writing and received by the supervisor at least two weeks before early voting begins. Supervisors have one week in which to approve such designations. The supervisor must furnish a list of such designees and the polling room or early voting area for which they were approved to the election board. Each party, committee, and candidate may have one watcher for each polling room or early voting area at any one time during the election.<sup>14</sup>

The bill requires the Division of Elections to promulgate a form to designate poll watchers. It also provides a noon deadline 14 days before early voting begins for designation of poll watchers. This aligns the noon timeframe of early voting with the noon timeframe of election day. Poll watcher designations must be signed by the chairman of the county political executive committee, the chairman of a political committee, or the candidate. All poll watchers are at-large poll watchers. Additionally, the supervisor of elections must provide poll watcher identification badges and the poll watchers must wear the badges when present at the polls.

### **Definitions in Chapter 106, F.S.**

The bill clarifies the definition of "candidate" to ensure that expenditures made by state or county party executive committees for potential candidate polls are not contributions or expenditures for the purposes of determining whether a person is a "candidate." The bill also amends the definitions of "contribution" and "expenditure" to exclude funds received under the testing of the waters provisions.

### **Political Advertising**

Political advertisements that are circulated prior to an election and paid for by the candidate must prominently state certain information such as: the name of the candidate, the party affiliation, and the office sought.<sup>15</sup> Any other political advertisement is required to be marked as a paid political advertisement, and provide information such as who paid for the advertisement, sponsorship, who approved of the advertisement, name, party affiliation, and office sought by a candidate. Current law does not address statements that must be featured on the advertisements of write-in candidates nor on advertisements made by in-kind contributions of political parties.

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<sup>13</sup> Explanation of proposed changes to the Florida Election Code, Department of State, March, 2011. Information on file with the Government Operations Subcommittee.

<sup>14</sup> s. 101.131, F.S.

<sup>15</sup> Pursuant to s. 99.0955, F.S.

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

The bill does the following:

- Requires that a write-in candidate use a specified disclaimer for political advertisements;
- Removes the requirement for statement of sponsorship of the advertisement, but retains the requirement for identification of who paid for the advertisement;
- Provides a specified disclaimer for political advertisements made as in-kind contributions by a political party; and
- Prohibits any political advertisement of a candidate running for nonpartisan office from indicating the candidate's party affiliation.

### **Canvassing**

The bill changes the deadline for filing an elections contest to accommodate the change to the audit procedures in s. 101.591, F.S. The audit must be completed by the 21st day following the election. The other changes clarify that the county canvassing board is not an indispensable party unless it was the board that canvassed the local election and that the Elections Canvassing Commission is an indispensable party in all judicial elections, except elections for county court judges.

### **Polls and Surveys Relating to Candidacies**

Current law provides that a candidate, political committee, committee of continuous existence, electioneering communications organization, or state or county executive committee of a political party may authorize or conduct a political poll, survey, index, or measurement of any kind relating to candidacy for public office provided that complete jurisdiction over the poll is maintained by the person or entity.<sup>16</sup>

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

The bill allows for the receipt of and spending of funds solely for the purpose an individual determining whether to run for office. The fund limitation is \$10,000. Reports must be maintained by the individual. Permissible activities for the use of funds are provided. These funds are not considered contributions and expenditures unless the person becomes a candidate.

### **Reports by Political Parties, Committees of Continuous Existence; Restrictions on Contributions and Expenditures**

The bill does the following:

- Provides that a political committee, committee of continuous existence (CCE), or electioneering communications organization (ECO) filing of the appointment of a registered agent and registered office be with the same filing officer that the entity registered with originally;
- Requires CCE's participating in local elections to file certain campaign finance reports at a specified time, requires all reports filed by CCEs include certain information in a certain format to conform to functionality of the Division of Elections electronic filing system, clarifies all report due dates, clarifies procedure for imposition of fines against CCEs, and establishes fines for repeated late filings;
- Requires political committees to file reports in a certain manner, provides notification of what is needed to complete reports, conforms requirements for certain reports and methods of reporting to that used for CCEs; and

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<sup>16</sup> See s. 106.17, F.S.



- Removes obsolete language relating to ECOs and adds ECO to certain penalty provisions for consistency.

### **Minor Political Parties**

Currently, substantive provisions of law regarding organizing a “minor political party” are contained in the definition of a minor political party. No provisions are contained in chapter 103, F.S., relating to political party structure. According to the Division of Elections, due to the lax requirements for a group to become a political party, there has been at least one incidence of a person forming and being the chair of more than one minor political party to which the person is not even a registered member.<sup>17</sup>

The bill removes substantive provisions from the definition<sup>18</sup> and places the provisions in chapter 103, F.S. The bill provides mechanisms to preclude the incident previously discussed. It also provides when a minor political party status may be canceled, and provides for retroactive application.

### **Florida Elections Commission**

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

The bill reverses the current default procedure whereby alleged election law violations are transferred to the Division of Administrative Hearings (DOAH) unless the party charged with the offense elects to have a hearing before the Commission. It mandates that the alleged violator affirmatively request a hearing at DOAH within 30 days after the Commission's probable cause determination, or the Commission will hear the case. The bill also authorizes the DOAH judge to impose civil penalties.

### **Soliciting**

Current law provides that each election board possesses full authority to maintain order at the polls, and to enforce obedience to its lawful commands during an election and canvass of the votes.<sup>19</sup> The sheriff must deputize a deputy sheriff for each polling place and each early voting site who must be present during the time the polls or early voting site are open and until the election is completed.<sup>20</sup>

Current law prohibits any person from entering a polling room or polling place where the polling place also is a polling room, or any early voting area, during voting hours, except for certain persons.<sup>21</sup> In addition, no person, political committee, committee of continuous existence, or other group or organization may solicit voters inside the polling place or polling room or within 100 feet of the entrance to such place or room.<sup>22</sup> The supervisor must designate the no-solicitation zone and mark the boundaries prior to the opening of the polling place or early voting site.<sup>23</sup>

The bill prohibits any person, political committee, committee of continuous existence, or other group or organization from soliciting any voter who is in line to vote at any polling place or early voting site. It amends the definition of “solicit” or “solicitation” to include offering voting or legal advice regarding voting or ballots. It is further expanded to include whether such solicitation is in person or by means of audio or visual equipment.

### **Other Provisions**

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

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<sup>17</sup> Information obtained from meetings with staff of the Division of Elections, Department of State, March, 2011.

<sup>18</sup> Section 97.021(18), F.S.

<sup>19</sup> Section 102.031(1), F.S.

<sup>20</sup> Section 102.031(2), F.S.

<sup>21</sup> Section 102.031(3)(a), F.S.

<sup>22</sup> The length of 100 feet around the entrance to a polling place has been upheld by the United States Supreme Court in *Burson v. Freeman*, 504 U.S. 191, 211, 112 S.Ct. 1846, 1858 (1992).

<sup>23</sup> Section 102.031(4)(a), F.S.

- Provides that the photo ID required at the polls is solely for the purpose of verifying the identity of the person present to vote.
- Allows certain funds to flow directly to the Florida Elections Commission versus having to flow through the Department of State.
- Eliminates the state mandate for a municipal election to have a 14-day candidate qualifying period when it moves its election to coincide with a state or county election.
- Removes the need for a Presidential Candidate Selection Committee and provides a specified time for a list of candidates to be prepared.
- Deletes provisions relating to removal of certain county executive members.
- Clarifies when it is an offense for an inspector or other election official to deny a person to observe ballot accounting at polls.

## B. SECTION DIRECTORY:

Section 1 amends s. 97.012, F.S., relating to the Secretary of State as chief election officer.

Section 2 amends s. 97.021, F.S., relating to definitions.

Section 3 amends s. 97.025, F.S., relating to the Election Code; copies thereof.

Section 4 amends s. 97.0575, F.S., relating to third-party voter registrations.

Section 5 amends s. 97.071, F.S., relating voter information cards.

Section 6 amends s. 97.073, F.S., relating to disposition of voter registration applications; cancellation notice.

Section 7 amends s. 97.1031, F.S., relating to notice of change of residence, change of name, or change of party affiliation.

Section 8 amends s. 98.075, F.S., relating to registration records maintenance activities; ineligibility determinations.

Section 9 amends s. 98.093, F.S., relating to duty of officials to furnish information relating to deceased persons, persons adjudicated mentally incapacitated, and person convicted of a felony.

Section 10 amends s. 98.0981, F.S., relating to reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics.

Section 11 amends s. 99.012, F.S., relating to restrictions on individuals qualifying for public office.

Section 12 amends s. 99.021, F.S., relating to form of candidate oath.

Section 13 amends s. 99.061, F.S., relating to method of qualifying for nomination or election to federal, state, county, or district office.

Section 14 amends s. 99.063, F.S., relating to candidates for Governor and Lieutenant Governor.

Section 15 amends s. 99.093, F.S., relating to municipal candidates; election assessment.

Section 16 amends s. 99.097, F.S., relating to verification of signatures on petitions.

Section 17 amends s. 100.111, F.S., relating to filling vacancy.

Section 18 amends s. 100.371, F.S., relating to initiatives; procedure for placement on ballot.

Section 19 amends s. 101.001, F.S., relating to precincts and polling places; boundaries.

Section 20 amends s. 101.043, F.S., relating to identification required at polls.

Section 21 amends s. 101.045, F.S., relating to electors must be registered in precinct.

Section 22 amends s. 101.131, F.S., relating to watchers at polls.

Section 23 amends s. 101.151, F.S., relating to specifications for ballots.

Section 24 amends s. 101.5605, F.S., relating to examination and approval of equipment.

Section 25 amends s. 101.5606, F.S., relating to requirements for approval of systems.

Section 26 amends s. 101.5612, F.S., relating to testing of tabulating equipment.

Section 27 amends s. 101.5614, F.S., relating to canvass of returns.

Section 28 amends s. 101.62, F.S., relating to request for absentee ballots.

Section 29 amends s. 101.65, F.S., relating to instructions to absent electors.

Section 30 amends s. 101.6923, F.S., relating to special absentee ballot instructions for certain first-time voters.

Section 31 amends s. 101.75, F.S., relating to municipal elections; change of dates for cause.

Section 32 amends s. 102.031, F.S., relating to maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters.

Section 33 amends s. 102.168, F.S., relating to contest of election.

Section 34 creates s. 103.095, F.S., relating to minor political parties.

Section 35 amends s. 103.101, F.S., relating to presidential preference primary.

Section 36 amends s. 103.141, F.S., relating to removal of county executive committee member for violation of oath.

Section 37 amends s. 104.29, F.S., relating to inspectors refusing to allow watchers while ballots are counted.

Section 38 amends s. 106.011, F.S., relating to definitions.

Section 39 creates s. 106.012, F.S., relating to testing the waters.

Section 40 amends s. 106.021, F.S., relating to campaign treasurers; deputies; primary and secondary depositories.

Section 41 amends s. 106.022, F.S., relating to appointment of a registered agent; duties.

Section 42 amends s. 106.023, F.S., relating to statement of candidate.

Section 43 amends s. 106.025, F.S., relating to campaign fund raisers.

Section 44 amends s. 106.04, F.S., relating to committees of continuous existence.

Section 45 amends s.106.07, F.S., relating to reports; certification and filing.

Section 46 amends s.106.0703, F.S., relating to electioneering communications organizations; reporting requirements; certification and filing; penalties.

Section 47 amends s. 106.0705, F.S., relating to electronic filing of campaign treasurer's reports.

Section 48 amends s. 106.071, F.S., relating to independent expenditures; electioneering communications; reports; disclaimers.

Section 49 amends s. 106.08, F.S., relating to contributions; limitations on.

Section 50 amends s. 106.09, F.S., relating to cash contributions and contribution by cashier's checks.

Section 51 amends s. 106.141, F.S., relating to disposition of surplus funds by candidates.

Section 52 amends s. 106.143, F.S., relating to political advertisements circulated prior to election; requirements.

Section 53 amends s. 106.15, F.S., relating to certain acts prohibited.

Section 54 amends s. 106.17, F.S., relating to polls and surveys relating to candidacies.

Section 55 amends s. 106.18, F.S., relating to when a candidate's name to be omitted from ballot.

Section 56 amends s. 106.19, F.S., relating to violations by candidates, person connected with campaigns, and political committees.

Section 57 amends s. 106.25, F.S., relating to reports of alleged violations to Florida Elections Commission; disposition of findings.

Section 58 amends s. 106.265, F.S., relating to civil penalties.

Section 59 amends s. 106.355, F.S., relating to nonparticipating candidate exceeding limits.

Section 60 amends s. 11.045, F.S., relating to lobbying before the Legislature; registration and reporting; exemptions; penalties.

Section 61 amends s. 112.312, F.S., relating to definitions.

Section 62 amends s. 876.05, F.S., relating to public employees; oath.

Section 63 amends s. 97.055, F.S., relating to registration books; when closed for an election; conforming to changes made by bill.

Section 64 amends s. 100.101, F.S., relating to special election and special primary elections; conforming to changes made in the bill.

Section 65 amends s. 101.111, F.S.; relating to voter challenges; conforming to changes made in the bill.

Section 66 repeals s. 876.07, F.S., relating to a candidate taking a public employee oath.

Section 67 provides an effective date of July 1, 2011, unless otherwise specifically provided in the bill.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
Indeterminate.
2. Expenditures:  
Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
Indeterminate.
2. Expenditures:  
Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

The legislation has an indeterminate fiscal impact on local governments. The change in ballot styling requirement might provide cost-savings to those counties with multi-style ballot precincts who would only have to produce ballots as needed. Also, the bill could potentially provide a cost savings to the supervisors of elections if they are reimbursed for certain verification fees. There are potential costs to local governments regarding maintaining certain databases related to third-party voter registration organizations, changes in timeframes for required information on voter history and precincts, as well as other areas, and the timeframe for mailing absentee ballots to non-uniformed and overseas voters is not known. Additionally, the bill requires the Department of State to assess each supervisor of elections office the cost of processing information received on precincts and the most recent decennial census blocks within the precincts in their respective counties, and inserting it into a searchable database maintained by the department. The costs are to be proportionally financed by each supervisor based on the number of registered voters in each county on January 1 of each year. This provision provides a cost that might raise questions related a local mandate since it is not directly associated with elections.

There will also be a personal fiscal impact on supervisors of elections who do not provide certain reports to the Department of State within timeframes required by law or do not provide complete reports in the manner prescribed. Those supervisors not in compliance will be subject to fines.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is exempt from the mandate requirements because it is amending the elections laws.

## 2. Other:

Under section 5 of the Voting Rights Act, new legislation that implements a voting change, including but not limited to, a change in the manner of voting, change in candidacy requirements and qualifications, change in the composition of the electorate that may vote for a candidate, or change affecting the creation or abolition of an elective office, is subject to preclearance by the U.S. Department of Justice. The preclearance review is to determine if the change has a discriminatory purpose or effect that denies or abridges the right to vote on account of race, color or membership in a language minority group in a covered jurisdiction. Florida has five covered jurisdictions subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe. If the Attorney General objects to the voting change, the legislation is unenforceable.

## B. RULE-MAKING AUTHORITY:

The Department of State is required to adopt rules to do the following:

- Prescribe the manner in which political parties, including minor political parties, may have their filings with the Department of State cancelled. Rules must provide for notice and the contents of such notice, adequate opportunity to respond, and opportunity to appeal to the Florida Elections Commission.
- Ensure the integrity of the registration process for third-party voter registration, including requirements for such organizations to account for all state and federal registration forms used by their agent.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 4, 9, 10, 11, and 19 require corrections to language to correct needed changes in terminology and timeframes specified for certain required activities.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Government Operations Subcommittee passed the proposed committee substitute for House Bill 1335. The committee substitute substantially changed the original bill. The following is a listing of the substantial changes:

- Removes the specified penalty in the original bill for supervisors of elections who fail to comply with the directions or opinions of the Secretary of State on performance of duties related to the Florida Election Code.
- Removes substantive language from the definition of "minor political party" and transfers it to chapter 103, F.S., and provides the process and requirements for establishment of a minor political party.
- Requires publication of the Florida Election Code pamphlet on the Internet and, upon request, in lieu of printing and distributing to each candidate.
- Revises requirements for third-party voter registration organizations.
- Requires inclusion of the polling place address on the voter information card by a time certain.
- Provides alternative methods to provide notice of change of residence, name, or party.
- Requires notification about disposition of voter registration applications within a time certain.
- Authorizes certain registration records maintenance to improve system integrity.
- Requires voting history and statewide voter registration system and precinct-level results to be provided in a specified format within a time certain and provides personal fines of supervisors of elections for noncompliance. Requires the Department of State to make information available on a user-friendly database by a time certain, and to provide information to persons specified in a time certain.
- Revises provisions relating to resign to run.
- Revises the form of the candidate oath, and repeals provisions relating to swearing to public employee oath.
- Revises the method of qualifying for nomination or election to office by requiring notarization of documents, specifies information on checks, specifies responsibility of ministerial officer, and exempts such officer from certain proceedings.

- Provides for efficiencies in processing of assessments.
- Clarifies the verification of petition process and undue burden, as well as conforming to court decisions.
- Revises filling a vacancy provisions to add an additional prohibition and to delete obsolete language.
- Revises initiative petition provisions to allow signatures to be valid for 2 years versus 4 years, removes the revocation process, specifies requirements for signer of petition, and places certain requirements on the Department of State.
- Revises current requirements for precincts and polling places and boundaries to require specific information to be provided and maintained on a database, requires specific information on boundaries to be provided to the Department of State within a time certain, and requires payment by supervisors of elections for the cost of placing information on a statewide database.
- States the purpose of photo identification at the polls.
- Removes the ability of a person to change his or her name or address at a polling place on election day and vote a regular ballot, and provides that the person can vote a provisional ballot.
- Revises ballot format specifications and expands ballot-on-demand technology.
- Clarifies the examination and approval requirements for voting equipment, and revises the testing of tabulating equipment.
- Conforms canvass of returns provisions to current technological practices.
- Revises absentee ballot provisions including timeframe for ballot request, when ballots are sent, and instructions to absentee voters.
- Eliminates certain state mandate for a municipal election.
- Clarifies the role of the canvassing board and evidence a court may consider in a contest of election.
- Eliminates the Presidential Candidate Selection Committee for the Presidential Preference Primary election, and provides a method for information being provided to the Department of State.
- Revises provisions relating to watchers watching while ballots are counted.
- Revises definitions in chapter 106.011, F.S., to conform to other changes made in the bill.
- Creates a provision allowing for persons to test the waters for viability as a candidate, and provides revisions to polls being conducted by political parties.
- Revises provisions relating to committees of continuous existence, political committees, and electioneering communications organizations.
- Revises provisions relating to campaign treasurers and depositories, and appointment of registered agents.
- Provides a shortened disclaimer for campaign fundraisers.
- Clarifies language related to cash contributions and contributions.
- Revises requirements for disposition of surplus by candidates.
- Revises political advertisement requirements.
- Clarifies compliance with chapter 106, F.S., to the qualification for office by a person.
- Removes obsolete provisions from law.
- Revises provisions relating to allegations going before the Florida Elections Commission and before an administrative law judge.
- Eliminates certain duties of the Department of State when a nonparticipating candidate exceeds expenditure limits.
- Conforms other provisions of law to accommodate changes made in the Florida Election Code by the bill.