

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7101 PCB SAC 19-01 Elections  
**SPONSOR(S):** Public Integrity & Ethics Committee, State Affairs Committee, Ingoglia  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	23 Y, 0 N	Toliver	Williamson
1) Public Integrity & Ethics Committee	13 Y, 4 N, As CS	Poreda	Rubottom

### SUMMARY ANALYSIS

The bill makes the following changes to the Florida Election Code:

- Extends the deadline for curing defective vote-by-mail (VBM) ballot signatures from 5 p.m. on the day before the election to 5 p.m. on the second day after an election.
- Moves the last day for voters to request VBM ballots from six days to 10 days before an election, and prohibits supervisors of elections (supervisors) from mailing out such ballots less than eight days prior to the election (currently four days).
- Moves the first day a voter may send a designee to pick up VBM ballot from 5 days to 9 days prior to an election.
- Allows supervisors to mail domestic VBM ballots earlier, allowing such VBM ballots to be mailed between 40 days and 28 days before an election instead of the current one-week window of 35 to 28 days.
- Allows canvassing of VBM ballots to start one week earlier, at 22 days before an election rather than 15 days before the election.
- Moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- Allows a voter to drop off his or her VBM ballot at secure drop boxes at specified locations.
- Requires the Department of State (DOS) to provide formal signature matching training to supervisors and county canvassing board (CCB) members.
- Creates a provisional ballot signature cure process that mirrors the revised VBM signature cure process. The provisional ballot signature defect may be cured until 5 p.m. on the second day after an election.
- Allows supervisors to designate one additional "wildcard" early voting site per election.
- Requires a candidate pay his or her qualification fee with a certified check.
- Requires the CCB to post on the supervisor's website the anticipated time the board expects to reconvene. The board must provide at least two hours' notice before reconvening.
- Requires each CCB member and all CCB staff wear identification badges during any period in which the CCB is canvassing votes or engaging in other official duties.
- Expands the no-solicitation zone at polling places and early voting sites from 100 feet to 150 feet.
- Allows a voter to photograph his or her ballot in a polling place.
- Prohibits precinct-level results by ballot type if 30 or fewer votes are cast rather than 10 to ensure voter anonymity.
- Requires the DOS rule regarding minimum security standards address chain of custody of ballots, transport of ballots, and ballot security.
- Provides ballot uniformity regarding the placement of ballot instructions and requiring all vote targets be ovals.
- Allows supervisors to use ballot-on-demand printing systems at polling places on election day.
- Allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation if the supervisor e-mails or mails every registered voter a sample ballot at least seven days before an election.
- Prohibits a supervisor from receiving a special qualification salary for a period of 24 months after being found to have willfully violated the Florida Election Code.

The bill will likely result in a fiscal impact to state and local governments. See Fiscal Comments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7101b.PIE

DATE: 3/29/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Vote-by-Mail Ballots**

###### Background

Florida allows any voter to vote by requesting a vote-by-mail (VBM) ballot<sup>1</sup> from his or her supervisor of elections (supervisor), completing the VBM ballot, and returning the VBM ballot to his or her supervisor.<sup>2</sup> A voter can request and vote a VBM ballot without offering any excuse or reason for doing so.<sup>3</sup> A supervisor must accept a request made by the voter for a VBM ballot in person or in writing<sup>4</sup> and may accept a telephonic request from the voter.<sup>5</sup> A member of the voter's immediate family<sup>6</sup> or his or her legal guardian can also request a VBM ballot on behalf of the voter.<sup>7</sup> Once a voter has requested a VBM ballot, the supervisor must notify the voter of the free access system for determining the status of his or her VBM ballot.<sup>8</sup>

The supervisor must, for each VBM request received, record the date the request was made, the date the VBM ballot was delivered to the voter, the date the VBM ballot was received by the supervisor, and the absence of the voter's signature on the voter's certificate.<sup>9</sup> The supervisor must provide the information to the Division of Elections (division) within the Department of State (DOS) each day beginning 60 days before the primary election until 15 days after the general election.<sup>10</sup> The information is confidential and exempt from public records requirements except it must be provided to the voter requesting the VBM ballot, a canvassing board, an election official, a political party or official thereof, a candidate, and registered political committees for political purposes.<sup>11</sup>

If the supervisor receives the request for a VBM ballot from a domestic voter prior to 35 days before the election, the supervisor must mail the VBM ballot to the voter between 35 days and 28 days before the election.<sup>12</sup> The last day to request a VBM ballot is six days prior to the election and the last day a supervisor may send out VBM ballots is on the fourth day preceding the election.<sup>13</sup> If a supervisor receives a request for a VBM ballot between the 28th day prior to the election and the sixth day prior to the election, the supervisor must send the requested VBM ballot to the voter within two days of receiving the request.<sup>14</sup>

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<sup>1</sup> Prior to 2016, VBM ballots were known as "absentee ballots." In 2016, the Legislature passed SB 112, which replaced the phrase "absentee ballot" with "vote-by-mail ballot" in the Florida Election Code. *See* ch. 2016-37, L.O.F. However, a voter voting a VBM ballot is still termed an "absent elector" for purposes of the Florida Election Code. *See* s. 97.021(1), F.S.

<sup>2</sup> Sections 101.62, 101.64, 101.65, 101.655, 101.661, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, and 101.697, F.S.

<sup>3</sup> Prior to 2001, a voter was required to show cause to vote using an absentee ballot, the previous statutory term for what is now a VBM ballot. The Election Reform Act of 2001 eliminated the requirement, allowing any voter to vote using an absentee ballot. *See* ch. 2001-40, s. 53, L.O.F.

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

<sup>5</sup> Section 101.62(1)(b), F.S.

<sup>6</sup> The term "immediate family" is defined to mean the voter's spouse or the parent, child, grandparent, or sibling of the voter. Section 101.62(4)(c)3., F.S.

<sup>7</sup> Section 101.62(1)(b), F.S.

<sup>8</sup> Section 101.62(1)(c), F.S.

<sup>9</sup> Section 101.62(3), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 101.62(4)(b), F.S.

<sup>13</sup> Section 101.62(2), F.S.

<sup>14</sup> Section 101.62(4)(b), F.S.

After receiving the request, the supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,<sup>15</sup> a secrecy envelope, and a mailing envelope for returning the ballot.<sup>16</sup> Once the elector has completed the ballot and placed it in the secrecy envelope, the elector must complete a voter's certificate affixed to the back of the mailing envelope.<sup>17</sup>

The voter's certificate reads as follows:

#### VOTER'S CERTIFICATE

I, \_\_\_\_\_, do solemnly swear or affirm that I am a qualified and registered voter of \_\_\_\_\_ County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

\_\_\_\_\_(Date)

\_\_\_\_\_(Voters Signature)<sup>18</sup>

VBM ballots must be received by the supervisor no later than 7 p.m. on election day to be counted.<sup>19</sup> Upon timely receipt of the VBM ballot, the supervisor, or if the supervisor has not done so, the county canvassing board (CCB), compares the signature on the voter's certificate to the signature of the elector in the registration books or the precinct register "to determine whether the elector is duly registered in the county."<sup>20</sup> A supervisor is prohibited from opening the VBM ballots and must safely keep the VBM ballots in his or her office until the CCB canvasses VBM ballots.<sup>21</sup>

In order for a VBM ballot to be valid, the signature on the voter's certificate must match the signature on the registration books or the precinct register.<sup>22</sup> A voter's VBM ballot may be invalidated based upon two deficiencies in signing the voter's certificate: signature omission and signature mismatch. If an elector's signature is omitted from the certificate, or if the signature on the certificate does not match the signature on file, the voter may cure the ballot using a cure affidavit.<sup>23</sup> Once a signature deficiency is discovered, the supervisor is required to immediately notify the voter of the defect.<sup>24</sup> The voter then has until 5 p.m. on the day before the election to complete a cure affidavit<sup>25</sup> and provide identification confirming the voter's identify<sup>26</sup> to the supervisor.<sup>27</sup> If the cure affidavit and identification are provided to the supervisor, the ballot will be legitimized and counted.<sup>28</sup>

The Florida Election Code<sup>29</sup> allows a voter voting by mail to update his or her signature for verification purposes at any time before the CCB begins canvassing the VBM ballots.<sup>30</sup> After canvassing begins, a

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<sup>15</sup> Section 101.65, F.S.

<sup>16</sup> Section 101.64(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> The supervisor must create the mailing envelope so that the voter's signature portion of the certificate crosses the seal of the envelope. Section 101.64(2), F.S.

<sup>19</sup> Section 101.67(2), F.S.

<sup>20</sup> Section 101.68(1), F.S.

<sup>21</sup> Section 101.68(1), F.S.

<sup>22</sup> Section 101.68(2)(c)1., F.S.

<sup>23</sup> Section 101.68(4), F.S.

<sup>24</sup> Section 101.68(4)(a), F.S.

<sup>25</sup> Each supervisor, as well as DOS, are required to include the cure affidavit and instructions thereto on their websites. Section 101.68(4)(d), F.S.

<sup>26</sup> Section 101.68(4)(c)3., F.S., provides the specified list of acceptable forms of identification in two tiers.

<sup>27</sup> *Id.*

<sup>28</sup> Section 101.68(2)(c)1., F.S.

<sup>29</sup> Section 97.011, F.S. Chapters 97-106, F.S., are known as "The Florida Election Code."

<sup>30</sup> Section 98.077(4), F.S.

voter voting a VBM ballot may not update his or her signature for this purpose.<sup>31</sup> CCBs may begin canvassing VBM ballots 15 days before the election but must begin canvassing those ballots by noon the day after the election.<sup>32</sup>

If a VBM ballot is physically damaged so that it cannot be placed in the automatic tabulating machine, a duplicate ballot must be made of the damaged ballot.<sup>33</sup> The duplication must be done in the presence of witnesses.<sup>34</sup> Similarly, if a VBM ballot contains an overvoted race or is marked but every race is undervoted, the ballot must be duplicated but the duplication will be based on the CCB's determination of what on the ballot constitutes a valid vote.<sup>35</sup> All duplicate ballots must be clearly labeled "duplicate" and bear a serial number that must also be recorded on the defective ballot.<sup>36</sup> After the duplication process has been completed, the defective ballot must be placed in a special envelope and the duplicate ballot will be counted as a valid ballot thereafter.<sup>37</sup>

After the election, the supervisor must notify each elector whose ballot was rejected and provide the reasons for the rejection.<sup>38</sup> If the reason for the rejection was a discrepancy between the signature on the VBM ballot cure affidavit or voter's certificate and the signature on file, the supervisor must send the voter registration application to the voter so the voter may update his or her signature on file.<sup>39</sup>

### *Recent Litigation*

In 2016, the Florida Election Code provided a method of curing a VBM ballot voter's certificate that did not contain a signature but did not provide a method of curing a signature on the certificate that did not match the signature on file.<sup>40</sup> The United States District Court for the Northern District of Florida, declared "Florida's statutory scheme as it relates to mismatched-signature [VBM] ballots" unconstitutional and ordered "mismatched-signature ballots to be cured in precisely the same fashion as currently provided for non-signature ballots."<sup>41</sup> In response to the court's decision, the Florida Legislature passed CS/HB 105 (2017), which created a statutory process to cure those VBM ballots with a signature mismatch.

In 2018, the U.S. District Court for the Northern District of Florida held that the opportunity to cure VBM ballots and provisional ballots was illusory and "unconstitutionally burdens the fundamental right of Florida citizens to vote and have their votes counted."<sup>42</sup> The court specifically noted that the inability of voters casting VBM ballots that were notified of a signature deficiency after the cure deadline had passed, and the inability of voters casting VBM ballots that were canvassed after the cure deadline to cure their ballot, presented an unconstitutional burden on the right to vote.<sup>43</sup> The court also noted that the absence of uniform standards for comparing signatures was problematic as it could lead to differing comparison standards from county to county.<sup>44</sup> The court granted a preliminary injunction and ordered each supervisor to allow voters who were belatedly notified they had submitted a mismatched signature VBM or provisional ballot to cure their ballots within two days of the order.<sup>45</sup> The National Republican Senatorial Committee, an intervenor in the case, filed a motion with the U.S. Court of Appeals for the

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<sup>31</sup> Section 98.077(4), F.S.; *see also* s. 97.055(1)(b), F.S.

<sup>32</sup> Section 101.68(2)(a), F.S.; *see also* s. 98.077, F.S., requiring each supervisor to publish a notice in each year in which a general election occurs specifying how an elector can update his or her voter registration signature in a newspaper in the county.

<sup>33</sup> Section 101.5614(4)(a), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Section 101.68(4)(f), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> Section 101.68(4)(b), F.S. (2016).

<sup>41</sup> *Fla. Democratic Party v. Detzner*, 4:16-CV-607 (N.D. Fla. 2016).

<sup>42</sup> *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017 (N.D. Fla. 2018).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

11th Circuit to stay the U.S District Court's order. The U.S. Court of Appeals denied the motion to stay and largely agreed with the rationale of the U.S. District Court order.<sup>46</sup>

### Effect of the Bill

The bill makes the following changes to the VBM ballot process:

- Moves the last day for voters to request VBM ballots from six days to 10 days before an election, and prohibits supervisors from mailing out such ballots less than eight days prior to the election (currently four days).
- Moves the first day a voter may send a designee to pick up VBM ballot from 5 days to 9 days prior to an election.
- Allows supervisors to mail domestic VBM ballots between 40 days and 28 days before an election instead of the current one-week window of the 35th to the 28th day.
- Moves the earliest start date for canvassing VBM ballots from 15 to 22 days before an election.
- Extends the deadline for curing defective VBM ballot signatures from 5 p.m. on the day before the election to 5 p.m. on the second day after a primary or general election.
- Moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- For canvassing purposes, requires CCBs to find by majority vote and beyond a reasonable doubt that a signature on a voter's certificate or cure affidavit does not match the signature in the registration records.
- Creates a new signature-deficiency notification process for timely received VBM ballots, requiring notification by first class mail in addition to at least one other method including by phone, email or text message . However, beginning the day before the election, the supervisor is not required to provide notice by first class mail of the signature deficiency.
- Creates a process to update immediately voter registration signatures with the signature on a valid VBM ballot cure affidavit, and makes conforming changes to the post-election voter notification/signature update request for voters whose ballots were rejected due to defective signatures.
- Alters the VBM ballot voter's certificate requesting additional voter contact information (e-mail address, home phone number, mobile phone number) for the limited purpose of correcting signature deficiencies.
- Allows a voter to drop off his or her VBM ballot at a secure drop box located at a supervisor's main and branch offices, and at each early voting location, and requires that the total number of VBM ballots dropped off at an early voting location be made publicly available each day.
- Requires the instructions accompanying a VBM ballot notify voters that they may drop off their ballot at the supervisor's office or a secure drop box at an early voting location.
- Requires the security envelope accompanying a VBM ballot to notify voters of the deadline their ballot must be received by the SOE.
- Requires DOS to provide formal signature matching training to supervisors and CCB members.

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<sup>46</sup> *Democratic Exec. Comm. of Fla. v. Detzner*, 915 F. 3d 1312 (11th Cir. 2018).

## Provisional Ballots

### Background

The Help America Vote Act of 2002 (HAVA) requires states to allow a voter whose eligibility to vote at a polling place cannot be immediately established to vote using a provisional ballot for elections for federal office.<sup>47</sup> Florida allows any voter claiming to be properly registered in the state and eligible to vote at the precinct in the election, but whose eligibility cannot be determined, or a person whom an election official asserts is not eligible, be allowed to vote a provisional ballot.<sup>48</sup> A provisional ballot, like a VBM ballot, is inserted into a secrecy envelope, which is then sealed in a provisional ballot envelope.<sup>49</sup> On the back of the provisional envelope is a provisional ballot voter's certificate and affirmation.<sup>50</sup> The provisional ballot voter's certificate and affirmation reads as follows:

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

I do solemnly swear (or affirm) that my name is \_\_\_\_\_; that my date of birth is \_\_\_\_\_; that I am registered and qualified to vote in \_\_\_\_\_ County, Florida; that I am registered in the \_\_\_\_\_ Party; that I am qualified voter of the county; and that I have not voted in this election. I understand that if I commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years.

\_\_\_\_\_  
(Signature of Voter)  
\_\_\_\_\_  
(Current Residence Address)  
\_\_\_\_\_  
(Current Mailing Address)  
\_\_\_\_\_  
(City, State, Zip Code)  
\_\_\_\_\_  
(Driver License Number or Last Four Digits of Social Security Number)<sup>51</sup>

All provisional ballots remain sealed in their envelopes for return to the supervisor.<sup>52</sup> Each voter voting a provisional ballot is entitled to present written evidence supporting his or her eligibility to vote to the supervisor no later than 5 p.m. on the second day following the election.<sup>53</sup> The CCB must examine each provisional ballot voter's certificate and affirmation to determine if the person voting the ballot was entitled to vote at the precinct where the person cast his or her vote and that the person had not already cast a ballot in the election.<sup>54</sup> In making this determination, the CCB must consider the following:

- The information provided in the provisional ballot voter's certificate and affirmation;
- Written evidence presented by the person; and
- Any other evidence presented by the supervisor.<sup>55</sup>

If the CCB determines that the person was not registered or entitled to vote at the precinct where the person cast his or her vote, then the provisional ballot is not opened and not counted.<sup>56</sup> If the CCB determines the person was registered and entitled to vote at the precinct, then the board compares the signature on the provisional ballot voter's certificate and affirmation with the signature on file and, if it

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<sup>47</sup> 52 U.S.C. s. 21082.

<sup>48</sup> Section 101.048(1), F.S.

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

<sup>50</sup> Section 101.048(3), F.S.

<sup>51</sup> *Id.*

<sup>52</sup> Section 101.048(1), F.S.

<sup>53</sup> *Id.* Each voter voting a provisional ballot is given instructions concerning his or her right to present additional written evidence to the supervisor. Section 101.048(5), F.S.

<sup>54</sup> Section 101.048(2)(a), F.S.

<sup>55</sup> *Id.* The CCB can, in the case of a challenge, consider any evidence presented by a challenger.

<sup>56</sup> Section 101.048(2)(b)2., F.S.

matches, the ballot is counted.<sup>57</sup> If the signatures do not match, then the ballot is not opened and not counted.<sup>58</sup>

Each supervisor is required to establish a free access system that allows each person who voted a provisional ballot to determine whether his or her ballot was counted.<sup>59</sup> If the voter's ballot was not counted, the system must inform the voter of the reason why the ballot was rejected.<sup>60</sup>

### Effect of the Bill

The bill makes the following changes to the provisional ballot process:

- Creates a provisional ballot signature cure and canvassing process that mirrors the revised VBM ballot signature cure process by creating a signature cure affidavit and instructions, providing for voter submission of supporting identification, and creating standards for CCBs to process ballots using the cure affidavit and supporting information. The cure provides that the provisional ballot signature defect may be cured until 5 p.m. two days following the election.
- For canvassing purposes, requires CCBs to find by majority vote and beyond a reasonable doubt that a signature on a voter's certificate or cure affidavit does not match the signature in the registration records.
- Modifies the Provisional Ballot Voter's Certificate and Affirmation to include requests for additional phone and electronic contact information.
- Requires supervisors to provide notification to a voter whose provisional ballot has a signature defect of such defect by first class mail in addition to at least one other method including by phone, email or text message.
- Creates a process to immediately update voter registration signatures with the signature on a valid provisional ballot cure affidavit.
- Incorporates the current VBM requirement that supervisors provide voters with a post-election notice and voter registration card to update signatures for voters whose ballots were rejected due to defective signatures.

## **Early Voting**

### Background

Early voting is the casting of a ballot prior to election day at an early voting site designated by the supervisor and depositing the voted ballot in the tabulation system.<sup>61</sup> Each supervisor must offer early voting in his or her county for any election that contains state or federal races.<sup>62</sup> The supervisor must allow early voting in his or her main office and, if applicable, any branch offices.<sup>63</sup> The supervisor may also designate any of the following facilities as early voting sites:

- Any city hall;
- Permanent public library facility;
- Fairground;
- Civic center;
- Courthouse;
- County commission building;
- Stadium;
- Convention center;
- Government-owned senior center; or
- Government-owned community center.<sup>64</sup>

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<sup>57</sup> Section 101.048(2)(b)1., F.S.

<sup>58</sup> *Id.*

<sup>59</sup> Section 101.048(6), F.S.; *see also* 52 U.S.C. s. 21082(a)(5)(B).

<sup>60</sup> *Id.*

<sup>61</sup> Section 97.021(10), F.S.

<sup>62</sup> Section 101.657(1)(d), F.S.

<sup>63</sup> Section 101.657(1)(a), F.S.

<sup>64</sup> *Id.*

Each of those sites, however, must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot.<sup>65</sup> A supervisor may designate one additional “wildcard” early voting site per election in an area of the county that does not have any of the specified early voting sites.<sup>66</sup> This additional early voting site must be geographically located to provide all voters in that area with an equal opportunity to cast a ballot.<sup>67</sup> Each supervisor must operate at least the same amount of early voting sites that the county operated in the 2012 general election.<sup>68</sup>

Early voting has a mandatory period during which supervisors must offer early voting, and a discretionary period during which a supervisor may offer early voting. The mandatory period begins on the 10th day preceding the election and ends on the third day preceding the election.<sup>69</sup> The discretionary period spans the 15th day through the 11th day preceding the election, and includes the second day preceding the election.<sup>70</sup> During either period, early voting sites must be provided for at least eight hours per day not to exceed 12 hours.<sup>71</sup>

### Effect of the Bill

The bill allows supervisors to designate one additional “wild card” early voting site per election.

### **Payment of Candidate Qualification Fee**

#### Background

Current law requires a person seeking to become a candidate for public office to either pay a qualification fee or qualify by petition.<sup>72</sup> If the person opts for the former, he or she must pay the qualification fee with a properly executed check drawn upon the candidate's campaign account.<sup>73</sup> If the check is returned by the bank for any reason, the filing officer must immediately notify the candidate.<sup>74</sup> The candidate then has until the end of the qualification period<sup>75</sup> to pay the fee with a cashier's check purchased from funds of the campaign account.<sup>76</sup>

In 2016, the Florida Supreme Court, in *Wright v. City of Miami Gardens*,<sup>77</sup> declared the statutory requirement that a candidate has until the end of the qualification period to rectify a check returned by a bank unconstitutional. In that case, a candidate for mayor of the City of Miami Gardens had the check he used to pay his qualification fee returned by the bank due to banking error. The candidate was not notified of the bank's erroneous action in time to remedy the defective instrument. The candidate was thereafter disqualified and his name withheld from the ballot. The Court held that the statute “unconstitutionally erects a barrier that is an unnecessary restraint on one's right to seek elective office” and severed the portion of the 2011 law that created that process. In so doing, the Court reverted the statute back to its pre-2011 form, which allows a candidate 48 hours, notwithstanding the end of the qualification period, after notification of the returned check to pay the qualification fee with a cashier's check.<sup>78</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Section 101.657(1)(d), F.S.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Section 99.061, F.S.

<sup>73</sup> Sections 99.051(7)(a)1. and 105.031(5)(a)1., F.S.; The division has interpreted that phrase to prohibit the use of personal checks, cashier's checks, money orders, and cash. *See* 2018 State Qualification Handbook, Division of Elections, Department of State, at pg. 7. Available at <https://dos.myflorida.com/media/698715/state-qualifying-handbook-2018.pdf> (last visited Mar. 17, 2019).

<sup>74</sup> Section 99.061(7)(a)1., F.S.

<sup>75</sup> Section 99.061(1)-(2), F.S.

<sup>76</sup> Section 99.061(7)(a)1., F.S.

<sup>77</sup> *Wright v. City of Miami Gardens*, 200 So. 3d 765 (Fla. 2016).

<sup>78</sup> *Id.*



### Effect of the Bill

The bill requires that a candidate pay his or her qualification fee with a certified check drawn upon the candidate's campaign account.

## **County Canvassing Board**

### Background

The CCB is the body that tabulates and canvasses the vote for an election in that county. The CCB is composed of the supervisor, the chair of the board of county commissioners, and a county court judge, who serves as chair.<sup>79</sup> If a member of the CCB is unable to serve, he or she can be replaced in one of two ways, either permanently, through the appointment of a substitute member, or temporarily, through the appointment and selection of an alternate member.<sup>80</sup> In the event a member of the CCB is absent for a temporary period, an alternate member is chosen to assume his or her position as a member of the CCB until the permanent member returns. The chair of the CCB decides which alternate member will serve as a member of the CCB.<sup>81</sup> Alternate members are appointed as follows:

- The chief judge of the judicial circuit in which the county is located must appoint a county court judge as an alternate member unless each judge is unable to serve or is disqualified,<sup>82</sup> then the chief judge must appoint a qualified elector of the county who is not a candidate and who is not an active participant in a campaign; or
- The chair of the board of county commissioners must appoint a member of the board of county commissioners unless each member of the board is unable to serve or is disqualified, the chief judge of the judicial circuit in which the county is located must appoint a qualified elector of the county who is not a candidate and who is not an active participant in a campaign.

When not serving as one of the three members of the CCB, an alternate member may be present, observe, and communicate with the CCB but may not vote in the CCB's determinations.<sup>83</sup>

Prior to canvassing ballots, the supervisor designates a time for the CCB to meet for that purpose.<sup>84</sup> The CCB, or the supervisor on the CCB's behalf, must give public notice of the time and place at which the CCB will meet.<sup>85</sup> The notice must be given at least 48 hours prior to the time of meeting and must be posted on the supervisor's website and published in one or more newspapers of general circulation in the county.<sup>86</sup> However, if there are no newspapers of general circulation in the county, then the notice must be posted in at least four conspicuous places in the county.<sup>87</sup> The CCB must meet in a building accessible to the public in the county where the election occurred to canvass VBM ballots and provisional ballots.<sup>88</sup> Once the VBM ballots and provisional ballots are canvassed, the CCB then begins to publicly canvass the vote given to each candidate, nominee, constitutional amendment, or other measure as shown by the returns sent from the election board at each polling place.<sup>89</sup>

### Effect of the Bill

The bill requires that if a CCB meeting is recessed or suspended for a period longer than 60 minutes, the CCB must post on the county's website and the supervisor's website the anticipated time the board

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<sup>79</sup> Section 102.141(1), F.S.

<sup>80</sup> Section 102.141(1)(e), F.S.

<sup>81</sup> Section 102.141(1)(e)3., F.S.

<sup>82</sup> A disqualifying event occurs when the member of the CCB is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed. Section 102.141(1), F.S.

<sup>83</sup> Section 102.141(1)(e)4., F.S.

<sup>84</sup> Section 102.141(2), F.S.

<sup>85</sup> Section 102.141(2), F.S.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

expects to reconvene. If the CCB does not reconvene at the specified time, the board must provide at least two hours' notice on the county's website and the supervisor's website before reconvening. The bill also requires a physical notice detailing the names of the individuals officially serving as the CCB, the names of any alternate members, the time of the meeting, and a brief statement as to the purpose of the meeting to be placed in a conspicuous area near the public entrance to the building in which the CCB meeting is taking place.

The bill requires each CCB member, substitute member, alternate member, and all CCB staff to wear an identification badge during any period in which the CCB is canvassing votes or engaging in other official duties. The identification badge must be displayed in a conspicuous, unobstructed area and include the name of the individual and their official position.

## **Primary Elections**

### Background

A primary election is held in each year a general election is held. Article VI, s. 5 of the Florida Constitution requires a general election be held "in each county on the first Tuesday after the first Monday in November of each even-numbered year."<sup>90</sup> Current law requires a primary election be held for the purpose of nominating candidates of political parties on the Tuesday 10 weeks prior to the general election.<sup>91</sup> The following are the dates for the past two primary elections, as well as the date for the forthcoming 2020 primary election:

<b>Year</b>	<b>Primary Election</b>	<b>General Election</b>
2016	August 30	November 8
2018	August 28	November 6
2020	August 25	November 3

### Effect of the Bill

The bill moves the primary election from 10 weeks preceding the general election to 11 weeks preceding the general election. As such, the forthcoming 2020 primary election would be held on August 18.<sup>92</sup>

## **No Solicitation Zone**

### Background

Currently, no person, political committee, or other group or organization may solicit<sup>93</sup> voters inside the polling place or within 100 feet of the entrance to any polling place,<sup>94</sup> polling room<sup>95</sup> where the polling place is also a polling room, early voting site,<sup>96</sup> or an office of the supervisor where VBM ballots are requested and printed on demand.<sup>97</sup> Each supervisor must inform the clerk<sup>98</sup> of the area within which

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<sup>90</sup> See also s. 97.021(16), F.S.

<sup>91</sup> Section 100.061, F.S.

<sup>92</sup> The presidential preference primary election occurs on a different date from the primary election and the two are not related. Currently, the presidential preference primary election occurs on the third Tuesday in March of each presidential election year. Section 103.101(1), F.S.

<sup>93</sup> The term "solicitation" includes, but is not limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except an exit poll; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item. Section 102.031(4)(b), F.S.

<sup>94</sup> The term "polling place" is defined to mean the building that contains the polling room where ballots are cast. Section 97.021(27), F.S.

<sup>95</sup> The term "polling room" is defined to mean the actual room in which ballots are cast on election day and during early voting. Section 97.021(28), F.S.

<sup>96</sup> The term "early voting site" is defined to mean those locations specified in s. 101.657, F.S., and the building in which early voting occurs. Section 97.021(11), F.S.

<sup>97</sup> Section 102.031(4)(a), F.S.

soliciting is unlawful based on the particular characteristics of that polling place.<sup>99</sup> Prior to opening of the polling place or early voting site, the clerk or supervisor must designate the no-solicitation zone and mark the boundaries.<sup>100</sup>

#### Effect of the Bill

The bill expands the no solicitation zone at polling places and early voting sites from 100 feet to 150 feet.

### **Polling Room Photography Prohibition**

#### Background

Photography is currently prohibited in the polling room or early voting area.<sup>101</sup> The prohibition can be enforced by the election board.<sup>102</sup>

#### Effect of the Bill

The bill allows a voter to photograph his or her own ballot but otherwise maintains the prohibition.

### **Precinct Level Election Results**

#### Background

Supervisors are required to, within 30 days following the certification of the election results by the Elections Canvassing Commission,<sup>103</sup> collect and submit to DOS precinct-level election results.<sup>104</sup> The results must be in a uniform electronic format and include the total number of all ballots cast in each precinct for each candidate or nominee to fill a national, state, county, or district office, or proposed constitutional amendment.<sup>105</sup> The results must also contain subtotals for each candidate and ballot type, unless fewer than 10 voters voted a certain type of ballot, in which case that ballot type will be omitted from the results to ensure that the votes for those voters remain secret.<sup>106</sup> After DOS has received the results, it must make the information available, through its website, on a searchable, sortable, and downloadable database.<sup>107</sup>

#### Effect of the Bill

The bill increases the amount of voters voting a specific ballot at a particular precinct that must be withheld from the results, from 10 voters to 30 voters.

### **Ballot Design**

#### Background

DOS is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system.<sup>108</sup> The rules are required to incorporate clear and unambiguous ballot

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<sup>98</sup> Each precinct has inspectors and a clerk, each appointed by the supervisor. These poll workers are collectively known as the election board. The clerk is in charge of and responsible for seeing that the election board carries out its duties and responsibilities. Section 102.012(1)(a), F.S.

<sup>99</sup> Section 102.031(4)(c), F.S.

<sup>100</sup> Section 102.031(4)(a), F.S.

<sup>101</sup> Section 102.031(5), F.S.

<sup>102</sup> The election board consists of the clerk and inspectors appointed to conduct an election. Section 97.021(13), F.S. Each election board possesses full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvassing of votes. Section 102.031(1), F.S.

<sup>103</sup> The Elections Canvassing Commission is a body that certifies election results for federal, state, and multicounty offices. The commission consists of the Governor and two members of the Cabinet selected by the Governor. The commission meets at 9 a.m. on the 14th day following a general election to certify the returns. Section 102.111, F.S.

<sup>104</sup> Section 98.0981(2)(a), F.S.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Section 98.0981(2)(b), F.S.

<sup>108</sup> Section 101.151(9)(a), F.S.

instructions, individual race layout, and overall ballot layout.<sup>109</sup> Additionally the rules are required to graphically depict a sample uniform primary and general election ballot form for each certified voting system.<sup>110</sup> DOS rule 1S-2.032, F.A.C., states that ballot instructions may appear “immediately below the ballot title either across the page or in the first column.” The graphic depictions of sample ballots, incorporate by reference into the rule, display the ballot instructions placed horizontally across the top of the ballot in some<sup>111</sup> and placed in the first column in others.<sup>112</sup>

Rule 1S-2.032, F.A.C., allows each supervisor to choose between four types of vote targets:<sup>113</sup> ovals, squares, rectangles, or broken arrows.<sup>114</sup> Different vote target types are subject to slightly different provisions of the rule. For instance, an oval, square, or rectangle vote target must appear after the candidate’s name, while, for a broken arrow vote target, the name is in front of the party designation, if applicable, and before the broken arrow.<sup>115</sup>

### Effect of the Bill

The bill requires that the uniform ballot rule require the ballot instructions to either be centered across the top of the ballot or included in the leftmost column so long as no individual races are included below the instructions in the leftmost column. If there is only one column on the entire ballot, the bill allows the individual races to appear beneath that leftmost column. The bill also requires that all vote targets be ovals.

## **Chain of Custody of Ballots and Ballot Security**

### Background

The Florida Election Code contains multiple provisions concerning the chain of custody of ballots, the documentation thereof, and ballot security. The following is a list of those provisions:

- The supervisor must safely keep in his or her office any envelopes containing marked VBM ballots and must, before the canvassing of the election returns, deliver the envelopes to the CCB.<sup>116</sup>
- During the canvassing of VBM ballots, the supervisor or the chair of the CCB has custody of the VBM ballots until a final proclamation is made as to the total vote received by each candidate.<sup>117</sup>
- Prior to the opening of the polls, the supervisor, after securely sealing the ballot box or ballot transfer container, must send the ballot box or ballot transfer container to the clerk or inspector of the precinct in which it is to be used.<sup>118</sup>
- Provisional ballots are required to be deposited in a ballot box and must remain sealed in their envelopes for return to the supervisor.<sup>119</sup>
- After the results are tabulated at each precinct, a certificate of the results is drawn up by the inspectors and clerk at each precinct. The certificate must be signed by the inspectors and clerk and must be delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication. All the ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used in the election also must be transmitted, after being sealed by the inspectors, to the supervisor’s office. Registration books and the poll lists may not be placed in the ballot boxes but must be returned to the supervisor.<sup>120</sup>

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<sup>109</sup> *Id.*

<sup>110</sup> Section 101.151(9)(b), F.S.

<sup>111</sup> *See* DS-DE-205, incorporated by reference into r. 1S-2.032, F.A.C.

<sup>112</sup> *See* DS-DE-202, incorporated by reference into r. 1S-2.032, F.A.C.

<sup>113</sup> A “vote target” is defined to mean an area on the ballot where the voter indicates his or her vote. Rule 1S-2.032(1)(l), F.A.C.

<sup>114</sup> *Id.*

<sup>115</sup> Rule 1S-2.032(9)(a)4., F.S.

<sup>116</sup> Section 101.67(1), F.S.

<sup>117</sup> Section 101.68(3), F.S.

<sup>118</sup> Section 101.24, F.S.

<sup>119</sup> Section 101.048(1), F.S.

<sup>120</sup> Section 102.071, F.S.

DOS is required to adopt rules to establish minimum security standards for voting systems.<sup>121</sup> Rule 1S-2.015, F.A.C., sets standards for chain of custody of ballots, ballot distribution, transport of ballots, and receiving and preparing voted ballots.<sup>122</sup> Supervisors must establish written procedures based on these minimum security standards to assure accuracy and security in his or her county.<sup>123</sup> The procedures must be reviewed by DOS every odd-numbered year.<sup>124</sup> If a supervisor revises his or her security procedures, he or she must submit those revisions to DOS at least 45 days prior to the commencement of early voting.<sup>125</sup>

### Effect of the Bill

The bill specifies the elements that must be included in DOS' rule regarding minimum security standards. The rule must address chain of custody of ballots, including a detailed written record of the ballot from the moment the supervisor takes possession of the ballot to the time it is destroyed. The bill also requires the rule to address the transport of ballots, including a description of the method and description of the equipment used in transport and detailed list of all individuals involved in the transport. Finally, the bill requires the rule to address ballot security, including a requirement that all ballots be kept in a locked room when not being canvassed.

## **Ballot-on-Demand**

### Background

A ballot-on-demand (BOD) system is a system in which ballots may be printed quickly and to the specifications required for the individual voter. For instance, during early voting, which occurs at centralized locations where voters of different precincts all vote together, a BOD system can print a precinct specific ballot for each voter. Currently, BOD systems are permitted to be used, at the supervisor's discretion, for early voting but the Florida Election Code is silent as to the use of BOD systems on election day.<sup>126</sup>

### Effect of the Bill

The bill allows supervisors to use BOD systems at polling places on election day.

## **Distribution of Sample Ballots**

### Background

Current law requires a sample ballot, once the list of qualified candidates is completed, be published by each supervisor in a newspaper of general circulation in the county before election day.<sup>127</sup> A supervisor may, but is not required to, send a sample ballot to each registered voter by e-mail at least seven days before an election if the voter has opted in and provided an e-mail address.<sup>128</sup> If a voter has opted out or has not provided an e-mail address, the sample ballot may be mailed to the voter at least seven days before an election.<sup>129</sup>

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<sup>121</sup> Section 101.015(4), F.S. The term "voting system" is defined to mean a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system's operation. Section 97.012(45), F.S.

<sup>122</sup> Rule 1S-2.015, F.A.C.

<sup>123</sup> Section 101.015(4)(b), F.S.

<sup>124</sup> *Id.*

<sup>125</sup> Section 101.015(4)(c), F.S.

<sup>126</sup> Section 101.151(1)(b), F.S.

<sup>127</sup> Section 101.20(2), F.S.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

### Effect of the Bill

The bill allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation if the supervisor e-mails or mails every registered voter a sample ballot at least seven days before an election.

### **Supervisors of Elections' Special Qualification Salary**

#### Background

Each supervisor is eligible to receive a special qualification salary of \$2,000 per year if he or she has met certain certification requirements established by DOS within six years after first taking office.<sup>130</sup> DOS has promulgated a rule establishing stringent requirements for a supervisor seeking the certification.<sup>131</sup> To maintain his or her certification, a supervisor must annually complete a course of continuing education.<sup>132</sup>

#### Effect of the Bill

The bill prohibits a supervisor from collecting a special qualification salary for a period of 24 months after being found by a court to have willfully violated a provision of the Florida Election Code.

### **Candidates for Governor and Lieutenant Governor**

#### Background

Each gubernatorial candidate must designate a Lieutenant Governor.<sup>133</sup> While a gubernatorial candidate can make the designation at any time, he or she must designate a Lieutenant Governor by 5 p.m. on the ninth day following the primary election.<sup>134</sup> If a gubernatorial candidate designates a Lieutenant Governor by the end of the qualifying period prior to the primary election, the candidate for Lieutenant Governor will appear on the primary ballot with the gubernatorial candidate.<sup>135</sup> However, if the gubernatorial candidate does not designate a Lieutenant Governor by the end of the qualifying period, the primary ballot will list the name of the candidate for Governor and below the name the phrase "Not Yet Designated" will appear in lieu of the name of Lieutenant Governor.<sup>136</sup>

#### Effect of the Bill

The bill removes the requirement that the phrase "Not Yet Designated" appear below the name of the gubernatorial candidate on the ballot if a Lieutenant Governor has not been designated.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 97.012, F.S., relating to Secretary of State's responsibilities as Chief Election Officer of the state.

Section 2 amends s. 98.077, F.S., relating to updates to a voter's signature.

Section 3 amends s. 98.0981, F.S., relating to precinct-level election results.

Section 4 amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, county, or district office.

Section 5 amends s. 99.063, F.S., relating to candidates for Governor and Lieutenant Governor.

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<sup>130</sup> Section 145.09(3), F.S.

<sup>131</sup> Rule 1S-2.0115, F.A.C.

<sup>132</sup> Section 145.09(3)(c), F.S.

<sup>133</sup> Section 99.063(1), F.S.; *see also* art. IV, s. 2, FLA. CONST.

<sup>134</sup> Section 99.063(1), F.S.

<sup>135</sup> Section 99.063(4), F.S. The qualification period for candidates for Governor and Lieutenant Governor is noon on the 71st day prior to the primary election until noon on the 67th day prior to the primary election. Section 99.061(1), F.S.

<sup>136</sup> Section 99.063(4), F.S.

Section 6 amends s. 100.061, F.S., relating to the primary election.

Section 7 amends s. 101.015, F.S., relating to standards for voting systems.

Section 8 amends s. 101.048, F.S., relating to provisional ballots.

Section 9 amends s. 101.151, F.S., relating to specifications for ballots.

Section 10 amends s. 101.20, F.S., relating to the publication of ballot form; sample ballots.

Section 11 amends s. 101.5614, F.S., relating to the canvass of election returns.

Section 12 amends s. 101.62, F.S., relating to requesting VBM ballots.

Section 13 amends s. 101.64, F.S., relating to delivery of VBM ballots; envelopes; form.

Section 14 amends s. 101.65, F.S., relating to instructions to absent electors.

Section 15 amends s. 101.657, F.S., relating to early voting.

Section 16 amends s. 101.68, F.S., relating to the canvassing of VBM ballots.

Section 17 amends s. 101.69, F.S., relating to voting in person and returning VBM ballots.

Section 18 amends s. 101.6923, F.S., relating to special VBM ballot instructions for certain first-time voters.

Section 19 amends s. 102.031, F.S., relating to maintenance of good order at the polls; authorities; persons allowed in polling rooms and early voting areas; and unlawful solicitation of voters.

Section 20 amends s. 102.141, F.S., relating to CCB duties.

Section 21 amends s. 104.051, F.S., relating to violations of the Florida Election Code; neglect of duty; and corrupt practices.

Section 22 provides an effective date of July 1, 2019.

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

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal fiscal impact on state expenditures. DOS will be required to modify rules currently in existence to comply with the provisions regarding specifications for ballots, chain of custody, and ballot security. The costs of such rulemaking, however, should be absorbed in DOS' current budget as part of its day-to-day operations.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal negative fiscal impact on local government expenditures. The bill requires supervisors to comply with new procedures and use new forms for the VBM and provisional ballot cure process. The bill also requires supervisors to train their staff to comply with these new provisions. The bill revises the VBM ballot instructions and envelope. The bill also requires supervisors to notify voters of a signature defect on their VBM and provisional ballot certificates by first class mail. However, the removal of the requirement to publish sample ballots in a newspaper of general circulation and mail or email those ballots instead should result in a cost savings.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is a law concerning elections.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On Thursday, March 28, 2019, the Public Integrity & Ethics Committee adopted two amendments to the bill and subsequently reported the bill favorably as a committee substitute. The amendments made the following revisions to the bill:

- Changed the requirement that the description of vehicles used in ballot transport to a description of the method and equipment to better reflect DOS rules for ballot security.
- Corrected subsection s.101.048 of current statute that was inadvertently stricken in the original bill.
- Changed the notification requirement of VBM and Provisional ballot signature deficiencies to be by first class mail and at least one other method, including by phone, text message or email instead of requiring notification by all listed methods.
- Allows voter designee to pick up VBM ballot on the day of an election or up to 9 days, changed from 5 days, prior to an election.



- Removed the requirement that instruction on the ballot security envelope of VBM ballots and the separate instructions included with the VBM be capitalized.
- Specifies that secure VBM ballot drop boxes may only be placed at the SOE main office, branch offices and each early voting site.
- Removed the requirement that CCB must notice meetings on the county website in addition to the SOE website.

This analysis is drafted to the committee substitute as passed by the Public Integrity & Ethics Committee.