

**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 Rules Committee

BILL: CS/CS/SB 2086

INTRODUCER: Committee on Rules and Subcommittee on Ethics and Elections

SUBJECT: Elections

DATE: April 19, 2011 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox/Seay</u>	<u>Roberts</u>	<u>EE</u>	<u><b>Fav/CS</b></u>
2.	<u>Fox/Carlton</u>	<u>Phelps</u>	<u>RC</u>	<u><b>Fav/CS</b></u>
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/CS/SB 2086 is an omnibus elections bill consisting primarily of the Secretary of State's election administration and campaign finance packages, along with numerous other major changes to the Florida Election Code, including:

- Specifying the time period to initiate a challenge to an amendment proposed by the Legislature to the State Constitution, and directing the Attorney General to revise ballot language found to be defective by a court;
- Changing Florida's primary date from 10 weeks to 9 weeks before the general election;
- Reducing the early voting period from 14 days to 6 days;
- Substantially revising the requirements for third-party voter registration organizations;
- Reducing the shelf-life of an initiative petition signature from 4 years to 2 years;
- Allowing the Secretary of State to provide direction and opinions to supervisors of elections on the performance of their official duties with respect to the Florida Election Code or rules adopted by the Department of State;
- Requiring electors with name or address changes at the polls on election day to vote a provisional ballot;

- Establishing revised timeframes and specifying the format for supervisors of elections and the Department of State to submit information on voter history and precinct-level election results;
- Requiring supervisors of elections to include polling place addresses on voter information cards issued on or after August 1, 2012;
- Specifying that if a manual recount was conducted pursuant to s. 102.166, F.S., a manual audit of the voting system is not required;
- Allowing county canvassing boards to begin canvassing absentee ballots at 7 a.m. on the 15th day before the election;
- Requiring committees of continuous existence (CCEs) and political committees (PCs) who participate in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections;
- Increasing the penalty for CCEs that late-file their final campaign finance report due before a primary or general election for the first three days the report is late, from \$50 per day to \$500 per day (to conform to current law regarding PC and candidate filings);
- Requiring CCEs, candidates, and PCs to include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement;
- Creating an additional election violation for filing three campaign finance reports late in a two-year period; and,
- Allowing county candidates who are seeking to qualify by petition in an apportionment year to obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries.

The bill takes effect upon becoming law, except as otherwise provided.

This bill substantially amends ss. 97.012, 97.021, 97.025, 97.0575, 97.071, 97.073, 97.1031, 98.075, 98.093, 98.0981, 99.012, 99.021, 99.061, 99.063, 99.092, 99.093, 99.095, 99.097, 100.061, 100.111, 100.371, 101.043, 101.045, 101.131, 101.151, 101.161, 101.5605, 101.5606, 101.5612, 101.5614, 101.591, 101.62, 101.65, 101.657, 101.68, 101.6923, 101.75, 102.168, 103.021, 103.095, 103.101, 103.141, 104.29, 106.011, 106.021, 106.022, 106.023, 106.025, 106.03, 106.04, 106.07, 106.0703, 106.0705, 106.08, 106.09, 106.11, 106.141, 106.143, 106.17, 106.18, 106.19, 106.25, 106.26, 106.265, 106.29, 106.35, and 876.05 of the Florida Statutes. The bill also repeals ss. 103.161 and 876.07 of the Florida Statutes, contains a severability clause, and creates an unnumbered section of Florida Statutes.

## II. Present Situation:

### *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>

### ***Minor Political Parties***

Section 97.021(18), F.S., defines the term “minor political party” for purposes of Florida’s Election Code. Currently, that paragraph also provides the procedure for becoming a minor political party and requires a minor political party to notify the Department of State when there are changes in the party’s filing certificate.

### ***Election Code Copies***

The Department of State is required to prepare a pamphlet of a reprint of the Florida Election Code and to have sufficient copies so that one may be given to a candidate upon request.<sup>2</sup> The Department is also permitted to send a sufficient number of the pamphlets to each supervisor of elections prior to the first day of qualifying so that the Supervisor can provide a copy to each candidate who qualifies.<sup>3</sup> The costs of printing the pamphlets shall be paid out of funds appropriated for conducting elections.<sup>4</sup>

### ***Voter Registration***

A supervisor of elections is required to notify a person applying to become a registered voter of the disposition of his/her voter registration application.<sup>5</sup> The notice must inform the applicant that the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration.<sup>6</sup> If the supervisor of elections sends a voter information card, that constitutes notice of approval of the application.<sup>7</sup> If an application is incomplete, the supervisor must request the applicant to submit the missing information using a signed voter registration application.<sup>8</sup> In the event that an application is denied, the supervisor is required to inform the applicant of the reason the application was denied. When a voter registration application indicates that the applicant was previously registered in another state, the Department is required to notify the registration official in the prior state that the applicant is now a registered voter in the State of Florida.<sup>9</sup>

An elector who moves within the same county is required to notify the supervisor of elections for that county.<sup>10</sup> The elector may notify the supervisor by a signed, written notice or by telephone or electronic means. If notice is provided by telephone or electronic means, the elector must also provide his or her date of birth. The supervisor is required to issue the elector a new voter information card as soon as practical to do so.

When an elector moves to a different county within Florida, changes party affiliation, or changes his or her name change by marriage or other legal process, the elector is required to provide

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<sup>1</sup> For a complete listing of the Secretary’s responsibilities, see section 97.012, F.S.

<sup>2</sup> Section 97.025, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 97.073(1), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 97.073(2), F.S.

<sup>10</sup> Section 97.1031(1), F.S.

notice via a voter registration application.<sup>11</sup> The voter registration official is required to send a new voter information card reflecting the new voter information. The voter registration official is required to make the necessary changes in the elector's records as soon as practical after receiving notice of a change of address of legal residence, name, or party affiliation.<sup>12</sup> The supervisor of elections is required to issue the new voter information card.

The Department is required to ensure the integrity of the current voter registration records.<sup>13</sup> The Department is required to look for voters who are registered more than once or applicants whose registration application would result in duplicate registrations.<sup>14</sup> In the event of a subsequent application submitted by a currently registered voter, the most recent application is deemed an update to the voter registration record. Section 98.075, F.S., also provides the procedures concerning registered voters who are deceased<sup>15</sup>, adjudicated mentally incapacitated<sup>16</sup>, convicted of a felony<sup>17</sup>, or other enumerated bases of ineligibility.<sup>18</sup> That section also specifies the procedures for removal of registered voters from the list of current registered voters and requires certification of the registration records maintenance on a biennial basis.

In order to maintain accurate current voter registration roles, the Department must receive certain information pertaining to the eligibility of voters from certain governmental entities.<sup>19</sup> In light of that necessity, certain federal, state, and local governmental entities are authorized or required to provide information for maintenance of the current voter registration roles.<sup>20</sup>

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

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>21</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.

### ***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 contain the following information:

- Voter's registration number;
- Date of registration;
- Full name;

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<sup>11</sup> Section 97.1031(2), F.S.

<sup>12</sup> Section 97.1031(3), F.S.

<sup>13</sup> Section 98.075(1), F.S.

<sup>14</sup> Section 98.075(2), F.S.

<sup>15</sup> Section 98.075(3), F.S.

<sup>16</sup> Section 98.075(4), F.S.

<sup>17</sup> Section 98.075(5), F.S.

<sup>18</sup> Section 98.075(6), F.S.

<sup>19</sup> Section 98.093(1), F.S.

<sup>20</sup> Section 98.093(2), F.S.

<sup>21</sup> See s. 97.0575, F.S.

- Party affiliation;
- Date of birth;
- Address of legal residence;
- Precinct number;
- Supervisor's name and contact information; and
- Any other information deemed necessary by the supervisor.<sup>22</sup>

Replacement cards are provided free of charge upon verification of the voter's registration, if the voter provides a signed written request for a replacement card.<sup>23</sup> The uniform statewide voter registration application may also be used to request a replacement card.<sup>24</sup> New cards are automatically issued when a voter's name, address, or party affiliation changes.<sup>25</sup>

A survey in 2010<sup>26</sup> indicated that 61 counties include the polling place address on the voter information card. The following six counties did not include the polling place address on the voter information card: Glades, Jefferson, Madison, Orange<sup>27</sup>, Taylor and Volusia.

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

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.

Supervisors of elections are required to transmit to the Department of State updated voting history information for each qualified voter who voted within 45 days after a general election.<sup>28</sup> Within 60 days after a general election, the Department of State is required to transmit a report containing the updated voting history information to the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader.<sup>29</sup> Within 45 days after the date of a presidential preference primary, a special election, or a general election, supervisors of elections are required to collect and submit precinct-level election results to the Department of State.<sup>30</sup> The Department must make publicly available all required reports relating to voter history and precinct data.

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<sup>22</sup> Section 97.071(1), F.S.

<sup>23</sup> Section 97.071(2), F.S.

<sup>24</sup> Section 97.052(1), F.S.

<sup>25</sup> Section 97.071(3), F.S.; *see also* s. 97.1031, F.S.

<sup>26</sup> Florida State Association of Supervisors of Elections, Unofficial Survey, *Voter Card with Polling Place Address*, (February 2010).

<sup>27</sup> While Orange County does not print the polling place address on the voter information cards, the polling place address is provided on the sample ballots that are mailed out prior to each election. The Orange County Supervisor of Elections office has explained that the office provides the polling place address on the sample ballot instead of the voter information card as the polling place varies for municipal elections and general elections. *See id.*

<sup>28</sup> Section 98.0981(1)(a), F.S.

<sup>29</sup> Section 98.0981(1)(c), F.S.

<sup>30</sup> Section 98.0981(2), F.S.

## *Candidate Qualifying*

### Partisan Races

Each candidate is required to take and subscribe to an oath or affirmation in writing.<sup>31</sup> In addition to the oath, a person seeking to qualify as a candidate for the nomination of a political party must affirm in writing the person's party affiliation, the fact that they're not a registered member of any other political party and have not been a candidate for nomination for any other political party within six months preceding the general election for which the person seeks to qualify, and that the person has paid the assessment levied against him/her, if any, by the executive committee of his/her party.<sup>32</sup>

Section 99.061, F.S., provides the method for qualifying for nomination or election to federal, state, county, or district office. That section also provides the time in which to qualify for those offices.

The Governor is required to designate a Lieutenant Governor candidate as a running mate by 5 p.m. on the ninth day after the primary election.<sup>33</sup> Then, no later than 5 p.m. on the ninth day after the primary election, the Lieutenant Governor candidate is required to submit the candidate's oath which must be "duly affirmed," the loyalty oath, a written statement of party affiliation, and the full and public disclosure of his or her financial interests pursuant to s. 8, Article II of the State Constitution.<sup>34</sup>

Any person who does not qualify for office by obtaining a sufficient number of verified petitions or as a write-in candidate is required to pay a qualifying fee at the time of qualifying.<sup>35</sup> The qualifying fee shall consist of a filing fee and an election assessment, the amounts of which are specified in statute. The election assessment must be deposited in the Clearing Funds Trust Fund and transferred to the Elections Commission Trust Fund within the Department of Legal Affairs.

Any person seeking to qualify for nomination or election to a municipal office shall pay an election assessment when they qualify.<sup>36</sup> Within 30 days after the close of the qualifying period, the qualifying officer shall forward all assessments collected to the Department of State for transfer to the Elections Commission Trust Fund within the Department of Legal Affairs.<sup>37</sup>

### Petition Method

A prospective candidate may choose to qualify for an elected office by petition, in lieu of a qualifying fee or party assessment.<sup>38</sup> Candidates generally must obtain signatures equal to at least one percent of the total number of registered voters of the geographic area represented by the office sought.<sup>39</sup>

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<sup>31</sup> Section 99.021(1)(a)1, F.S.

<sup>32</sup> Section 99.021(1)(b), F.S.

<sup>33</sup> Section 99.063(1), F.S.

<sup>34</sup> Section 99.063(2), F.S.

<sup>35</sup> Section 99.092(1), F.S.

<sup>36</sup> Section 99.093(1), F.S.

<sup>37</sup> Section 99.093(2), F.S.

<sup>38</sup> Section 99.095(1), F.S.

<sup>39</sup> Section 99.095(2)(a), F.S.

Following each decennial census, federal congressional districts and state legislative districts are reapportioned to reflect changes in population. In a year of apportionment, where district boundaries are subject to change, legislative candidates seeking to qualify by the petition method must obtain signatures of Florida registered voters equal to .33% of the ideal population for the office sought.<sup>40</sup> Counties must also reapportion, establishing new district lines for offices like county commissioner.<sup>41</sup> However, there is *no analogous provision* allowing local candidates seeking to qualify by petition to obtain signatures countywide.

In 2005, the legislature changed the law to allow candidates seeking to qualify by petition to begin collecting signatures *prior to* the year of the election.<sup>42</sup> As a result, local candidates have already begun collecting signatures from voters in the current district in which they seek to run. If the district lines change with reapportionment, however, there is a legitimate question as to whether signatures collected from folks who find themselves outside the *new* district boundaries will count toward the total number of required signatures.

### ***Resign-to-Run***

The resign-to-run law precludes persons from qualifying to run for more than one public office if the terms or any part thereof run concurrently; and, prohibits *officers* from qualifying to run for another state, district, county, or municipal public office if the terms or any parts thereof run concurrently without resigning the office he or she presently holds.<sup>43</sup> The name of any person who doesn't comply with the resign-to-run law may be removed from every ballot on which it appears when ordered by a circuit court upon petition of an elector or the Department.<sup>44</sup>

### ***Primary Election Day***

Florida's primary election is held 10 weeks before the general election.<sup>45</sup> This date corresponds to the week of August 27 for the 2012 election cycle, the same week that the Republican National Convention is scheduled to be held in Tampa. As recently as 2006, the primary was held 9 weeks before the general election on the Tuesday after Labor Day.<sup>46</sup>

### ***Petition Signatures***

A supervisor of elections is permitted to verify the names on petitions based on the least expensive and the most administratively feasible method of verification.<sup>47</sup> A candidate or the proponent of an issue is required to pay the supervisor of elections a 10-cent, per-signature fee in advance for the verification of petition signatures.<sup>48</sup> Candidates or individuals for whom this would pose a severe hardship may file an undue burden oath, in which case the candidate or persons sponsoring the initiative petition shall be relieved of the costs.<sup>49</sup>

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<sup>40</sup> Section 99.09651, F.S. The "ideal population" means the total population of the State based on the most recent decennial census divided by the number of districts to be voted (i.e., Florida Senate has 40 districts, Florida House has 120 districts).

<sup>41</sup> Art. VIII, s. 1(e), FLA. CONST.

<sup>42</sup> Ch. 2005-277, s. 14, LAWS OF FLA.

<sup>43</sup> Section 99.012 (2), (3), F.S.

<sup>44</sup> Section 99.012 (5), F.S.

<sup>45</sup> Section 100.061, F.S.

<sup>46</sup> See ch. 2007-30, s. 22, LAWS OF FLA. (changing the primary from 9 to 10 weeks before the general election).

<sup>47</sup> Section 99.097(1), F.S.

<sup>48</sup> Section 99.097(4), F.S.

<sup>49</sup> *Id.*

***Provisional Ballots***

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 the person may then vote a regular ballot, after it is determined that the person is registered. 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>50</sup>

***Poll Watchers***

A political party, political committee, and a candidate who requests to have poll watchers must designate in writing the 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>51</sup>

***Vacancies in Nomination***

If a party has a vacancy in nomination caused by death, resignation, withdrawal, removal, or any other cause, leaving no candidate for an office from the party, the filing officer before whom the candidate qualified shall notify the state, district, or county political party executive committee.<sup>52</sup> Within 5 days, the chair shall call a meeting of his or her executive committee to consider designation of a nominee to fill the vacancy. That designee's name shall be provided to the Department of State within 7 days for inclusion on the ballot. If the name is submitted after certification of the primary election results, the ballots shall not be changed and the former nominee's name will appear on the general election ballot. Votes cast for the former candidate will be counted for the person replacing the former nominee. If there is no opposing candidate, the nominee will be elected to office at the general election. Any person who, at the close of qualifying, was qualified for nomination, election or retention to a public office to be filled at the next general election is prohibited from qualifying as a candidate to fill a vacancy in nomination for any other office to be filled at that general election, even if they have withdrawn or have been eliminated as a candidate for the original office sought.<sup>53</sup>

***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

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<sup>50</sup> The 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 enable them to vote a regular ballot, under certain circumstances. One method that is permitted is an oral or written affirmation of change of address.

<sup>51</sup> Section 101.131, F.S.

<sup>52</sup> Section 100.111(4)(a), F.S.

<sup>53</sup> Section 100.111(4)(c), F.S.



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. The Florida Supreme Court has held that the initiative petition revocation procedure detailed in subsection (6) is unconstitutional.<sup>54</sup>

### ***Challenge of Constitutional Amendments***

Amendments can be removed from the ballot if the ballot title and summary fail to inform the voter, in clear and unambiguous language, of the chief purpose of the amendment.<sup>55</sup> This has been referred to by the courts as the “accuracy requirement.”<sup>56</sup> All constitutional amendments are subject to this requirement, including amendments proposed by the Legislature.<sup>57</sup> In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the ballot by Florida courts; the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.<sup>58</sup>

If a court rules to remove an amendment from the ballot and the Legislature is not in session, there is no opportunity to correct a deficiency in the ballot title or ballot summary — absent calling a special session.

### ***Photo I.D. at the Polls***

An elector is required to produce one of several approved types of picture identification at the polls.<sup>59</sup> If the picture identification does not contain a signature, an additional identification with the voter’s signature is required. If an elector fails to furnish the required identification, he or she must be permitted to vote using a provisional ballot.<sup>60</sup>

### ***Ballot Specifications***

Section 101.151, F.S., prescribes the specifications, including the type of paper and format, for ballots. That Section also prescribes the ballot position for specific offices and the requisite headings, such as “Congressional” and “State.”

### ***Voting Systems***

Section 101.5605, F.S., requires that voting systems used in the state be certified by the Department of State, and that the vote counting segment of such systems meet electronic industry standards.

Section 101.5606, F.S., establishes the requirements for the approval of voting systems, which includes an antiquated requirement that the system be able to produce precinct totals in marked or punched form.

<sup>54</sup> *Browning v. Florida Hometown Democracy*, 29 So.3d 1053 (Fla. 2010).

<sup>55</sup> *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).

<sup>56</sup> *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

<sup>57</sup> *Armstrong*, *supra* note 56, at 13.

<sup>58</sup> *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010); *Fla. Dept. of State v. Mangat*, 43 So.3d 642 (Fla. 2010); *Fla. Dept. of State v. Fla. State Conference of NAACP Branches*, 43 So.3d 662 (Fla. 2010).

<sup>59</sup> Section 101.043(1), F.S.

<sup>60</sup> Section 101.043(2), F.S.

Prior to an election, supervisors must test vote tabulating equipment.<sup>61</sup> A random sample of at least 5 percent of the devices for an optical scan system or 2 percent of the devices for a touchscreen system or 10 of the devices for either system, whichever is greater, is required.

### ***Municipal Elections***

Municipalities are allowed to move the date of a municipal election under certain circumstances.<sup>62</sup> Municipalities may also move the dates of the qualifying period for a municipal office when the election date has been moved.<sup>63</sup> However, the qualifying period can be no less than 14 days.<sup>64</sup>

### ***Voting System Audits***

Following the certification of each election, the county canvassing board or the local board responsible for certifying the election is required to conduct a manual audit of between 1% and 2% of the voting systems used in randomly selected precincts.<sup>65</sup> The section provides procedures that must be used to conduct the manual audit and the timeframe in which the manual audit must be completed.<sup>66</sup> After completion of the audit, the county canvassing board or local board must provide a report to the Department of State detailing the results.<sup>67</sup>

### ***Absentee Ballots***

An elector's request for an absentee ballot is deemed sufficient to receive an absentee ballot for all elections through the *next regularly scheduled general election*, unless the elector specifies the elections during that period for which he or she wishes to receive a ballot.<sup>68</sup> Ballots for absent uniform service voters and overseas voters must be sent at least 45 days before an election, for those timely requesting a ballot; there is no prescribed time for sending other absentee ballots. In addition, supervisors are required to make available electronically, and update by noon of each day, certain absentee ballot request information.

According to testimony from the Florida State Association of Supervisors of Elections (FSASE), there are a handful of municipalities that hold their elections *after* the general election but *before* the end of the calendar year, and it's unclear whether an elector's absentee ballot request remains valid for these local elections.<sup>69</sup>

Electors are permitted to request that their absentee ballot be mailed to an address other than the current mailing address on file with the supervisor of elections.<sup>70</sup> If the elector requests the absentee ballot be mailed to an address other than the current mailing address on file with the supervisor of elections, the elector must specify that either: the elector is absent from the county

<sup>61</sup> Section 101.5612(2), F.S.

<sup>62</sup> Section 101.75, F.S.

<sup>63</sup> Section 101.75(1), F.S.

<sup>64</sup> Section 101.75(3), F.S.

<sup>65</sup> Section 101.591, F.S.

<sup>66</sup> See s. 101.591(2)-(5), F.S.

<sup>67</sup> Section 101.591(5), F.S.

<sup>68</sup> Section 101.62(1)(a), F.S.

<sup>69</sup> Testimony of the Honorable David Stafford, FSASE President-Elect and Escambia Co. Supervisor of Elections before the Florida Senate Rules Subcommittee on Ethics and Elections (Mar. 28, 2011).

<sup>70</sup> Section 101.62(4)(b)1., F.S.

and does not plan to return prior to election day; the elector is temporarily unable to occupy his or her residence because of hurricane, tornado, flood, fire, or other emergency or natural disaster; or, the elector is in a hospital, assisted living facility, nursing home, short-term medical or rehabilitation center, or correctional facility.<sup>71</sup>

The county canvassing board may begin canvassing absentee ballots at 7 a.m. on the sixth day before an election, but not later than noon on the day following the election.<sup>72</sup> If the county is using electronic tabulating equipment, the processing of absentee ballots through the electronic tabulating equipment may also begin at 7 a.m. on the sixth day before the election.<sup>73</sup> However, it is a felony to release any results until the polls close on election day.<sup>74</sup>

Section 101.65, F.S., requires supervisors of elections to enclose detailed instructions with an absentee ballot. That section also provides the specific instructions to be enclosed. Certain first time voters are required to be provided with special absentee ballot instructions, the substance of which is provided for in statute.<sup>75</sup>

### ***Early Voting***

The concept of early voting was formally introduced in Florida in 1998 with the advent of “in-person absentee voting” in the offices of the supervisors of elections.<sup>76</sup> This form of early voting was discretionary for each supervisor of elections.<sup>77</sup> As the result of problems on election day with the 2002 primary elections in Broward and Miami-Dade counties, interim Secretary of State Jim Smith publicly encouraged voters statewide to “vote early” at the supervisors’ offices and help ease some of the election-day administrative crunch and potential for problems. As a result, the 2004 Legislature adopted a mandatory early voting statute.<sup>78</sup>

Florida’s present early voting statute allows voters to cast a ballot in the main or permanent branch office of a supervisor of elections, a city hall, or a public library, beginning 15 days before and ending on the 2<sup>nd</sup> day before an election.<sup>79</sup> For special elections, the beginning of the early voting period begins 8 days before the election. Early voting sites must be open for 8 hours on the weekdays and a total of 8 hours on the weekend within the hours of 7 a.m. and 7 p.m.

### ***Contest of Election***

An unsuccessful candidate, a qualified elector, or a taxpayer may contest the certification of an election in circuit court.<sup>80</sup> That Section establishes the allegations that must be contained in the complaint and provides that certain entities are indispensable parties to a contest.

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<sup>71</sup> *Id.* Absent uniformed services voters and overseas voters are excluded from this requirement. Section 101.62(4)(b)2., F.S.

<sup>72</sup> Section 101.68(2)(a), F.S.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Section 101.6923, F.S.

<sup>76</sup> Ch. 98-129, s. 17, LAWS OF FLA. (codified at s. 101.657, F.S.)

<sup>77</sup> *Id.*

<sup>78</sup> Ch. 2004-252, s. 13, LAWS OF FLA.

<sup>79</sup> Section 101.657, F.S.

<sup>80</sup> Section 102.168(1), F.S.

***Nomination for Presidential Electors; Minor Parties***

Section 103.021(4), F.S., provides that a minor political party that is affiliated with a national political party that holds a convention to nominate candidates for President and Vice President of the United States must simply notify the Department of State by September 1 of an election year of the name of its candidates, and the names are included on the general election ballot. A “national party” is defined as one established and admitted to the ballot in at least one state other than Florida.

A minor political party that is not affiliated with a national party that holds a convention to nominate presidential and vice-presidential candidates may only get their candidates’ names on the ballot by submitting petitions signed by one percent of the registered electors of the state (as of the preceding general election).

***Presidential Preference Primary***

The major political parties are required to elect a person to be the party’s candidate for President of the United States or to select a delegation to the party’s national convention.<sup>81</sup> There must be a Presidential Candidate Selection Committee composed of the Secretary of State, the Speaker of the House of Representatives, the President of the Senate, the minority leader of each house of the Legislature, and the chair of each political party required to have a presidential preference primary. The selection committee must meet in Tallahassee on the first Tuesday after the first Monday in November of the year before the presidential preference primary.<sup>82</sup> The mechanism to get a presidential candidate on the primary ballot and the qualifications for delegates is provided for in s. 103.101, F.S.

***Removal of Political Party Officers and Members***

Section 103.161, F.S., authorizes the chair of the state executive committee to remove or suspend state/county officers and members within the party structure for: violating their oath of office; engaging in activities that have or could have injured the name or status of the political party; or, interfering with the activities of the political party.

***Elections Code Violations***

It is a first degree misdemeanor for an inspector or canvassing official to refuse to allow up to three observers near, at all times while ballots are being counted, to see whether the ballots are being correctly read, called, and tallied.<sup>83</sup>

***Independent Expenditures***

Independent expenditures are expenditures by a person for the purpose of expressly advocating the election or the approval or rejection of an issue which are not controlled by or coordinated with any candidate, political committee, or their respective agents.<sup>84</sup> Under s. 106.011, F.S., an expenditure is not considered an independent expenditure if a committee or person, after the last day of qualifying for statewide or legislative office, consults about the candidate’s plans,

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<sup>81</sup> Section 103.101(1), F.S.

<sup>82</sup> Section 103.101(2)(c), F.S.

<sup>83</sup> Section 104.29, F.S.

<sup>84</sup> Section 106.011(5)(a), F.S.

projects, or needs, and then uses that information to plan, create, design, or prepare an independent expenditure or advertising campaign.<sup>85</sup>

### ***Candidate Reimbursement Reporting***

Candidates and their family members who receive reimbursement by check from the campaign depository for campaign expenses must report the name and *address* of the person to whom payment was made on periodic campaign finance reports.<sup>86</sup>

### ***Appointment of Registered Agents***

Each political committee, committee of continuous existence, or electioneering communications organization (ECO) is required to file a statement of appointment for both the registered office and registered agent with the Division of Elections (Division).<sup>87</sup> In the event that the registered office or registered agent changes, the entity is required to complete a written statement of change and file with the Division.<sup>88</sup>

### ***Statement of Candidates***

Candidates are required to file a statement with their filing officer that they have received, read, and understood the requirements of Chapter 106 of the Florida Statutes.<sup>89</sup> The candidate must file such statement within 10 days of the appointment of the candidate's campaign treasurer and designation of the campaign depository.<sup>90</sup>

### ***Electioneering Communication Organizations (ECOs)***

ECOs must register with the Division of Elections within 24 hours after receiving contributions or making expenditures for electioneering communications aggregating more than \$5,000 in a calendar year.<sup>91</sup> This has led to some confusion, as an "electioneering communication," by definition, cannot occur until 30 days before a primary election or 60 days before a general election, or what appropriately can be termed the "ECO season."<sup>92</sup>

ECOs must file campaign finance reports detailing contributions received and expenditures made on the same schedule as political committees, that is, quarterly for most of the year but with greater frequency after candidate qualifying.<sup>93</sup>

### ***Committees of Continuous Existence***

Under Florida law, committees of continuous existence are defined as any group, organization, association, or other entity certified under the requirements of s. 106.04, F.S. Committees of continuous existence must file annual reports with the Division.<sup>94</sup> If the CCE fails to meet the criteria in s. 106.04(1), F.S., the Division revokes the committee's certification until the criteria

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<sup>85</sup> Section 106.011(5), F.S.; section 106.011(6), F.S.

<sup>86</sup> Section 106.021 (3)(b), F.S.

<sup>87</sup> Section 106.022(1), F.S.

<sup>88</sup> When filing the original statement of appointment for the registered office and registered agent, the entity also pledges the undertaking to inform the Division of any change of the originally designated address of the entity. Section 106.022(1)(d).

<sup>89</sup> Section 106.023(1), F.S.

<sup>90</sup> Section 106.023(1), F.S.

<sup>91</sup> Section 106.03(1)(b), F.S.

<sup>92</sup> Section 106.011(18), F.S.

<sup>93</sup> Section 106.0703(1), F.S.

<sup>94</sup> Section 106.04(4)(a), F.S.

is met.<sup>95</sup> The Legislature has granted the Division rulemaking authority to establish the procedure of revoking the CCE's certification.<sup>96</sup> If a CCE does not file its annual report on its designated due date, the Division must levy a fine.<sup>97</sup> Once a report is found to be late, a Division filing officer must provide notice to the committee's treasurer.<sup>98</sup> The committee's treasurer may appeal or dispute a late filing fine by requesting a hearing before the Florida Elections Commission.<sup>99</sup> The Division's filing officer is to notify the commission of repeated late filing by a committee; the failure of a committee to file a report after given notice; or the failure to pay the imposed fine.<sup>100</sup>

CCEs must file campaign finance reporting forms at the same time as candidates and political committees, which must include transaction information from each credit card statement that will be included in the next report.<sup>101</sup> Failure to file subjects CCEs to a \$50 per day fine for the first three days late, thereafter \$500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater.<sup>102</sup> Unlike candidates and political committees, there is no enhanced \$500 penalty for the first three days late with respect to the final campaign finance report due immediately preceding a primary or general election.<sup>103</sup>

### ***Reports by Candidates and Political Committees***

Campaign treasurers for candidates and political committees are to file regular reports detailing all contributions received and all expenditures made, by or on behalf of the candidate or political committee.<sup>104</sup> The reports are normally due on the 10th day following the end of each calendar quarter.<sup>105</sup> Additionally, a candidate facing opposition to nomination or election to an office, a political committee, or a committee of continuous existence must file a report on the 32nd, 18th, and 4th days immediately preceding the primary election and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election. A candidate who has opted to receive public campaign financing is required to file reports at more frequent increments.<sup>106</sup> When a special election is called to fill a vacancy in office, all political committees and committees of continuous existence making contributions or expenditures to influence the results of the special election must file campaign treasurers' reports with the Division of Elections' filing officer on the dates set by the Department of State.<sup>107</sup>

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<sup>95</sup> Section 106.04(7), F.S.

<sup>96</sup> *Id.*

<sup>97</sup> Section 106.04(8)(a), F.S.

<sup>98</sup> Section 106.04(8)(b), F.S.

<sup>99</sup> Section 106.04(8)(c), F.S.

<sup>100</sup> Section 106.04(8)(d), F.S.

<sup>101</sup> Section 106.04(4)(b), F.S.

<sup>102</sup> Section 106.04(8)(a), F.S.

<sup>103</sup> See *infra* note 50 and accompanying text (political committees and candidates are subject to a \$500 per day penalty for each day that they are late in filing their final campaign finance report).

<sup>104</sup> Section 106.07(1), F.S.

<sup>105</sup> The section provides variances in the event that the tenth day following the end of each calendar quarter falls on a Saturday, Sunday, or legal holiday. *Id.*

<sup>106</sup> Candidates who opt to receive public campaign financing through the Florida Election Campaign Financing Act must file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election. Section 106.07(1)(b), F.S.

<sup>107</sup> Section 106.07(1)(d)1, F.S.

The Division's filing officer may conditionally accept a report that is deemed incomplete. If a report is deemed incomplete, the Division must notify the campaign treasurer why the report was found to be incomplete by registered mail. The Division must allow the campaign treasurer 3 days from receipt of the notice to complete the report by filing an addendum. The filing officer may opt to notify the campaign treasurer of the report's deficiency by a telephone call in lieu of sending a notice via registered mail. If no additional information is received from the campaign treasurer within 3 days of the telephone notification, the filing officer shall send notice via registered mail.

Each report submitted to the Division must include each credit card statement after it is received by the campaign treasurer.<sup>108</sup> Additionally, the campaign depository is required to return all checks drawn from the campaign account to the campaign treasurer — which, in turn, the campaign treasurer is required to retain for records.<sup>109</sup> The maintained records are subject to inspection by the Division or the Florida Elections Commission (Commission) anytime during normal business hours.<sup>110</sup>

If the Division determines that a report is late, the filing officer must notify either the candidate or the chair of the political committee that the report is late and that a fine is levied for each day that the report is late.<sup>111</sup> Reports due immediately preceding each primary and general election are subject to a higher late fine.<sup>112</sup> The appropriate filing officer must notify the Commission of repeated late filing of reports.<sup>113</sup>

All candidates that are required to file reports with the Division pursuant to s. 106.07, F.S., must use the Division's electronic filing system.

#### ***Limitations on Campaign Contributions***

Independent or minor party candidates may qualify to be placed on the ballot through the petition method.<sup>114</sup> Once a determination of qualification is made by the Department of State or the appropriate supervisor of elections, the department or supervisor must notify in writing all other candidates who have qualified for that same office within 3 days of the determination.<sup>115</sup> If an independent or minor party candidate failed to qualify through petition, any contribution received by a candidate, campaign treasurer, or deputy campaign treasurer after notification of the other candidate's failure to qualify must be returned to the contributor and may not be used on behalf of the candidate.<sup>116</sup>

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<sup>108</sup> Section 106.07(4)(a)11, F.S.

<sup>109</sup> Section 106.07(6), F.S.

<sup>110</sup> *Id.*

<sup>111</sup> Section 106.07(8)(b), F.S. The fine is \$50 per day for the first three days late, followed by \$500 per day thereafter, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*

<sup>112</sup> *Id.* The fine for late-filing the final report is \$500 per day, not to exceed 25 percent of the total receipts or expenditures for the period, whichever is greater. *Id.*

<sup>113</sup> Section 106.07(8)(d), F.S.

<sup>114</sup> Pursuant to Section 99.0955, F.S.

<sup>115</sup> Section 106.08(3)(c), F.S.

<sup>116</sup> Section 106.08(3)(c)2, F.S.

More restrictions are placed on candidates' acceptance of campaign contributions by cash or cashier's check. An individual is prohibited from contributing or accepting a cash contribution or contribution by cashier's check in excess of \$50.<sup>117</sup>

### ***Expenditures by Candidates and Political Committees***

Candidates and political committees may use debit cards when making expenditures. Before a candidate or political committee does use a debit card, they must provide a list of all persons authorized to use the card with the Division.<sup>118</sup> Any debit cards that are issued for a candidate's campaign or a political committee must expire by midnight of the last day of the month of the general election.<sup>119</sup>

### ***Surplus Campaign Funds***

Florida law currently provides that all surplus funds of state candidates who received *public financing* must be deposited in the Election Campaign Financing Trust Fund; the Trust Fund has been defunct for years after failing to have be reauthorized by the Legislature, and public financing of elections is now funded out of the General Revenue Fund.<sup>120</sup>

Other candidates may return, or "turn back," up to \$10,000 of surplus funds to their political party, except that candidates for the Florida Senate may turn back up to \$30,000.<sup>121</sup>

### ***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>122</sup> Current law does not address statements that must be featured on the advertisements of write-in candidates. Political advertisements by non-candidates must include the name of the sponsor of the advertisement, as well as who paid for the advertisement (if different from the sponsor, and not patently clear from the content or format of the ad).

In 2010, the Legislature adopted changes to modernize Florida's political advertising disclaimer laws by excluding required disclaimers on certain Internet and electronically-delivered advertisements.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> Any political advertisements, offered on behalf of a candidate, must state that the advertisement was approved by the candidate and must disclose who paid for the advertisement.<sup>126</sup> The "approved by"

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<sup>117</sup> Section 106.09(1), F.S.

<sup>118</sup> Section 106.11(2)(a)4, F.S.

<sup>119</sup> Section 106.11(2)(a)5, F.S.

<sup>120</sup> Section 106.141(4)(b), F.S.

<sup>121</sup> Section 106.141(4)(a)3., F.S.

<sup>122</sup> Section 106.143(1)(a), F.S.

<sup>123</sup> Ch. 2010-167, s. 18, LAWS OF FLA. (codified at s. 106.143(8), F.S.)

<sup>124</sup> Section 106.143(2), F.S.

<sup>125</sup> *Id.*

<sup>126</sup> Section 106.143(4)(a), F.S.



disclaimer is not required for campaign messages used by a candidate or his or her supporters if the message is displayed on clothing.<sup>127</sup>

### ***Campaign Fundraisers***

In addition to the regular sponsorship disclaimers required in s. 106.143, F.S., tickets or advertising to campaign fundraising events must include an additional disclaimer that identifies the ticket purchase or any contribution as a contribution to the campaign of the candidate.<sup>128</sup>

### ***Polls and Surveys***

Current law provides that a candidate, PC, CCE, ECO, 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>129</sup>

### ***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 Commission has the power to subpoena witnesses and others with information relevant to an investigation, as well as to require the production of relevant papers, books, or other relevant documentation.<sup>130</sup> The Commission may pursue an action in any circuit court to compel any witness to appear, respond to lawful inquiries, and produce subpoenaed documentation.<sup>131</sup>

### **Penalties for Election Violations**

The Florida Elections Commission has jurisdiction to investigate and determine violations of Chapters 104 and 106 of the Florida Statutes,<sup>132</sup> and to impose a civil penalty of up to \$1,000 per violation, in most cases.<sup>133</sup>

Until 2007, where there were disputed issues of material fact, an alleged violator could elect to have a formal hearing at the Division of Administrative Hearings (DOAH), with the matter returning to the Commission for final disposition and a determination of penalties, if applicable. Otherwise, the Commission would conduct the hearing.

In 2007, the Legislature amended the procedure to have *all* cases default to an ALJ at DOAH after the Commission makes a probable cause determination, *unless* the alleged violator elects<sup>134</sup> to have a formal or informal hearing before the commission; or, resolves the matter by consent

<sup>127</sup> Section 106.143(4)(c), F.S.

<sup>128</sup> Section 106.025(1)(c), F.S.

<sup>129</sup> Section 106.17, F.S.

<sup>130</sup> Section 106.26(1), F.S.

<sup>131</sup> *Id.*

<sup>132</sup> Section 106.25(1), F.S.

<sup>133</sup> Section 106.265(1), F.S. In addition, Sections 104.271 and 106.19, F.S., provide for expanded and enhanced penalties for certain election law violations.

<sup>134</sup> Within 30 days after the probable cause determination.

order.<sup>135</sup> The 2007 changes also gave the ALJ the authority to enter a *final order* on the matter, appealable directly to Florida's appellate courts: cases forwarded to DOAH never return to the Commission for final disposition. The 2007 law, however, neglected to give the ALJ the power to impose a civil penalty in cases where the ALJ found a violation.

This omission has been the subject of litigation.<sup>136</sup> In April 2006, the Commission received a sworn complaint alleging that James Davis, a candidate, had violated certain elections laws. The Commission conducted an investigation and found probable cause, charging Mr. Davis with five violations of Chapter 106, F.S. Because he did not request a hearing before the Commission, or elect to resolve the matter by a consent order, the matter was referred to DOAH for a formal administrative hearing. Ultimately, the ALJ found that Mr. Davis violated the Election Code, as alleged. The ALJ declined to impose civil penalties, however, because he determined that he lacked the express authority to do so. The Commission appealed the case to the First District Court of Appeal, which affirmed the order. As a result, complaints heard by an ALJ can result in a violation without recourse to the imposition of a civil penalty for the violation.<sup>137</sup>

#### Electioneering Communications Organizations

Section 106.265, F.S., contains the specific authority for the Commission to impose a civil penalty for a violation of Chapter 104 or Chapter 106 of the Florida Statutes. That section authorizes the Commission to impose a civil penalty not to exceed \$1,000 per count, with the precise amount dependent upon consideration of certain aggravating and mitigating factors. The section further provides that the Commission is responsible for collecting civil penalties when any person, political committee, committee of continuous existence, or political party fails or refuses to pay any civil penalties, and requires such penalties to be deposited into the now-defunct Election Campaign Financing Trust Fund.<sup>138</sup> Finally, the section permits a respondent, under certain circumstances, to seek reimbursement for attorney's fees.

Nothing in Section 106.265, F.S., specifically addresses *electioneering communications organizations*, which can also commit elections violations; until last year — when they were more explicitly detailed in statute — ECOs were generally treated like political committees for most purposes under the campaign finance laws.<sup>139</sup>

#### ***Public Officer or Employee Oath***

Employees of the state, its departments and agencies, subdivisions, counties, cities, school boards, and districts of the free public school system of the state or counties, or institutions of higher learning, and all candidates for public office, except for federal office, are required to take the oath prescribed therein.<sup>140</sup> Any person who is required to take the employee oath and fails to do so is required to be discharged by the governing authority of his or her public employer, shall

<sup>135</sup> Chapter 2007-30, Section 48, LAWS OF FLORIDA.

<sup>136</sup> *Florida Elections Commission v. Davis*, 44 So.3d 1211 (Fla. 1<sup>st</sup> DCA 2010).

<sup>137</sup> Because of the nature of such proceedings, it is unclear whether the Commission would have jurisdiction to impose a civil penalty based upon a final order from DOAH — or even how they practically would accomplish it.

<sup>138</sup> The Elections Campaign Financing Trust Fund expired effective November 4, 1996, by operation of law. Funding for public campaign financing in statewide races has since been handled through the General Revenue Fund.

<sup>139</sup> See generally, Ch. 2010-167, LAWS OF FLA. (detailing requirements for ECOs in sections such as 106.0703, F.S.); see also, s. 106.011(1)(b)3., F.S. (2009) (for purposes of registering and reporting contributions and expenditures, ECOs are treated like political committees).

<sup>140</sup> Section 876.05(1), F.S.

have his or her name removed from the payroll, and shall not be permitted to receive any payment as an employee or as an officer where he or she was serving.<sup>141</sup> Any person who refuses to take the oath in Section 876.05, F.S., is deemed to have failed to qualify for office and his or her name shall not be printed on the ballot as a qualified candidate.<sup>142</sup>

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 97.012, authorizing 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>143</sup> or rules adopted by the Department of State.

**Section 2.** Amends s. 97.021(18), F.S., providing that a minor political party is any group specified in s. 103.095, F.S., where the new substantive requirements for minor political parties are located.

**Section 3.** Amends s. 97.025, F.S. requiring the Department of State to make an Election Code pamphlet available to each candidate who qualifies, as opposed to providing a printed pamphlet. The bill also amends s. 97.025, F.S., to require only that the Department make the Election Code pamphlet available to each supervisor of election, so each candidate qualifying can have access to the pamphlet.

**Section 4.** Amends s. 97.0575, F.S., requiring third-party voter registration organizations to register with the Division of Elections and provide certain information in an electronic format; mandating that all voter registration applications used by such organization contain information identifying the organization and that information about the assignment of the forms be maintained in a database by the Division and supervisors of elections; providing 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; requiring applications collected by these organizations to 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; acknowledging *force majeure* or impossibility of performance as an affirmative defense to submitting forms on the prescribed timetable.

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 Division rulemaking authority.

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<sup>141</sup> Section 876.06, F.S.

<sup>142</sup> Section 876.07, F.S.

<sup>143</sup> The Florida Election Code encompasses Chapters 97-106, F.S.

**Section 5.** Amends s. 97.071, F.S., requiring voter information cards to include an elector's polling place address; providing that when an elector's polling place address changes, the supervisor of elections must send a new card to the elector.

**Section 6.** Creates an unnumbered section providing that all supervisors of elections must provide voter information cards including the polling place address for any elector who registers to vote or who is issued a new voter information card, on or after August 1, 2012.

**Section 7.** Amends s. 97.073(1), F.S., requiring the supervisor of elections to notify each voter registration applicant of the disposition of his application within 5 business days after the voter registration information is entered into the statewide voter registration system. If an application is approved, the supervisor must mail a voter identification card to the applicant. The voter identification card constitutes notice of registration. If an application is incomplete failure to provide the information required in s. 97.053(5), F.S., the supervisor shall mail a notice requesting the missing information. If an application is a duplicate of a current registration record, the supervisor must treat the application as if it were an update, including a signature update, to the record and send a new voter information card. If the application is denied, the supervisor shall mail a notice of denial informing the applicant of the reason his or her application was denied.

**Section 8.** Amends s. 97.1031, F.S., specifying the procedure for an elector to notify the supervisor of elections of a change of address, name or party affiliation; providing that a registered voter who moves within the state may notify the supervisor by telephone or electronic means; providing that if the notification is by electronic means, the elector must provide his or her date of birth. Alternatively, the bill allows the elector who moves within the state to submit the change on a voter registration application or other signed written notice. When an elector changes his or her name by marriage or other legal process, the elector is required to notify his or her supervisor of elections or other voter registration official using a voter registration application.

**Section 9.** Amends s. 98.075, F.S., regarding voter registration list maintenance activities; requiring in the Department to identify registered voters who are deceased by using information from the Department of Health or the U.S. Social Security Administration; mandating that the supervisor of elections remove the name of the registered voter within 7 days after receiving information from the Department of Health or U.S. Social Security Administration that a voter is deceased; requiring the supervisor to remove the name of a registered voter from the statewide voter registration when the supervisor receives a copy of the death certificate issued by a governmental agency authorized to issue death certificates. If the Department or supervisor of elections learns that a registered voter is ineligible to vote due to death, adjudication as a convicted felon without having his or her civil rights restored, adjudicated mentally incapacitated without having his or her voting rights restored, or other legal basis, from sources other than the agencies enumerated in s. 98.075, F.S., the Department or supervisor is required to follow the notification procedures for removal in s. 98.075(7), F.S.

**Section 10.** Amends s. 98.093, F.S., authorizing the Department and supervisors of elections to receive or access certain information from state and federal officials and entities in the format prescribed in order to identify ineligible registered voters and maintain accurate and current

statewide voter registration records; requiring the Florida Parole Commission to furnish information about those who have been granted clemency or any other updates made in the preceding month on at least a bimonthly basis; requiring the Parole Commission to provide the following additional information which was not previously required: Florida driver's license number, Florida identification card number, or the last four digits of the social security number; mandating that the Department of Corrections identify those who have been convicted of a felony and committed to its custody or placed on community supervision; requiring that information be provided in a time and manner that enables the Department of State to identify registered voters who are convicted felons and meet its obligations under state and federal law.

**Section 11.** Effective July 1, 2012, amends s. 98.0981, F.S., prescribing in law the format requirements for voter history and precinct-level data reports; modifying the timeframes for information to be sent by the supervisors to the Department; requiring the Department to make precinct-level reports available in a voter database; subjecting supervisors of elections to a \$50/day fine for late or incomplete reports, payable from supervisors' personal funds; expanding the elections for which voting history must be provided to include, in addition to general elections, presidential preference primaries, special elections, and primary elections; creating detailed file specifications for voting history and precinct-level election results data; requiring supervisors to reconcile the two data sets to ensure the integrity of the information. Fines are remitted to the Department of State, which transmits the fines for deposit in the General Revenue Fund.

The section 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.

**Section 12.** Amends s. 99.012, F.S., prohibiting a person not complying with the resign to run laws from qualifying as a candidate for election. Such person cannot be on the ballot.

**Section 13.** Amends s. 99.021, F.S., providing that a copy of the candidate oath or affirmation be made available to candidates by the officer before whom the candidate seeks to qualify in lieu of receiving a printed copy; removing the requirement that candidates for partisan office affirm that they have taken the employee oath;<sup>144</sup> requiring candidates for partisan office other than federal office to affirm that he or she will support the Constitution of the United States and the Constitution of the State of Florida; requiring candidates for federal office to affirm that they will support the U.S. Constitution. Any person seeking to qualify for nomination as a candidate of any political party is required to affirm his or her party membership and that he or she has not been a registered member of any other political party in the calendar year leading up to the general election. The bill also codifies current practice that those seeking to qualify for President or Vice President of the United States are not required to comply with the oath/affirmation requirement for federal office in s. 99.021, F.S.

**Section 14.** Amends s. 99.061, F.S., modifying the qualifying papers necessary to qualify for partisan federal, state, or multicounty district office; requiring that, at the time of qualifying for a constitutional office, each candidate file a full and public disclosure of financial interests

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<sup>144</sup> The oath is located in s. 876.05, Florida Statutes, which is amended elsewhere in the bill.

pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), F.S. The check required to pay the filing fees, if the person did not qualify by petition, must be drawn on the candidate's campaign account and be payable to the person or entity as prescribed by the filing officer. If the check for the filing fee is returned by the bank, the candidate no longer is required to submit a certified check within 48 hours of receipt of the notification that the check was returned. Rather, if the check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check. A candidate is no longer required to provide a copy of the notice of obtaining ballot position when he or she qualifies by the petition process in s. 99.095, F.S. Candidates are no longer required to submit the loyalty oath required by s. 876.05, F.S. The original appointment of campaign treasurer and designation of campaign depository are required to be filed by the end of qualifying, unless the candidate filed those forms prior to the beginning of the qualifying period. The bill also provides that the filing officer performs a ministerial function in reviewing qualifying papers. In determining whether a candidate is qualified, the filing officer shall review the qualifying papers to determine whether all items required have been properly filed and whether each item is complete on its face, including the verification of documents required to be verified. The filing officer may not determine whether the contents of the qualifying papers are accurate. The decision of the filing officer concerning whether a candidate is qualified is exempt from the Administrative Procedures Act in Chapter 120 of the Statutes.

**Section 15.** Amends s. 99.063, F.S., requiring the signature of a Lieutenant Governor candidate to be verified under oath or affirmation pursuant to 92.525(1)(a), F.S. at qualifying as opposed to "duly acknowledged."; deleting a requirement that Lt. Governor candidates file the loyalty oath required by s. 876.05, F.S., to conform to changes to that section in the bill.

**Section 16.** Amends s. 99.092, F.S., requiring that the filing officer transfer election assessments for candidates for partisan office directly to the Elections Commission Trust Fund.

**Section 17.** Amends s. 99.093, F.S., requiring the qualifying officer in municipal elections to forward election assessments paid by municipal candidates to the Florida Elections Commission for deposit in the Elections Commission Trust Fund, within thirty days after the close of qualifying.

**Section 18.** Amends s. 99.095, F.S., specifying that in a year of apportionment, any candidate for county or district office seeking ballot position through the petition process may obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries; provides that the candidate must obtain at least the number of signatures equal to 1 percent of the total number of registered voters divided by the total number of districts of the office involved; provides that the number of signatures required will be determined by a compilation of the immediately preceding general election.

**Section 19.** Amends s. 99.097, F.S., clarifying 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; clarifying that the rulemaking authority of the Department of State extends to all petitions, not just for the random sample method of verifying petitions; codifying Florida case law, which holds that the random

sampling method of petition verification may not be used for constitutional amendment petitions; providing 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 by the petition sponsors, 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.

**Section 20.** Amends s. 100.061, F.S., moving Florida's primary election from 10 weeks before the general election to 9 weeks (i.e., September 4, 2012), which corresponds with Labor Day Weekend.

**Section 21.** Amends s. 100.111, F.S., deleting obsolete requirements concerning filling vacancies created by an incumbent officeholder's qualification to run for federal office, as the resign-to-run law no longer applies to incumbent officeholders running for federal office; placing 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; providing a process and timeframes for filling a vacancy in nomination. A person who qualified for nomination or election to or retention in a public office to be filled at the ensuing general election or who attempted to qualify and failed to qualify is prohibited from qualifying as a candidate to fill a vacancy in nomination. The bill also specifies that a vacancy in nomination is not created if an order of a court that has become final determines that a nominee did not properly qualify or did not meet the necessary qualifications to hold the office for which he or she sought to qualify.

**Section 22.** Amends s. 100.371, F.S., reducing the validity of initiative petition signatures from 4 years to 2 years after the petition is signed; requiring the initiative sponsor to submit signed and dated forms to the supervisor of elections for the county of residence listed by the person signing the form for verification; mandating that supervisors receiving misfiled petitions notify the initiative petition sponsor. If a signature is from a registered voter of another county, the supervisor shall notify the petition sponsor of the misfiled petition. The bill changes two signature verification requirements: the form must set forth the purported elector's city of residence; and, the purported elector must be a registered voter of the state both when the form is signed and when it is verified. Finally, this section removes the initiative signature revocation procedure that the Florida courts have determined to be unconstitutional.

**Section 23.** Amends s. 101.043, F.S., providing that the address that appears on the identification presented by an elector at the polls may not be used as the basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence.

**Section 24.** Amends s. 101.045, F.S., readopting a prohibition against an elector voting 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; removing an elector's ability to change his or her name or address at the precinct and vote a *regular* ballot; such electors are still entitled to vote a *provisional* ballot.

**Section 25.** Amends s. 101.131, F.S., requiring the Division of Elections to promulgate a form to designate poll watchers; providing a noon deadline 14 days before early voting begins for designation of poll watchers; requiring poll watcher designations to be made by the chairman of the county political executive committee, the chairman of a political committee, or the candidate; making all poll watchers at-large poll watchers, able to enter all polling rooms and early voting areas; requiring supervisors of elections to provide poll watcher identification badges that poll watchers must wear when present at the polls.

**Section 26.** Amends s. 101.151, F.S., authorizing ballot-on-demand technology for printing election-day ballots, without the need for the Secretary of State's express written authorization; modifying ballot layout to eliminate headings and providing for the re-ordering of certain offices.

**Section 27.** Amends s. 101.161, F.S., providing that any action for a judicial determination that a ballot title or substance is misleading or otherwise deficient in a constitutional amendment adopted through joint resolution of the Legislature must commence within 30 days after the joint resolution is filed with the Secretary of State or at least 150 days before the election that the amendment is to appear on the ballot; whichever date occurs later; providing that any court hearing such an action must accord priority to this case and must render a decision expeditiously; directing the Attorney General to prepare a revised ballot title or substance that corrects the deficiency identified by the court if a court determines that the ballot title or substance is defective and appeal of the decision is either declined, abandoned, or exhausted; requiring the Department of State to provide a designated number to the revised ballot and substance for supervisors of elections to place on the ballot; specifying that a defect in the ballot title or substance of a constitutional amendment adopted through joint resolution is not grounds for removal from the ballot.

**Section 28.** Amends s. 101.5605, F.S., requiring the vote counting component of voting systems to meet Department of State standards for certification instead of industry standards.

**Section 29.** Amends s. 101.5606, F.S., eliminating an antiquated requirement that voting systems be capable of automatically producing precinct totals in marked or punched form.

**Section 30.** Amends s. 101.5612, F.S., modifying the random sample, pre-election testing of vote tabulators to require testing of *both* optical scan and touchscreen voting systems; specifying that a random sample test of the devices must consist of a random selection of at least 5 percent or 10 of the optical scan systems devices, whichever is greater, and a sample of at least 2 percent of the touchscreen systems used by voters with disabilities.

**Section 31.** Amends s. 101.5614, F.S., removing obsolete provisions relating to canvassing write-in votes; providing that for each ballot or ballot image, the canvassing board compare write-in votes with the votes cast on the ballot and if the number of votes for any office exceeds the number of votes allowed by law, the votes shall not be counted.



**Section 32.** Amends s. 101.591, F.S., specifying that if a manual recount was conducted pursuant to s. 102.166, F.S., it is not necessary to conduct a manual audit of the voting system. The manual recount appears sufficient to satisfy the intent of the audit requirement provision because the individual ballots would be inspected.

**Section 33.** Amends s. 101.62, F.S., allowing a request for an absentee ballot to be sufficient for all elections through the end of the calendar year of the second ensuing, regularly-scheduled general election, unless the elector specifically indicates in their request which elections during that period that they desire to vote by absentee ballot; requiring supervisors to update and make available electronically absentee ballot request information by 8 a.m. daily, including weekends; requiring supervisors to begin mailing absentee ballots to non-uniformed and overseas voters between the 30th and 35th day of an election; mandating that supervisors mail such ballots within 48 hours of a timely request; deleting the “for cause” requirements for mailing an absentee ballot to an address that the elector specifies in his or her absentee ballot request that differs from the one on file with the supervisor of elections.

**Section 34.** Amends s. 101.65, F.S., providing for the following additional instructions to be included with absentee ballots:

An absentee ballot will be considered illegal and not be counted if the signature in the voter’s certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the voter’s certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of elections so that it is received no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15<sup>th</sup> day before election day.

**Section 35.** Amends s. 101.657, F.S., providing for early voting in elections containing state and local races to begin 7 days before an election; eliminating language governing early voting in special elections, to conform; eliminating the restriction that early voting sites be open between the hours of 7 a.m. and 7 p.m.; giving supervisors the discretion to hold early voting in other elections and determine the hours of operation of early voting sites in those elections.

**Section 36.** Amends s. 101.68, F.S., allowing the county canvassing board to begin canvassing absentee ballots at 7 a.m. on the 15th day before the election. This would allow canvassing to begin at the same time that early voting begins, and allow the supervisors greater efficiency in canvassing ballots. Supervisors would still be prohibited from releasing any election results until the polls close on Election Day.

**Section 37.** Amends s. 101.6923, F.S., providing for the following additional instructions to be included with special absentee ballot instructions for voters who registered to vote by mail and have not previously provided identification prior to voting for the first time in the state:

An absentee ballot will be considered illegal and not be counted if the signature in the voter’s certificate does not match the signature on record. The signature on file at the start of the canvass of the absentee ballots is the signature that will be used to verify your signature on the voter’s certificate. If you need to update your signature for this election, send your signature update on a voter registration application to your supervisor of

elections so that it is received no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15<sup>th</sup> day before election day.

**Section 38.** Amends s. 101.75, F.S., deleting a requirement that governing bodies setting municipal elections to coincide with statewide or countywide elections provide for a 14-day candidate qualifying period.

**Section 39.** Amends s. 102.168, F.S., providing that the canvassing board responsible for canvassing the election is an indispensable party defendant in county and local election contests; clarifying that the Elections Canvassing Commission is an indispensable party defendant in federal, state, and multicounty election contests and in election contests for justice of the Supreme Court, judge of a district court of appeal, and judge of a circuit court. This section further provides that in any contest requiring a review of the canvassing board's decision on the legality of an absentee ballot pursuant to s. 101.68 based upon a comparison of the signature on the voter's certificate and the signature of the elector in the registration records, the circuit court may not review or consider any evidence other than the signatures on the voter's certificate and the signature of the elector in the registration records. The reviewing court shall only determine if the canvassing board abused its discretion in making its decision.

**Section 40.** Amends s. 103.021, F.S., modifying the definition of "national party" with respect to the nomination of affiliated minor party candidates for President and Vice President of the United States; limiting the term "national party" to one registered with and recognized as a qualified national committee of a political party by the Federal Election Commission; modifying the petition requirements for presidential and vice presidential candidates of a minor political party *not* affiliated with a national party holding a convention to nominate candidates, from 1 percent of the registered electors of the state for the preceding general election to "a number of electors in each of one-half of the congressional districts of the state, and of the state as a whole, equal to 2 percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding general election in which presidential electors were chosen."

**Section 41.** Authorizes s. 103.095, F.S., establishing new, substantive requirements for the regulation of minor political parties; authorizing the Department to cancel the filings of minor political parties and to promulgate rules concerning the cancellation of filing; making the requirements of the section retroactive for any party registered with the Department on July 1, 2011; providing that the new requirements must be complied with within 180 days after the Department notifies any existing minor political party or the minor political party's registration is automatically cancelled.

**Section 42.** Amends s. 103.101, F.S., eliminating the Presidential Candidate Selection Committee in connection with the presidential preference primary (PPP); providing for the political parties to directly designate candidates for the PPP by a date certain in November of the year preceding the PPP; requiring the Department to immediately notify each presidential candidate listed by the Secretary of State. The bill also makes technical and conforming changes to s. 103.101, F.S.

**Section 43.** Amends s. 103.141, F.S., deleting a provision relating to the removal of officers or members of a county executive committee, to conform to the repeal of s. 103.161, F.S., *infra*.

**Section 44.** Repeals s. 103.161, F.S., relating to the for-cause removal of officers or members of the state executive committee or county executive committee of a political party.

**Section 45.** Amends s. 104.29, F.S., to clarify that the inspectors or other election officials at the polling place shall, after the polls close, allow as many as three persons near to them to see whether the ballots are being reconciled correctly.

**Section 46.** Amends s. 106.011, F.S., clarifying the time period during which consultation by a committee or person about a candidate's plans, projects, or needs will constitute an exemption from the definition of an "independent expenditure," tying the time frame to the candidate's specific qualifying period instead of the qualifying period for legislative and statewide candidates; providing that disbursements relating to potential candidate polls in s. 106.17, F.S., are not "contributions or expenditures" for purposes of determining whether someone is a "candidate" pursuant to Chapter 106, Florida Statutes (campaign finance).

**Section 47.** Amends s. 106.021, F.S., deleting a requirement that candidates (and their family members) receiving reimbursement for campaign expenses by check drawn on their campaign account report the *address* of each person *to whom* the candidate made payment, on their periodic campaign finance reporting forms.

**Section 48.** Amends s. 106.022, F.S., providing that a PC's, CCE's, or ECO's appointment of a registered agent and registered office be filed with the same filing officer that the entity registered with originally.

**Section 49.** Amends s. 106.023, F.S., revising the "Statement of Candidate" mandated for every candidate to state that the candidate has been *provided access* to Chapter 106 of the Florida Statutes, instead of *providing a copy*.

**Section 50.** Amends s. 106.025, F.S., excluding certain Internet and electronic campaign fundraiser tickets and advertising pursuant s. 106.143(8), F.S., from the additional fundraising sponsorship disclaimer requirements.

**Section 51.** Amends s. 106.03, F.S., clarifying that ECO's need only register with the Division at the commencement of the "ECO season," no earlier than 30 days before a primary or 60 days before a general election at which the ECO makes an aggregate *expenditure* in excess of \$5,000; deleting a requirement that ECO's register after receiving *contributions* or making expenditures aggregating more than \$5,000; clarifying that ECOs who support or oppose candidates at the multicounty or local level and PCs who make intend to support or oppose candidates or issues at the multicounty or local level need only register with the Division.

**Section 52.** Amends s. 106.04, F.S., requiring CCEs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that CCEs include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); clarifying when campaign treasurer's reports for committee of

continuous existence are due and how notification is provided when reports are late or incomplete; clarifies the procedures for imposition of fines against committees of continuous existence; defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

**Section 53.** Amends s. 106.07, F.S., deleting a redundant requirement to file a third-quarter campaign finance report during an election season, as reports are due more frequently after qualifying — generally in 2-week intervals; providing that a campaign treasurer must be notified by certified mail or another method that provides a proof of delivery of notice when a filing officer has deemed a report as incomplete; establishing that, within 7 days of receiving the notice, the campaign treasurer must provide an addendum to the filing officer containing the information needed to complete the report; requiring PCs participating in local elections to file campaign finance reports on the same schedule as the local candidates, in addition to filing that information on required periodic reports with the Division of Elections; providing that PCs and candidates include transaction information for each credit card purchase in electronic campaign finance reports, in lieu of a copy of their credit card statement (to conform to the functionality of the electronic filing system); defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation.

**Section 54.** Amends s. 106.0703, F.S., defining the term “repeated late filings,” providing that three late filed campaign finance reports within a two-year period will be treated as a separate, additional election violation; clarifying, for administrative ease of filers, that the initial campaign finance report filed by an ECO shall be a single, retroactive report of receipts and disbursements made from the date of the last general election, instead of multiple reports for each applicable calendar quarter and other abbreviated time frames applicable to reports of political committees and candidates.

**Section 55.** Amends s. 106.0705, F.S., requires campaign finance *office account* reports and *termination* reports (surplus funds) 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; deletes a time-delimited, outdated provision related to campaign finance filings; requiring the Division to amend its electronic campaign finance reporting system to provide for the initial, single, retroactive report ECOs must now file, to conform to changes to s. 106.0703(8) made by the Act.

**Section 56.** Amends s. 106.08, F.S., deleting a requirement that persons authorized to accept in-kind contributions to the state or county executive committee of a political party do so in a *signed* acceptance (the written acceptance must still be dated before the in-kind contribution is made); provides that persons accepting on behalf of county executive committees file their in-kind contribution acceptance with the applicable supervisor of elections instead of the Division of Elections; deletes obsolete provisions relating to minor party and independent candidates seeking to qualify by the petition method.

**Section 57.** Amends s. 106.09, F.S., clarifying that the \$50 limit on contribution by cash and cashier’s check are in the *aggregate, per election*; it also clarifies that the aggregate limits apply

to *making* contributions to *the same* candidate or committee or *accepting* contributions from *the same* contributor.

**Section 58.** Amends s. 106.11, F.S., eliminating a requirement for candidates using debit cards as bank checks to submit a list of authorized users to the Division of Elections (unnecessary in practice); removes the requirement that the debit cards expire no later than November 30 of an election year (banks do not typically issue termination dates for debit cards); clarifies that a candidate may be reimbursed for a loan that he or she has made to the campaign “at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations;” makes technical changes to the designation of a campaign account.

**Section 59.** Amends s. 106.141, F.S., directing that surplus campaign funds of candidates that have received public financing be returned to the General Revenue Fund, after paying off: previous monetary obligations of the campaign, costs for closing down campaign offices, and, costs associated with preparing final campaign reports; authorizes unlimited turn backs of surplus campaign funds to a candidate’s political party.

**Section 60.** Amends s. 106.143, F.S., mandating that a write-in candidate use a specified disclaimer for political advertisements; changing the sponsorship disclaimer for non-candidate political advertisements to require disclosure of the person *paying* for the advertisement in lieu of the *sponsor*; simplifying the requirements for disclaimers for political party and political committee 3-pack ads; creating a new, specific-language sponsorship disclaimer for political advertisements made as in-kind contributions from a political party; prohibiting candidates for nonpartisan office from referring to party affiliation in their political advertisements, and prohibiting them from campaigning based on party affiliation; clarifying that if a political advertisement is paid for a candidate, the advertisement need not specify that the candidate “approved” the advertisement (mirroring the treatment of political disclaimers in the 2010 “Technology in Elections Act”,<sup>145</sup> which created a new disclaimer for electronic ads that merely states: “Paid by (name of candidate), (party affiliation), for (office sought)”); deletes an exclusion from the “approved by” disclaimer for campaign messages designed to be worn, to conform to changes made to the general ‘paid-for-by’ disclaimer in the 2010 Technology in Elections Act.<sup>146</sup>

**Section 61.** Amends s. 106.17, F.S., providing that political parties and affiliated party committees may conduct polls for the purpose of determining the viability of potential candidates and share those results with potential candidates without such activities constituting a contribution to the potential candidate or expenditure by the political party or affiliated party committee.

**Section 62.** Amends s. 106.18, F.S., deleting an outdated provision relating to candidates filing copies of their campaign finance reports. Before going to electronic filings, candidates required to file with the Division also had to file copies with the applicable supervisors of elections.

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<sup>145</sup> Ch. 2010-167, s. 18, LAWS OF FLA.

<sup>146</sup> *Id.*

**Section 63.** Amends s. 106.19, F.S., providing that a candidate's failure to comply with the requirements of Chapter 106 has no effect on whether the candidate has qualified for the office sought.

**Section 64.** Amends s. 106.25, F.S., providing that respondents against whom a sworn complaint is received by the Florida Elections Commission shall have 14 days after receipt to file an initial response, and prohibiting the executive director from making a legal sufficiency determination on the complaint during that time; prohibiting the Commission from determining by rule what constitutes "willfulness" for purposes of determining elections violations; authorizing the Commission to enter into consent decrees with a respondent without requiring an admission of guilt; reversing 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; mandating 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; authorizing the DOAH administrative law judge to impose civil penalties to the same extent as the Commission, and that he or she consider the same mitigating or aggravating circumstances in determining fines.

**Section 65.** Amends s. 106.26, F.S., providing that the proper venue for the Florida Elections Commission to file a complaint to enforce a subpoena against a witness is the circuit court where the witness resides.

**Section 66.** Amends s. 106.265, F.S., integrating ECOs into a statutory list of entities for the purpose of assessing election law civil penalties; clarifying that all civil penalties collected are deposited to the General Revenue Fund of the State instead of the defunct Election Campaign Financing Trust Fund.

**Section 67.** Amends s. 106.29, F.S., clarifying that political party executive committees making contributions or expenditures in special primary or special elections must file campaign finance reports on the dates set by the Department of State in s. 100.111, F.S.; providing for the filing of such reports on the Friday before a special primary or special election, and subjecting the state and county executive committee filing late to a \$10,000-per-day or \$500-per-day fine, consistent with other elections; provides that notice of fines is sufficient upon proof of delivery of written notice to the mailing address or street address on record with the filing officer; establishes repeated late filings (3 late filings in any 2-year period) as a separate violation.

**Section 68.** Amends s. 106.35, F.S., deleting outdated provisions relating to paper reports associated with public campaign financing. Paper reports have been replaced by the Division's electronic filing system as mandated by s. 106.0705, F.S.

**Section 69.** Amends s. 876.05, F.S., deleting the requirement that all candidates for public office, other than candidates for federal office, execute the public employees' oath.

**Section 70.** Repeals s. 876.07, F.S., which provides that a candidate who fails to execute the oath shall be deemed to have not qualified for public office and shall not be listed on the ballot as a qualified candidate.

**Section 71.** Provides for a severability clause.

**Section 72.** Except as otherwise provided, the act takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may result in very minor additional costs to prepare and file local campaign finance reports for CCEs who participate in county or municipal elections.

C. Government Sector Impact:

The bill may be expected to have a positive fiscal impact as a result of: reducing the time period for early voting from 14 days to 6 days; higher penalties being realized for certain late-filed reports by CCEs; fines being realized on the new election violation of “repeated late filings;” no longer requiring county canvassing boards to perform a voting system audit if a manual recount is completed; and, abolishing the requirement of providing candidates with a physical copy of Chapter 106 of the Florida Statutes. The precise fiscal impacts are indeterminate at this time.

The bill will also require six counties to issue new voter information cards reflecting the polling place address. While it varies from county to county, the average county cost to print and mail one card is roughly 52 cents.<sup>147</sup> However, any additional costs will likely be minimal since all counties will be issuing new voter information cards in 2012 as a result of reapportionment.

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<sup>147</sup> The cost estimate is based on 2009 data provided by the Florida State Association of Supervisors of Elections.

Finally, the bill requires supervisors of elections to pay for the cost of maintaining a database of voter registration forms assigned to the third-party registration organizations. The current cost is indeterminate.

## VI. Technical Deficiencies:

Section 11 of the bill requires the Department of State to submit voting history information to the Legislature 15 days after certification of an election, but that same section provides that the supervisors need not submit such data to the Department until *30 days* after the election certification: these timetables should be reversed or amended.

## VII. Related Issues:

On March 24, 2011, the Legislature overrode the governor's veto on CS/CS/HB 1207,<sup>148</sup> which authorized affiliated party committees. Post-session, the Division of Statutory Revision will make the necessary changes to *existing* statutory text modified in the bill to harmonize the changes herein with the veto override, but the Division does not have the authority to insert the term "affiliated party committee" in any newly-created text. That is why the APC term may be found in certain newly-created text in the bill but not in the existing, underlying statutes in which the new text is being inserted.

## VIII. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes:

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

#### **CS/CS by Rules on April 15, 2011:**

This committee substitute includes the entirety of the previous committee substitute (CS/SB 2086), along with numerous other changes to the Florida Election Code. Some of the more significant changes include: modifying the responsibilities of the Secretary of State to provide direction to supervisors of elections; changing the primary date from 10 weeks to 9 weeks before the general election; reducing the early voting period from fourteen days to six days; revising requirements for third-party voter registration organizations; requiring electors changing names or addresses at polling places on election day to vote a provisional ballot; establishing revised timeframes and specifying the format for supervisors of elections and the Department of State to submit information on state voter history and precinct data; revising the form of the oaths required of candidates at qualifying; revising provisions relating to the resign-to-run law; modifying ballot format specifications; reducing the validity period for initiative petition signatures from 4 years to 2 years; allowing for the unlimited turn back of surplus funds by candidates to their political parties.

Other changes include: establishing extensive new regulations for minor political parties; eliminating certain requirements for the Department of State to produce paper copies of certain documents in lieu of making an electronic version available; requiring voter registration cards to contain polling place addresses for voters registering after August 1,

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<sup>148</sup> Ch. 2011, s.6, LAWS OF FLA.



2012; amending procedures for handling voter registrations; providing new procedures for changing voter information with respect to residence, name, and party affiliation; modifying voter registration list maintenance activities; amending information requirements for the Florida Voter Registration System; amending procedures for compiling and providing voter history and precinct-level election results; modifying the candidate qualifying oaths; amending requirements for candidate qualifying papers; modifying the candidate-qualifying affirmation requirements for lieutenant governor candidates; modifying the mechanism for transferring election assessments of certain candidates to the Florida Elections Commission; amending methods and requirements relating to signature verification on petitions; modifying provisions relating to vacancies in nomination; modifying procedures with respect to initiative petition signature verification; precluding address information on a voter's I.D. at the polls from being used to challenge a voter's legal residence; authorizing at-large poll watchers; modifying ballot specifications; adopting Florida certification standards for voting equipment certification in lieu of industry standards; modifying the requirements for random, pre-election testing of voting equipment; amending procedures to canvass write-in ballots, to eliminate obsolete requirements; providing that absentee ballot requests shall be valid for all elections through the end of the calendar year of the second ensuing general election; modifying the time to mail certain absentee ballots; modifying absentee ballot instructions; deleting certain restrictions with respect to the requisite candidate qualifying period for certain municipal elections; amending procedures relating to election contests; modifying the procedures for minor political parties to designate presidential and vice-presidential candidates for inclusion on the general election ballot; deleting the selection committee in connection with the presidential preference primary and providing for the direct designation of candidates; deleting a provision authorizing the state executive committee chair to remove certain officers and members for cause; modifying election penalties with respect to reconciling ballots after the polls close; deleting certain electronic fundraising tickets and advertising from the specific fundraising disclaimer in s. 106.025, F.S.; modifying ECO registration and reporting requirements; modifying certain political advertising disclaimers; authorizing political parties and APCs to run pre-candidate polls that are not considered contributions or expenditures; modifying procedures relating to the Florida Elections Commission; authorizing the imposition of election law fines and penalties by an administrative law judge at the Division of Administrative Hearings; incorporating ECOs into the list of entities subject to election law fines and civil penalties; adding a severability clause; and, changing the effective date, in most cases.

**CS by Ethics and Elections on April 4, 2011:**

The committee substitute differs from the original bill in that it:

- Adds requirements that voter information cards issued by supervisors of elections must include an elector's polling place address.
- Provides that when an elector's polling place address changes, the supervisor must send a new card to the elector.
- Specifies that the supervisor must provide a voter information card meeting the requirements of this act for any elector who, on or after August 1, 2012, registers to vote, requests a replacement card, or changes their name, address, or party affiliation.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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