

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Alexander, Vice Chair

MEETING DATE: Friday, April 15, 2011
TIME: 9:15 a.m.—12:15 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Thrasher, Chair; Senator Alexander, Vice Chair; Senators Bullard, Flores, Gaetz, Gardiner, Jones, Margolis, Negron, Richter, Siplin, Smith, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consent Agenda			
1	CS/SB 426 Judiciary / Latvala (Similar CS/H 291)	Service of Process; Authorizes certified process servers to serve writs of possession in actions for possession of residential property. Authorizes a landlord to select a certified process server to serve a writ of possession. Requires a certified process server to provide notice of the posting of the writ to the sheriff.	
		JU 02/08/2011 Fav/CS CA 03/21/2011 Not Considered CA 03/28/2011 Favorable RC 04/05/2011 Temporarily Postponed RC 04/15/2011	
2	SB 652 Simmons (Compare CS/H 703)	Liability of Spaceflight Entities; Saves a provision from future repeal which provides spaceflight entities with immunity from liability for the loss, damage, or death of a participant resulting from the inherent risks of spaceflight activities.	
		MS 03/10/2011 Favorable JU 03/22/2011 Favorable RC 04/05/2011 Not Considered RC 04/15/2011	
3	SB 1620 Flores (Compare H 7197, CS/CS/S 1546) (If Received)	K-12 Educational Instruction; Adds statewide virtual providers to the list of public school choices. Authorizes the creation of a virtual charter school. Requires the virtual charter school to contract with an approved statewide virtual provider. Provides for funding of the virtual charter school. Provides for a blended-learning charter school. Provides that home education students may enroll in certain virtual education courses or courses offered in the school district in which they reside, etc.	
		ED 04/05/2011 Favorable BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered RC 04/15/2011 If received	

Will not receive - still in BC

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Rules

Friday, April 15, 2011, 9:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 886 Transportation / Oelrich (Compare H 643)	Motor Vehicles; Revises penalties for unlawful operation of a soundmaking device in a motor vehicle. Provides that a second or subsequent violation is a moving violation and includes the assessment of points against the driver's license. Provides increased penalties for repeat violations within a certain time period.	
		TR 03/09/2011 Fav/CS BC 04/13/2011 Not Considered BC 04/14/2011 Favorable RC 04/15/2011	
5	CS/CS/SB 512 Budget / Environmental Preservation and Conservation / Negrón (Similar CS/CS/H 293)	Vessels; Revises penalty provisions for the violation of navigation rules. Provides that a violation resulting in serious bodily injury or death is a second-degree misdemeanor. Provides that a violation that does not constitute reckless operation of a vessel is a noncriminal violation. Provides an additional exemption from the requirement that certain persons possess a boating safety identification card while operating a motor vessel of a specified horsepower. Provides for increased penalties for certain noncriminal violations of navigation rules, etc.	
		EP 03/17/2011 Temporarily Postponed EP 03/30/2011 Fav/CS BC 04/13/2011 Not Considered BC 04/14/2011 Fav/CS RC 04/15/2011	
6	CS/CS/SB 1286 Budget / Banking and Insurance / Bennett (Similar CS/H 723)	State Reciprocity in Workers' Compensation Claims; Provides extraterritorial coverage for employees of this state who temporarily leave this state incidental to his or her employment. Exempts certain employees from another state working in this state and the employers of such employees from the workers' compensation law of this state under certain conditions. Provides that the benefits under the workers' compensation insurance or similar laws of the other state are the exclusive remedy against the employer for any injury received by an employee working temporarily in this state, etc.	
		BI 03/22/2011 Fav/CS BC 04/13/2011 Not Considered BC 04/14/2011 Fav/CS RC 04/15/2011	

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Friday, April 15, 2011, 9:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/CS/SB 274 Budget / Transportation / Lynn (Compare H 489, H 953, CS/CS/H 1363, CS/H 7213, S 492, S 908, S 1172, S 1464)	Road and Bridge Designations; Designates Senator Javier D. Souto Way in Miami-Dade County. Designates Nona and Papa Road in St. Johns County. Designates Walter Francis Spence Parkway in Okaloosa County. Designates Corporal Michael J. Roberts Parkway in Hillsborough County. Designates the Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial in Highlands County, etc.	
		TR 03/29/2011 Fav/CS BC 04/13/2011 Not Considered BC 04/14/2011 Fav/CS RC 04/15/2011	
8	SB 550 Hays (Identical H 4097)	Repealing Budget Provisions; Deletes certain budget summary requirements. Repeals a provision relating to Mobility 2000 funding. Conforms cross-references.	
	(If Received)	TR 02/22/2011 Favorable BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered RC 04/15/2011 If received	
	Will not receive - still in BC		
9	SB 704 Sachs (Identical H 765)	Special Observances/Purple Heart Day; Designates August 7 of each year as "Purple Heart Day."	
		MS 03/17/2011 Favorable GO 04/05/2011 Favorable RC 04/15/2011	
End of Consent Agenda			
10	CS/CS/SB 402 Community Affairs / Criminal Justice / Negrón (Similar CS/CS/CS/H 45)	Regulation of Firearms and Ammunition; Prohibits specified persons and entities, when acting in their official capacity, from regulating or attempting to regulate firearms or ammunition in any manner except as specifically authorized by s. 790.33, F.S., by general law, or by the State Constitution. Eliminates provisions authorizing counties to adopt an ordinance requiring a waiting period between the purchase and delivery of a handgun. Provides a penalty for knowing and willful violations of prohibitions, etc.	
		CJ 02/08/2011 Fav/CS CA 03/21/2011 Fav/CS JU 04/04/2011 Favorable RC 04/15/2011	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SJR 1538 Judiciary / Flores (Identical CS/HJR 1179)	Abortion/Public Funding/Construction of Rights; Proposes amendments to the State Constitution to generally prohibit public funding of abortions and prohibit the State Constitution from being interpreted to create broader rights to an abortion than those contained in the United States Constitution.	
		HR 03/14/2011 Favorable JU 03/22/2011 Not Considered JU 03/28/2011 Fav/CS RC 04/15/2011	
12	SJR 1664 Bogdanoff (Compare HJR 1097, CS/HJR 7111)	Senate Confirmation/Appointments to Supreme Court; Proposes an amendment to the State Constitution to require Senate confirmation of appointments to the office of justice of the Supreme Court.	
		JU 03/22/2011 Not Considered JU 03/28/2011 Favorable GO 04/05/2011 Favorable RC 04/15/2011	
13	CS/SB 2086 Rules Subcommittee on Ethics and Elections / Rules Subcommittee on Ethics and Elections (Compare H 559, H 813, CS/H 1261, CS/H 1355, CS/S 242, CS/S 1504, S 1968)	Elections; Requires that voter information cards contain the address of the polling place of the registered voter. Requires a supervisor of elections to issue a new voter information card to a voter upon a change in a voter's address of legal residence or a change in a voter's polling place address. Provides instructions for implementation by the supervisors of elections. Allows a candidate to obtain the required number of signatures from any registered voter regardless of district boundaries in a year of apportionment, etc.	
		EE 04/04/2011 Fav/CS RC 04/15/2011 BC	
14	CS/SB 2088 Rules Subcommittee on Ethics and Elections / Rules (Compare H 1071, CS/S 86, S 1484, S 1692)	Ethics; Provides for an exception to a provision authorizing a state public officer to vote in an official capacity on any matter, to conform to changes made by the act. Prohibits a member of the Legislature from voting upon any legislation inuring to his or her special private gain or loss. Revises provisions relating to the requisite mental state for the offenses of unlawful compensation and reward for official behavior and official misconduct, to conform to changes made by the act, etc.	
		EE 04/04/2011 Fav/CS RC 04/15/2011 BC	

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	CS/SB 234 Criminal Justice / Evers (Similar CS/CS/H 517, Compare CS/H 4069, CS/S 956)	Firearms; Provides that a person in compliance with the terms of a concealed carry license may carry openly notwithstanding specified provisions. Allows the Division of Licensing of the Department of Agriculture and Consumer Services to take fingerprints from concealed carry license applicants. Provides that concealed carry licensees shall not be prohibited from carrying or storing a firearm in a vehicle for lawful purposes. Repeals provisions relating to the purchase of rifles and shotguns in contiguous states, etc.	
		CJ 02/22/2011 Temporarily Postponed CJ 03/09/2011 Temporarily Postponed CJ 03/14/2011 Fav/CS JU 04/12/2011 Favorable RC 04/15/2011	
16	CS/SB 1754 Banking and Insurance / Garcia (Identical CS/H 1193)	Health Insurance; Prohibits a person from being compelled to purchase health insurance except under specified conditions. Specifies that the act does not prohibit the collection of certain debts.	
		BI 03/22/2011 Temporarily Postponed BI 04/05/2011 Fav/CS HR 04/12/2011 Favorable RC 04/15/2011	
17	SB 2170 Judiciary (If Received)	Judicial Nominating Commissions; Provides for the Attorney General, rather than the Board of Governors of The Florida Bar, to submit nominees for certain positions on judicial nominating commissions. Provides for the termination of terms of all current members of judicial nominating commissions. Provides for staggered terms of newly appointed members.	
		JU 04/12/2011 Not Considered RC 04/15/2011 If received	
	Will Not Receive - still in JU		

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Friday, April 15, 2011, 9:15 a.m.—12:15 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	CS/SB 830 Community Affairs / Thrasher (Similar CS/H 1021)	Labor and Employment; Prohibits a state agency from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity. Prohibits a county, municipality, or other local governmental entity from deducting from employee wages the dues, uniform assessments, fines, penalties, or special assessments of an employee organization or contributions made for purposes of political activity, etc.	CA 03/07/2011 CA 03/14/2011 Fav/CS BC 04/13/2011 Favorable RC 04/15/2011
19	CS/SB 1388 Education Pre-K - 12 / Flores (Similar CS/H 965) (If Received)	Department of Revenue; Authorizes the department to release certain taxpayers' names and addresses to certain scholarship-funding organizations. Deletes a limitation on the amount of tax credit allowable for contributions made to certain scholarship-funding organizations. Extends the carry-forward period for the use of certain tax credits resulting from contributions to the Florida Tax Credit Scholarship Program. Deletes a restriction on a taxpayer's ability to rescind certain tax credits resulting from contributions to the program.	ED 03/30/2011 Fav/CS BC 04/13/2011 Not Considered BC 04/14/2011 Not Considered RC 04/15/2011 If received
	Will not receive - still in BC		
20	CS/CS/SB 1522 Banking and Insurance / Health Regulation / Gaetz (Similar CS/CS/H 445, Compare CS/H 119, CS/S 1736, CS/CS/S 1972)	Wellness or Health Improvement Programs; Authorizes insurers and health maintenance organizations to offer a voluntary wellness or health improvement program and to encourage or reward participation in the program by offering rewards or incentives to members. Authorizes insurers and health maintenance organizations to require plan members not participating in the wellness or health improvement programs to provide verification that their medical condition warrants nonparticipation in order for the nonparticipants to receive rewards or incentives, etc.	HR 03/22/2011 Fav/CS BI 04/12/2011 Fav/CS RC 04/15/2011

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	SB 42 Benacquisto (Similar H 1151, Identical H 57, Compare H 525)	Relief/Eric Brody/Broward County Sheriff's Office; Compensates Eric Brody for injuries sustained as a result of the negligence of the Broward County Sheriff's Office. Authorizes the Sheriff of Broward County, in lieu of payment, to execute to Eric Brody and his legal guardians an assignment of all claims that the Broward County Sheriff's Office has against its insurer arising out of the insurer's handling of the claim against the sheriff's office, etc.	SM 04/07/2011 Recommendation: Unfavorable RC 04/15/2011

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/SB 426
 INTRODUCER: Judiciary Committee and Senator Latvalla
 SUBJECT: Service of Process
 DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Treadwell	Maclure	JU	Fav/CS
2.	Wolfgang	Yeatman	CA	Favorable
3.	Wolfgang	Phelps	RC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill authorizes certified process servers to serve writs of possession in actions for possession of residential property. More specifically, upon the entry of a judgment in favor of a landlord in a possession action and issuance of the writ by the clerk of court, the landlord may elect to use a certified process server to serve the writ rather than the sheriff.

After the posting of a writ by the certified process server, he or she must, within 12 hours, provide written notice to the sheriff including the date and time the writ was posted on the premises.

This bill substantially amends the following sections of the Florida Statutes: 48.021, 48.27, and 83.62.

II. Present Situation:

Florida Residential Landlord and Tenant Act

Part II of chapter 83, F.S., titled the “Florida Residential Landlord and Tenant Act” (act), governs the relationship between landlords and tenants under a residential lease agreement.¹ A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant’s occupation of a dwelling unit.² The provisions of this act specifically address the payment of rent,³ duration of leases,⁴ security deposits,⁵ landlord maintenance obligations,⁶ termination of rental agreements,⁷ and landlord remedies.⁸

Landlord Remedies for Breach of Lease

Current law provides the landlord with choices of remedies for breaches of the rental agreement by the tenant.⁹ The remedies provided in statute apply to the following situations:

- The tenant has breached the lease for the dwelling unit and the landlord has obtained a writ of possession;
- The tenant has surrendered possession of the dwelling unit to the landlord; or
- The tenant has abandoned the dwelling unit.

The statute permits the landlord to:

- Treat the lease as terminated and retake possession for his or her own account, thereby terminating any further liability of the tenant; or
- Retake possession of the dwelling unit for the account of the tenant, holding the tenant liable for the difference between rent stipulated to be paid under the lease agreement and what, in good faith, the landlord is able to recover from a reletting; or
- Stand by and do nothing, holding the lessee liable for the rent as it comes due.¹⁰

Right of Action for Possession

A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated.¹¹ However, under current law, a landlord is not authorized to recover possession except under the following circumstances:

¹ Part II of ch. 83, F.S.

² Section 83.43(7), F.S. (A rental agreement “means any written agreement, ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.”)

³ Section 83.46, F.S.

⁴ *Id.*

⁵ Section 83.49, F.S.

⁶ Section 83.51, F.S.

⁷ *See* ss. 83.56 and 83.575, F.S.

⁸ *See* ss. 83.58 and 83.595, F.S.

⁹ Section 83.595, F.S.

¹⁰ *Id.*

¹¹ Section 83.59(1), F. S.

- In an action for possession, in which the landlord, the landlord’s attorney, or agent files a specified complaint alleging certain facts authorizing recovery in the proper county court where the dwelling unit is located;¹²
- In other civil actions in which right of possession is to be determined;
- Possession of the dwelling unit has been surrendered by the tenant to the landlord;
- The dwelling unit has been abandoned by the tenant; or
- The only remaining tenant in the dwelling unit has been deceased for at least 60 days with his or her personal property still remaining on the premises and rent remains unpaid, and the landlord has not received notice of a probate estate or personal representative thereof.¹³

Writs of Possession

After judgment is awarded in favor of the landlord in an action for possession of the property, the clerk must issue a writ of possession to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours’ notice conspicuously posted on the premises.¹⁴ After the 24-hour period elapses from the posting of the writ, the landlord or the landlord’s agent may remove any personal property found on the premises.¹⁵ The landlord may request that the sheriff stand by to keep the peace while the landlord changes the locks and removes the personal property from the premises.¹⁶ Neither the sheriff nor the landlord is liable to the tenant or any other party for the loss, destruction, or damage to the property after it has been removed.¹⁷

Overview of Service of Process

Service of process is the formal delivery of a writ, summons, or other legal process or notice.¹⁸ As a general rule, “statutes governing service of process are to be strictly construed to insure that a defendant receives notice of the proceedings.”¹⁹ Currently, under Florida law process may be served by a sheriff, a person appointed by the sheriff in the sheriff’s county (“special process server”), or a certified process server appointed by the chief judge of the circuit court.²⁰ All process must be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses, which may be served by a special or certified process server.²¹ Any person

¹² Section 83.59(2), F.S.

¹³ Section 83.59(3), F.S.

¹⁴ Section 83.62(1), F.S.

¹⁵ Section 83.62(2), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ “The term ‘process’ is not limited to ‘summons.’ In its broadest sense [,] it is equivalent to, or synonymous with, ‘procedure,’ or ‘proceeding.’” BLACK’S LAW DICTIONARY (9th ed. 2009). Thus, service of process may trigger the constitutional issue of procedural due process, which requires notice and the opportunity to be heard. *See, e.g., Minda v. Ponce*, 918 So. 2d 417, 422 (Fla. 2d DCA 2006) (citing *Schnicke v. Schnicke*, 533 So. 2d 337, 337-38 (Fla. 5th DCA 1988)).

¹⁹ *Abbate v. Provident Nat’l Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994) (citing *Henzel v. Noel*, 598 So. 2d 220, 221 (Fla. 5th DCA 1992)).

²⁰ *Id.*

²¹ Section 48.021(1), F.S. Service of process may be categorized as enforceable or nonenforceable. *See* Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, at 1 (Aug. 2005).

authorized by the Florida Rules of Procedure may also serve civil witness subpoenas.²² However, at present, there is no statutory authority or rule of procedure that allows anyone other than a sheriff or a sheriff's deputy to serve writs of possession in actions for possession of real property.

Certified Process Servers

A certified process server must be appointed by the chief judge of the judicial circuit in which he or she shall be allowed to serve process.²³ The chief judge of each circuit has discretion as to whether or not to appoint certified process servers. According to s. 48.29(3), F.S., a person applying with the chief judge to become a certified process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process;
- Execute a bond in the amount of \$5,000, which shall be renewable annually, for the benefit of any person injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server; and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.²⁴

Once the process server is certified, he or she may serve nonenforceable civil process, as well as criminal witness subpoenas and criminal summonses, on a person found within the circuit where the server is certified.²⁵ Florida law does not provide a fee schedule establishing the fees allowed to be charged by certified process servers. Rather, current law generally provides that a “certified process server may charge a fee for his or her services.”²⁶

Fees and Costs Associated with Writs of Possession

Under Florida law, county sheriffs of the state must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.²⁷ All fees collected under the statutory provisions for sheriffs' fees for service of process are to be paid monthly into

“Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property).” *Id.* On the other hand, “[n]onenforceable service of process is designed to place another party on notice that he or she must take action (i.e., summons to appear, witness subpoena).” *Id.*

²² Section 48.021(1), F.S. Rule 1.070, Florida Rules of Civil Procedure, provides that service of process may be made by a person appointed by court order, known as an elisor.

²³ Section 48.27, F.S.

²⁴ Section 48.29(3), F.S.

²⁵ Section 48.27(2), F.S.

²⁶ Section 48.29(8), F.S.

²⁷ Section 30.231(1), F.S.

the county's fine and forfeiture fund.²⁸ Current law provides that the sheriff's office may charge \$40 for docketing and indexing each writ of execution, regardless of the number of persons involved, and \$50 for each levy.²⁹ In addition to these fees, the sheriff is authorized to charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace in an action for possession of property is responsible for paying the hourly rate.³⁰

III. Effect of Proposed Changes:

The bill authorizes certified process servers to serve writs of possession in actions for possession of real property. Currently, there is no statute or rule that allows anyone other than a sheriff or deputy to serve writs of possession in possession actions. The bill specifies that, upon the entry of a judgment in favor of a landlord in an eviction action and issuance of the writ by the clerk of court, the landlord may elect to use a certified process server to serve the writ.

The bill also makes conforming changes in the Florida Residential Landlord and Tenant Act (specifically s. 83.62, F.S.) and the general service of process statute (s. 48.021, F.S.) to authorize service of the writ of possession by a certified process server. The bill retains a sheriff's authority to serve a writ of possession in an eviction action.

Under current statute and practice, the clerk issues the writ of possession to the sheriff, and the sheriff serves the writ by conspicuously posting the writ on the premises. After 24 hours have passed from the posting of the writ, the landlord may take possession of the property with the sheriff standing by to keep the peace.³¹ Under the bill, if the landlord elects to use a certified process server to serve the writ, the sheriff will remain under the obligation to stand by to keep the peace after the 24-hour period has passed. To aid in this process, the bill provides that upon the posting of the writ by the certified process server, he or she, within 12 hours, must provide written notice to the sheriff including the date and time the writ was posted on the premises.

Other Potential Implications:

It is the long-standing practice of Florida that enforceable civil process is served by the sheriff. Allowing a certified process server to serve the writ of possession is a significant departure from this practice.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII, State Constitution, provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists

²⁸ Section 30.231(5), F.S.

²⁹ Section 30.231(1)(d), F.S. A levy is considered made when any property or any portion of the property listed or unlisted in the instructions for levy is seized, or upon demand of the sheriff the writ is satisfied by the defendant in lieu of seizure.

³⁰ Section 83.62(2), F.S.

³¹ Section 83.62, F.S.

on February 1, 1989. Because sheriffs retain the authority to serve writs of possession under the bill, it does not appear that the authority of the local government to raise revenues has been affected by the provisions of the bill.

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:

In counties experiencing high volumes of cases involving possession of real property, landlords who elect to use a certified process server to deliver the writ of possession may experience a reduction in the amount of time that elapses between court approval of the writ and the actual service of the writ. Dependent upon the actual fee charged by certified process servers for serving the writ of possession, landlords could experience higher costs associated with the execution of the writ if they elect to use a certified process server.

C. Government Sector Impact:

The bill will allow landlords in successful eviction actions to elect to use certified process servers rather than the sheriff's office to serve writs of possession. All fees collected under the statutory provisions for sheriffs' fees for service of process are paid monthly into the county's fine and forfeiture fund. County revenues could be decreased contingent upon the number of landlords who elect to use certified process servers rather than the sheriff to serve the writs. However, sheriffs will continue to receive fees for assisting with repossession of the property 24 hours after the posting of the writ.

Clerks of court may experience some expense associated with revisions to the writ of possession form if changes are necessary as a result of allowing certified process servers to serve the writ.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on February 8, 2011:

The committee substitute:

- Specifies that a writ of possession may be served by a certified process server in s. 48.021, F.S. (the general service of process statute), for consistency with the bill's grant of authority to certified process servers in s. 48.27, F.S.;
- Substitutes the term "landlord" for the term "person" to make clear that the landlord selects the certified process server; and
- Requires a certified process server, within 12 hours of the posting of the writ, to provide written notice to the sheriff including the date and time the writ was posted on the premises.

- B. **Amendments:**

None.

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: SB 652

INTRODUCER: Senators Simmons and Altman

SUBJECT: Liability of Spaceflight Entities

DATE: April 1, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fleming</u>	<u>Carter</u>	<u>MS</u>	Favorable
2.	<u>Boland</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	<u>Boland</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill saves from future repeal the statute that provides spaceflight entities with immunity from liability for the loss, damage, or death of a participant resulting from the inherent risks of spaceflight activities. The bill eliminates the statute’s scheduled repeal date of October 2, 2018.

This bill substantially amends section 331.501, Florida Statutes.

II. Present Situation:

In 2008, the Legislature enacted s. 331.501, F.S., which provides that a spaceflight entity¹ is not liable for injury to or death of a spaceflight participant² resulting from the inherent risks of spaceflight launch activities,³ so long as a required warning is given to and signed by the participant. The law further provides that a participant or participant’s representative may not recover from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities. The immunity provided by

¹ “Spaceflight entity” means any public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities.

² “Spaceflight participant” means an individual, who is not crew, carried within a launch vehicle or reentry vehicle as defined in 49 U.S.C. s. 70102.

³ “Spaceflight activities” means launch services or reentry services as those terms are defined in 49 U.S.C. s. 70102. That federal statute defines “launch services” as activities involved in the preparation of a launch vehicle, payload, crew (including crew training), or space flight participant for launch and the conduct of a launch, and it defines “reentry services” as activities involved in the preparation of a reentry vehicle and payload, crew (including crew training), or space flight participant for reentry and the conduct of a reentry.

s. 331.501, F.S., does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:

- Commits gross negligence or willful or wanton disregard for the safety of the participant;
- Has actual knowledge or reasonably should have known of a dangerous condition; or
- Intentionally injures the participant.

To receive the immunity, the spaceflight entity must have each participant sign a required warning statement. The warning statement must contain, at a minimum, the following statement:

WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Injuries caused by the inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.

The limitation on liability established in s. 331.501, F.S., is in addition to any other limitation of legal liability that might otherwise be provided by law.

Section 331.501, F.S., includes a provision that the section will expire on October 2, 2018, unless reviewed and reenacted by the Legislature.

III. Effect of Proposed Changes:

This bill saves from future repeal the section of the Florida Statutes which provides spaceflight entities with immunity from liability for the loss, damage, or death of a participant resulting from the inherent risks of spaceflight activities. Specifically, the bill deletes the provision from s. 331.501, F.S., which provides for the statute to expire on October 2, 2018, unless reviewed and reenacted by the Legislature.

The bill provides an effective date of July 1, 2011.

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:

To the extent that the removal of the sunset provision from s. 331.501, F.S., encourages private sector economic activity by providing additional incentives for private space flight companies to locate in Florida, the bill could have a positive private sector impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

None.

B. Amendments:

None.

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/SB 886

INTRODUCER: Transportation Committee and Senator Oelrich

SUBJECT: Motor Vehicles

DATE: April 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	Fav/CS
2.	Carey	Meyer, C.	BC	Favorable
3.	Carey	Phelps	RC	Pre-meeting
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:

This bill revises the penalties associated with noise violations in vehicles established in s. 316.3045, F.S. The bill increases the level of a violation of s. 316.3045, F.S, from a non-moving violation to a moving violation for second and subsequent violations. This bill also sets minimum fines for second, third, and subsequent violations of s. 316.3045, F.S., within a 12 month period.

This bill amends ss. 316.3045 and 318.18, Florida Statutes.

II. Present Situation:

Section 316.3045, F.S., provides criteria related to the operation of radios or other mechanical sound-making devices in motor vehicles. Presently, it is unlawful for a person operating or occupying a motor vehicle on a street or highway to amplify the sound produced by a radio, tape player, or other mechanical sound-making device or instrument from within the motor vehicle where the sound is:

- plainly audible at a distance of 25 feet or more from the vehicle, or

- louder than necessary for the convenient hearing by persons inside the vehicle in areas adjoining churches, schools or hospitals.

A violation of the conditions of this section is a noncriminal traffic infraction, punishable as a nonmoving violation.

Section 318.18, F.S. sets the penalty for a non moving violation at \$30 plus applicable court costs and fees.

III. Effect of Proposed Changes:

Section 1: The bill amends s. 316.3045, F.S., to increase the level of the violation for second, third, and subsequent violations to a moving violation. Violators of s. 316.3045, F.S., will be assessed 3 points on the driver's license for second, third and subsequent violations as provided in s. 322.27(1)(d), F.S.

Section 2: The bill amends s. 318.18, F.S., by establishing increased minimum fines for second, third, and subsequent violations occurring within the same 12 month period. A fine of \$120 will be assessed for a second violation and \$180 for third and subsequent violations within a 12 month period.

Section 2: The bill will take effect July 1, 2011.

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:

Violators of s. 316.3045, F.S. will be required to pay a higher fine for a second, third or subsequent violation within a 12 month period.

C. **Government Sector Impact:**

This bill may increase revenue for state and local governments due to higher fines and increased penalties for violators of s. 316.3045, F.S., relating to soundmaking devices in motor vehicles.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

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

CS by Transportation on March 9, 2011:

The committee substitute limits the assessment of the increased penalties to second and subsequent violations.

B. **Amendments:**

None.

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 512

INTRODUCER: Budget Committee, Environmental Preservation and Conservation Committee, and Senator Negron

SUBJECT: Vessels

DATE: April 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Fav/CS
2.	DeLoach	Meyer, C.	BC	Fav/CS
3.	DeLoach	Phelps	RC	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation, from a misdemeanor of the second degree to a noncriminal infraction. The bill increases the civil penalties for navigation rule violations that result in an accident but do not cause serious bodily injury or death, depending on the judge's discretion, as follows.

- First offense: up to \$250.
- Second offense: up to \$750.
- Third offense: up to \$1,000.

The penalty for a navigation violation that causes serious bodily injury or death is a second degree misdemeanor.

This bill allows boaters who can present proof of boater safety course completion and photo identification to operate a motor vessel without waiting to receive the Florida Fish and Wildlife Conservation Commission (commission) Boating Identification card in the mail. The boater

education certificate must include the student's first and last name, date of birth, and the date that the student passed the course examination.

This bill substantially amends the following sections of the Florida Statutes: 327.33, 327.395, 327.54, 327.73, 327.72, and 327.731(1).

II. Present Situation:

Currently, under s. 327.33(3), F.S., all navigation rule violations are noncriminal infractions except those navigation rule violations that result in boating accidents. If a navigation rule violation results in a boating accident, the charge is increased from a noncriminal infraction to a misdemeanor of the second degree. When a reckless operation violation occurs, the penalties are more severe and include a first degree misdemeanor charge, a maximum \$1,000 fine, and up to one year in jail.

In accordance with s. 327.73, F.S., individuals charged with noncriminal infractions sign and accept a citation indicating a promise to appear in court or pay the civil penalty, by mail or in person, within 30 days. If the person elects to pay the civil penalty, he or she is deemed to have admitted the noncriminal infraction and waived the right to a hearing. Such admittance shall not be used as evidence in any other hearing. The amount of the civil penalty assessed for the noncriminal navigation rule violation is \$50, plus court specific additions if the violator elects to pay the fine without a court appearance. If the person elects to appear in court to plead the case, he or she has waived the limitations of the civil penalty. If the court determines the infraction has been committed, it may impose a civil penalty of up to \$500.¹

Section 327.731 F.S., requires any person who is convicted of two noncriminal infractions in a 12-month period to enroll in, attend, and successfully complete a boating safety course that meets the minimum standards established by the Florida Fish and Wildlife Conservation Commission (commission).

Anyone charged with a navigation rule violation that results in an accident is charged with a second degree misdemeanor. Upon the finding of guilt for a second degree misdemeanor, in accordance with ss. 775.082 and 775.083, F.S., a person may be fined up to \$500 and subjected to imprisonment not to exceed 60 days, at the discretion of the judge. In addition to the punishment, a judge, in accordance with s. 775.089, F.S., can order restitution to a victim for damage or loss related to the defendant's criminal act. There is not a civil penalty provision that an individual may pay in person or by mail for second degree misdemeanors in lieu of sentencing as described above for noncriminal infractions.

Per s. 327.731, F.S., mandatory education is required for anyone convicted under ch. 327, F.S., of a criminal violation, a non-criminal infraction that resulted in a reportable boating accident, as defined in s. 327.30(2), F.S., or two noncriminal infractions in a 12-month period. Additionally, commission rule 68D-36.106, F.A.C. (created pursuant to s. 327.04, F.S.), requires anyone convicted of a noncriminal boating infraction that resulted in a reportable boating accident and

¹ Florida Fish and Wildlife Conservation Commission, *Senate Bill 512 Fiscal Analysis* (February 10, 2011) (on file with the Senate Committee on Environmental Preservation and Conservation)

anyone convicted of any criminal boating violation to complete an additional online boating course. Reportable boating accidents include those that must be reported to law enforcement under s. 327.30(2), F.S. They include:

- Accidents involving any kind of vessel if the accident involves a vessel capsizing.
- A vessel colliding with another vessel or object.
- A vessel sinking.
- Serious personal injury (requiring more than basic first aid).
- Death.
- Disappearance of any person onboard under circumstances suggestive of a likelihood of death or injury.
- Damage to the vessel or any property in an aggregate amount greater than \$2,000.

According to the commission, from 2007 through 2010 there were 452 individuals cited for second degree misdemeanor violations of navigation rules that resulted in a boating accident. During the same time frame, there were 303 individuals cited for noncriminal infractions for navigation rule violations that did not result in a boating accident.

All civil penalties collected for noncriminal infractions related to boating are deposited into the Marine Resources Conservation Trust Fund within the commission, to be used for boating safety education purposes (s. 327.73(8), F.S.). Also, the court assesses the costs payable to the clerk for each noncriminal violation (s. 327.73(11), F.S.).

Under s. 775.083(1), F.S., all fines collected for convictions of second degree misdemeanors are deposited into the county's Fine and Forfeiture Fund (established in section 142.01, F.S.) for use by the clerk of the circuit court in performing court-related functions.

Section 327.395, F.S., requires a person born after January 1, 1988, to have a boater safety identification card to operate a vessel powered by a motor of 10 horsepower or greater. In order to obtain a boater safety identification card, the person must have completed a commission-approved boater education course that meets the minimum eight-hour instruction requirement established by the National Association of State Boating Law Administrators. A person may also obtain a boater safety identification card by passing a course equivalency examination approved by the Florida Fish and Wildlife Conservation Commission (commission) or pass a temporary certificate examination developed or approved by the commission.

The boater safety course may be taken in person at one of the commission's state offices at no charge. An applicant may also take the course online at a cost of up to \$30. The commission lists the approved online courses on their website.² The U.S. Coast Guard also offers a commission-approved course for \$35.

The commission may appoint liveries, marinas, or other agents to administer the boater safety course, as long as the entities adhere to the commission's established guidelines. These private entities offer the course for approximately \$30. However, these entities may not issue a boater

² The Florida Fish and Wildlife Conservation Commission, *Boating Safety Education*, available online at <http://myfwc.com/boating/safety-education/boating-courses/> (last visited on March 15, 2011).

safety card on the premises. These private entities must send a \$2 exam fee to the commission, in addition to providing proof that the applicant successfully passed the course. The commission also allows the private entities to charge and keep an additional \$1 service fee.²

Once the commission has received documented proof that the applicant successfully completed the course, then the commission will mail a boater safety identification card to the applicant. It currently takes the commission up to ten days to mail a card to an applicant who has successfully completed the boating safety course and has provided all of the necessary identification documentation. Incomplete applications may take longer, as the commission must contact the applicant and retrieve any missing information.

III. Effect of Proposed Changes:

Section 1 amends s. 327.33(3), F.S., to remove the criminal charge, for those individuals who violate a navigation rule that results in an accident but does not cause serious bodily injury or death or rise to the level of reckless operation, from a second degree misdemeanor to a noncriminal infraction.

Section 2 amends s. 327.395(6), F.S., to allow the operation of a vessel without a commission-issued Boater Identification card, for up to 90 days, for a boater who can prove boater safety course completion and provide photo identification. In order to prove boater safety course completion, the boater must be able to provide a boater education certificate that includes the student's first and last name, date of birth, and the date he or she passed the course examination.

Section 3 amends s. 327.54(2), F.S., to provide an exemption to allow liveries to accept boater education certificates that contain specific data, under specified conditions outlined in s. 327.395, F.S., as proof of successfully completing the Boater Education Course.

Section 4 amends s. 327.73(1) and (5), F.S., to increase the civil penalty for individuals who violate a navigation rule that result in a boating accident and to provide for increased penalties for repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to \$250 for a first offense, up to \$750 for a second offense, and up to \$1,000 for a third or subsequent offense.

Section 5 reenacts and amends s. 327.72, F.S., to incorporate changes to s. 327.73, F.S., by reference.

Section 6 reenacts s. 327.731(1), F.S., for the purpose of incorporating the amendment to s. 327.73, F.S.

Section 5 provides an effective date of October 1, 2011.

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:

The changes may increase the penalties on boaters who violate navigation rules resulting in boating accidents, especially repeat offenders. Individuals who commit a navigational violation who are involved in an accident where no one is injured or killed will be subject to increased civil penalties up to \$250 for a first offense, up to \$750 for a second offense, and up to \$1,000 for a third or subsequent offense.

The bill would allow liveries to accept the boater education certificate as proof that the course was successfully completed. The certificate must include the boater's first and last name, date of birth, and the date that he or she passed the course. Private entities may see an increase in business if they are allowed to accept the certificate as individuals may rent boats on the premises after successfully completing the boater education course.

C. Government Sector Impact:

According to the commission, there will be an indeterminate positive fiscal impact to the Marine Resources Conservation Trust Fund, due to increased civil penalties collected for noncriminal infractions related to boating. Revenues from these penalties are used for boating safety education purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Budget on April 14, 2011:

The committee substitute (CS) reduces the civil penalty for navigation rule violations that result in an accident but do not cause serious bodily injury or death for the first offense to \$250.

The CS also allows boaters who can present proof of boater safety course completion and identification to operate a motor vessel without waiting to receive the commission boating identification card in the mail.

CS by Environmental Preservation and Conservation on March 31, 2011:

The Committee Substitute (CS) removes the criminal penalties for a navigational violation that results in an accident but does not rise to the level of reckless operation from a misdemeanor of the second degree to a noncriminal infraction. The CS increases the fines for navigational violations that result in an accident but do not cause bodily injury or death up to \$500 for the first offense, up to \$750 for the second offense, and up to \$1,000 for a third or subsequent offense.

- B. **Amendments:**

None.

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 1286

INTRODUCER: Budget Committee, Banking and Insurance Committee, and Senator Bennett

SUBJECT: State Reciprocity in Workers' Compensation Claims

DATE: April 14, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	FavCS
2.	Frederick	Meyer, C.	BC	Fav/CS
3.	Frederick	Phelps	RC	Pre-meeting
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates a process designed to ensure that if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, provided that state has a reciprocal provision similar to Florida's. The provisions of section 440.094, Florida Statutes, apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

This bill creates section 440.094, Florida Statutes.

II. Present Situation:

Workers' compensation is a form of insurance designed to provide wage replacement and medical benefits for employees who are injured in the course of employment, in exchange for giving up the right to sue the employer for negligence. Workers' compensation insurance was established to address cost of lawsuits filed by employees against employers for work-related injuries. Through the Florida workers' compensation law, employers must provide medical

benefits and indemnity (wage replacement) benefits to their employees who are injured in the course of their employment.

Florida Workers' Compensation Law

In Florida, the worker's compensation process is governed by ch. 440, F.S., titled the "Workers' Compensation Law." Section 440.015, F.S., expresses the legislative intent that the Workers' Compensation Law "be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer." Further, the Legislature expressed the intent that:

It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department (Department of Financial Services), agency (Agency for Health Care Administration), the Office of Insurance Regulation, the Department of Education, and the Division of Administrative Hearings shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.¹

Chapter 440, F.S., provides a detailed framework for coverage and benefit issues,² as well as the process for resolving disputes,³ all of which are specific to Florida and may have substantially different provisions than in other states.

The Florida laws provide predictability for employees, employers, and workers' compensation insurance carriers. A greater degree of predictability helps the National Council of Compensation Insurance (NCCI), the rating organization that files annual worker's compensation rates in Florida, to more accurately evaluate the risks being covered and to seek the appropriate premium levels. Further, a greater degree of predictability helps the Office of Insurance Regulation (OIR) to evaluate the annual rate filing and establish the most appropriate premium levels for Florida businesses.

Recently, however, a number of Florida employees, most notably former professional athletes, have begun to file for benefits under the workers' compensation laws of other states, particularly California. The claims are based on the premise that, although the employer and primary employment is in Florida, the injury was sustained in the other state.

¹ Section 440.015, F.S.

² See, e.g., s. 440.09, F.S. (coverage requirements), s. 440.102, F.S. (drug free workplace provisions), s. 440.106, F.S. (civil remedies), s. 440.15 F.S. (permanent total disability, temporary total disability, permanent impairment benefits, temporary partial disability, and subsequent injury), s. 440.151, F.S. (occupational diseases), and s. 440.16, F.S. (compensation for death).

³ See, e.g., s. 440.021, F.S. (exemption from Administrative Procedure Act), s. 440.011, F.S. (exclusiveness of liability), s. 440.192, F.S. (dispute resolution procedures), s. 440.1926, F.S. (alternate dispute resolution procedures), s. 440.25, F.S. (procedures for mediation and hearings), s. 440.271, F.S. (appeal rights), and s. 440.29, F.S. (procedures before a judge of compensation claims).

Currently, s. 440.09(1)(d), F.S., provides that, if a Florida employee is injured while employed outside of Florida, and the injury would entitle the employee or dependents to compensation if it had happened in this state, the employee or his or her dependents are entitled to compensation. If, however, the employee receives compensation or damages under the laws of any other state, the total compensation for the injury may not be greater than is provided in ch. 440, F.S.

III. Effect of Proposed Changes:

The bill creates a process designed to ensure that, if a Florida employee is injured in the course of employment while temporarily in another state, that employee is entitled to receive only the benefits required under Florida law, and not the benefits required by the law of the other state, if that state has a reciprocal provision similar to Florida's. To accomplish this purpose, the bill creates s. 440.094, F.S., to provide the following.

- If a Florida employee temporarily leaves the state incidental to his or her employment and is injured in the course of employment, that employee, or beneficiaries if the injury results in death, is entitled to the benefits as if the employee were injured in Florida.
- If an employee from another state is injured incidental to employment while temporarily in Florida, that employee and his or her employer are exempt from Florida law if: (1) the employer has workers' compensation insurance coverage under its own state laws; (2) the extraterritorial provisions of Florida law are recognized in the employer's state and; (3) employers and employees covered in Florida are exempted from the workers' compensation laws of the other state.
- If an employee from another state is injured incidental to employment while temporarily in Florida, the exclusive remedy against the employer are the workers' compensation laws of the other state.
- A certificate from the appropriate office of another state is prima facie evidence that an employer carries workers' compensation coverage in the other state.
- For any litigation in Florida that involves a question of construction of laws in another state, the Florida court shall take judicial notice of the laws of the other state.
- When an employee has a claim under workers' compensation in another jurisdiction for the same injury or occupational disease as a claim filed in Florida, the total amount of compensation derived from the other jurisdiction shall be credited against the compensation due under Florida Workers' Compensation Law.
- An employee is considered to be temporarily working in another state if the duration of that work does not exceed 10 consecutive days or 25 days during a calendar year.
- The provisions of s. 440.094, F.S., apply to any claim made on or after July 1, 2011, regardless of the date of the accident.

The bill provides an effective date of July 11, 2011.

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:

By establishing a process to ensure that a single jurisdiction will apply in cases involving employees injured in a state other than where they are employed, the legislation should reduce the ability of an injured employee to choose the jurisdiction with the more generous benefits. As a result, workers' compensation premiums and potential litigation costs ultimately should be lower for those businesses that employ significant numbers of employees who temporarily travel to other states as part of their employment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Budget on April 14, 2011

The committee substitute removes from the bill the provisions authorizing a workers' compensation carrier to provide workers' compensation weekly payments through the use of prepaid cards.

CS by Banking and Insurance on March 22, 2011

The Committee Substitute:

- Creates a separate section for the extraterritorial reciprocity provisions, rather than incorporating those provisions in s. 440.09, F.S., as the original bill had.

- Removes a provision that would have authorized the Division of Workers' Compensation of the Department of Financial Services to enter into agreements with similar agencies of other states concerning boundary or jurisdiction disputes.
- Removes redundant language from two subparts of the extraterritorial reciprocity language.
- Provides that, if authorized by the employee, a worker's compensation carrier can make its weekly payment to the employee by means of a prepaid card, if it meets conditions specified in the bill.
- Requires a carrier to keep a record of all payments and the time and manner of the payments, and to furnish the records if requested by the Bureau of Workers' Compensation Fraud.

B. Amendments:

None.

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 274

INTRODUCER: Budget Committee, Transportation Committee, and Senator Lynn

SUBJECT: Road and Bridge Designations

DATE: April 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sookhoo	Spalla	TR	Fav/CS
2.	Carey	Meyer, C.	BC	Fav/CS
3.	Carey	Phelps	RC	Pre-meeting
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:

Section 334.071, F.S., specifies the purpose and effect of the designation of roads, bridges, and other transportation facilities for honorary or memorial purposes by the Florida Legislature. These designations are for honorary purposes only, and do not require changing of street signs, mailing addresses, or 911 listings. The bill designates the following roads as follows:

- State Road 19 in Putnam County between U.S. Highway 17 (State Road 15) and Carriage Drive in Palatka is designated as “Veterans Memorial Highway.”
- The Interstate 295/State Road 9A overpass (Bridge Nos. 720256 and 720347) over Interstate 10/State Road 8 in Duval County is designated as “Duval County Law Enforcement Memorial Overpass.”
- U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County is designated as “SP4 Thomas Berry Corbin Memorial Highway.”

- U.S. Highway 19/98/State Road 55 between N.E. 592 Street/Chavous Road/ Kate Green Road and N.E. 170th Street in Dixie County is designated as “U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway.”
- State Road 24 between County road 374 and Bridge Number 340053 in Levy County is designated as “Marine Lance Corporal Brian R. Buesing Memorial Highway.”
- U.S. Highway 19/98/State Road 55/S. Main Street between N.W. 1st Avenue and S.E. 2nd Avenue in Levy County is designated as “United States Army Sergeant Karl A. Campbell Memorial Highway.”
- U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County is designated as “U.S. Army SPC James A. Page Memorial Highway.”
- State Road 100 in Union County from the Bradford County Line to the Columbia County line is designated “Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway.”
- State Road 26A in Gainesville, Alachua County, between West University Avenue and S.W. 25th Street, is designated “Deputy Jack A. Romeis Road.”
- State Road 824 between I-95 and State Road A1A in Broward County is designated as “Mardi Gras Way.”
- State Road 7 between Pembroke Road and County Line Road in Broward County is designated as “West Park Boulevard.”
- SR 976 (Bird Road) between S.W. 87th Ave and Palmetto Expressway Ramp is designated as “Senator Javier D. Souto Way.”
- The San Juan Road Extension in Anastasia State Park is designated as “Nona and Papa Road.”
- State Road 293 from the Mid-Bay Bridge Toll plaza north of Chocatawhatchee Bay to its intersection with State Highway 85 is designated as “Walter Francis Spence Parkway.”
- State Route 87 from its intersection with US98 northward to its intersection of U.S. 90 in Santa Rosa County is designated as “Beaches and Rivers Parkway.”
- U.S. 41/State Road 45/ Nebraska Ave from County Road 584/Waters Avenue to State Road 580/Busch Boulevard is designated as “Corporal Michael J. Roberts Parkway.”
- Milepost 22.182 on U.S. 27 in Highlands County is designated as “Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial.”
- Biscayne Boulevard from N.E. 88th Street to N.E. 105th Street in Miami Shores Village in Miami-Dade County is designated as “Hugh Anderson Boulevard.”

- N.W. 79th Street between N.W. 6th Avenue and N.W. 7th Avenue in Miami-Dade County is designated as “Miss Lillie Williams Boulevard.”
- N.W. 54th Street between N.W. 2nd Avenue and N.E. 3rd Avenue in Miami Dade-County is designated as “Father Gerard Jean-Juste.”
- State Road 858/Hallandale Beach Boulevard between Interstate 95 and U.S. Highway 441/State Road 7 in Broward County is designated as “Pembroke Park Boulevard.”
- State Road 46 in Brevard County from U.S. 1 to the Volusia County line is designated as “Harry T. and Harriette V. Moore Memorial Highway.”
- Beaver Street in Duval County between Laura Street and Rushing Street is designated as “Elizabeth G. Means Memorial Boulevard.”
- U.S. 1 Alternate/SR 115/SR 115A/Haines Street Expressway in Duval County between 8th Street and Duval Street is designated as “Louise Steward Memorial Boulevard.”
- Edgewood Avenue in Duval County between Commonwealth Avenue and Beaver Street is designated as “Isiah J. Williams, III, Memorial Boulevard.”
- S.W. 27th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 13th Street is designated as “Reverend Max Salvadore Avenue.”
- S.W. 8th Street in Miami-Dade County between S.W. 10th Avenue and S.W. 12th Avenue is designated as “BRIGADA 2506 STREET, Carlos Rodriguez Santana.”
- S.W. 87th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 24th Street is designated as “Reverend Jorge Comesanas Way.”
- S.W. 23rd Street, in front of James G. Pressly Stadium, and 4211 S.W. 23rd Street, located between S.W. 2nd Avenue and Fraternity Row/Drive in Alachua County is designated as “Coach Jimmy Carnes Boulevard.”

This bill creates undesignated sections of Florida Law.

II. Present Situation:

Section 334.071, F.S., provides: (1) Legislative designations of transportation facilities are for honorary or memorial purposes, or to distinguish a particular facility, and may not be construed to require any action by local governments or private parties regarding the changing of any street signs, mailing addresses, or 911 emergency telephone number system listings, unless the legislation specifically provides for such changes; (2) When the Legislature establishes road or bridge designations, the Florida Department of Transportation (FDOT) is required to place markers only at the termini specified for each highway segment or bridge designated by the law creating the designation, and to erect any other markers it deems appropriate for the

transportation facility; and (3) The FDOT may not erect the markers for honorary road or bridge designations unless the affected city or county commission enacts a resolution supporting the designation. When the designated road or bridge segment is located in more than one city or county, resolutions supporting the designations must be passed by each affected local government prior to the erection of the markers.

III. Effect of Proposed Changes:

The effects of the bill are as follows:

Section 1: Designates the portion of State Road 19 in Putnam County between U.S. Highway 17 (State Road 15) and Carriage Drive in Palatka as “Veterans Memorial Highway” in recognition of military veterans.

Section 2: Designates the portion of Interstate 295/State Road 9A overpass (Bridge Nos. 720256 and 720347) over Interstate 10/State Road 8 in Duval County is designated as “Duval County Law Enforcement Memorial Overpass.”

This memorial is dedicated to the men and women in all law enforcement agencies located within Duval County who have died in the line of duty.

Section 3: Designates the portion of U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County is designated as “SP4 Thomas Berry Corbin Memorial Highway.”

Thomas Corbin, born in Old Town Dixie, lived in Cross City, served in the United States Army as a Specialist Fourth Class and was killed in action during the Vietnam War during a mission against the Viet Cong. He was awarded the Silver Star due to his dedication and commitment.

Section 4: Designates the portion of U.S. Highway 19/98/State Road 55 between N.E. 592 Street/Chavous Road/ Kate Green Road and N.E. 170th Street in Dixie County is designated as “U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway.”

Samuel Chavous Jr. was born in Cross City and served in the US Navy. He served in the US Navy in the Vietnam War and was killed in action. For his service, he was awarded the Purple Heart.

Section 5: Designates the portion of State Road 24 between County road 374 and Bridge Number 340053 in Levy County is designated as “Marine Lance Corporal Brian R. Buesing Memorial Highway.”

Lance Corporal Brian Buesing was born and raised in Cedar Key. He enlisted in the Marines and at the young age of 21 during Operation Iraqi Freedom, he was killed in action while trying to protect two fellow Marines. For his bravery and dedication, he was awarded the Purple Heart.

Section 6: Designates the portion of U.S. Highway 19/98/State Road 55/S. Main Street between N.W. 1st Avenue and S.E. 2nd Avenue in Levy County is designated as “United States Army

Sergeant Karl A. Campbell Memorial Highway.” Also this bill directs FDOT to erect suitable markers.

Army Sergeant Karl Campbell of Chiefland enlisted in the Army in 1995 and served as an infantryman until 2003. He re-enlisted in November 2009. Sergeant Campbell died from wounds suffered when insurgents in Afghanistan attacked his unit with an improvised explosive device. He has been awarded the Bronze Star and the Purple Heart.

Section 7: Designates the portion of U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County is designated as “U.S. Army SPC James A. Page Memorial Highway.”

Army Specialist James Page of Titusville died from an improvised explosive device at the young age of 23. He has been awarded the Bronze Star and the Purple Heart.

Section 8: Designates the portion of State Road 824 between I-95 and U.S. Highway 1 in Broward County is designated as “Mardi Gras Way.”

The City of Hallandale recognizes pari-mutual gaming as part of Florida's history. The city has made efforts to be gaming friendly to bolster marketing and economic development.

Section 9: Designates the portion of State Road 7 between Pembroke Road and County Line Road in Broward County is designated as “West Park Boulevard.”

The City Commission of West Park recognizes the designated West Park Boulevard as a means to increase visibility.

Section 10. Designates the portion of State Road 858/Hallandale Beach Boulevard between Interstate 95 and U.S. Highway 441/State Road 7 in Broward County as “Pembroke Park Boulevard.” The City of Hallendale Beach has requested this designation.

Section 11: Designates the portion of State Road 100 in Union County from the Bradford County Line to the Columbia County line is designated “Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway.”

Deputy Hal P. Croft and Deputy Ronald Jackson were shot and killed while serving an arrest warrant on May 23rd, 1961. Both men were residents of Lake Butler and served the Union County Sheriff's Department.

Section 12: Designates the portion of State Road 26A in Gainesville, Alachua County, between West University Avenue and S.W. 25th Street, is designated “Deputy Jack A. Romeis Road.”

Deputy Romeis died after sustaining injuries due to an automobile accident while in pursuit of a stolen vehicle. Deputy Romeis has served as a full time deputy for 5 years and had previously served as a reserve deputy for 15 years.

Section 13: Designates the portion of SR 976 (Bird Road) between S.W. 87th Ave and Palmetto Expressway Ramp as “Senator Javier D. Souto Way.”

Senator Souto served the people of Miami-Dade for over 30 years. He has served as both a Florida Representative and Senator; his active participation in the community is exemplified by his appointments to various organizations such as the Child Abuse Prevention Program of South Florida and the Alliance for the Aging. In addition, he was a member of the Dade County Civil Defense, the Lions, Kiwanis, and Rotary Clubs.

Section 14: Designates the San Juan Road Extension in Anastasia State Park as “Nona and Papa Road.”

This is a dedication for grandparents in the State of Florida who have given to our state parks by volunteering their time and providing an example for future generations of Florida how important our state parks are.

Section 15: Designates the portion of State Road 293 from the Mid-Bay Bridge Toll plaza north of Chocatawatchee Bay to its intersection with State Highway 85 as “Walter Francis Spence Parkway.”

Walter Francis Spence was born in the Village of Boston. He attended Tulane University, where he earned a Bachelor’s degree in engineering. He later began working with the United States Air Force at Englin in the 1950s. Walter was President of the Chamber of Commerce, and founded the Boggy Bayou Mullet Festival in Niceville, Florida. He started working towards building the Mid-Bay Bridge in 1977 and also formed the Spence Brothers Properties to develop and build commercial property in the area.

Section 16: Designates the portion of State Route 87 from its intersection with U.S. 98 northward to its intersection of U.S. 90 in Santa Rosa County as “Beaches and Rivers Parkway.”

This road designation will aide in the enhancement of tourism in Santa Rosa County.

Section 17: Designates the portion of N.W. 79th Street between N.W. 6th Avenue and N.W. 7th Avenue in Miami-Dade County as “Miss Lillie Williams Boulevard.”

This bill corrects the designation made last year by changing E. 12th to N.W. 7th Avenue in Miami-Dade County.

Section 18: Designates the portion of N.W. 54th Street between N.W. 2nd Avenue and N.E. 3rd Avenue in Miami Dade-County as “Father Gerard Jean-Juste Street.”

This bill corrects the designation made last year by changing N.W. to N.E. 3rd Avenue.

Section 19: Designates the portion of U.S. 41/State Road 45/ Nebraska Ave from County Road 584/Waters Avenue to State Road 580/Busch Boulevard as “Corporal Michael J. Roberts Parkway.”

Corporal Roberts was shot and killed in the line of duty after 11 years of service with the Tampa Police. During his service with the Tampa Police Department, Corporal Roberts was honored with a Life Saving Award in 2005 as well as numerous letters of appreciation from citizens and other law enforcement agencies.

Section 20: Designates the portion of Milepost 22.182 on U.S. 27 in Highlands County as “Florida Highway Patrol Trooper Sgt. Nicholas G. Sottile Memorial.”

Sgt. Sottile died in the line of duty while performing a traffic stop at the intersection of U.S. 27 and Whitmore Road in Highlands County. Sgt. Sottile served for over 24 years with the Florida Highway Patrol.

Section 21: Designates the portion of Biscayne Boulevard from N.E. 88th Street to N.E. 105th Street in Miami Shores Village in Miami-Dade County as “Hugh Anderson Boulevard.”

Hugh Anderson was a land developer and businessman in Miami, Florida. He pioneered the construction of Biscayne Boulevard as a historic thoroughfare.

Section 22. Designates the portion of S.W. 27th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 13th Street as “Reverend Max Salvadore Avenue.”

Reverend Max Salvadore was influential in developing the role of Hispanics in the Episcopal Church and founded the first Spanish speaking Rotary Club in the United States.

Section 23. Designates the portion of S.W. 8th Street in Miami-Dade County between S.W. 10th Avenue and S.W. 12th Avenue as “BRIGADA 2506 STREET, Carlos Rodriguez Santana.”

Carlos Rodriguez Santana was the first to die in training for the Bay of Pigs. The brigade took his personal identification number of 2506 as their brigade number.

Section 24. Designates the portion of S.W. 87th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 24th Street as “Reverend Jorge Comesanas Way.”

The Reverend Jorge Comesanas led the First Baptist Church of Coral Park over three decades to unprecedented growth and sent mission teams around the world in such countries as Nicaragua, Paraguay, Cuba, Mexico and Guatemala.

Section 25. Designates the portion of S.W. 23rd Street, in front of James G. Pressly Stadium, and 4211 S.W. 23rd Street, located between S.W. 2nd Avenue and Fraternity Row/Drive in Alachua County is designated as “Coach Jimmy Carnes Boulevard.”

Section 26. Designates the portion of State Road 46 in Brevard County from U.S. 1 to the Volusia County line is designated as “Harry T. and Harriette V. Moore Memorial Highway.”

Harry T. and Harriette V. Moore were parents, educators, and leading local and national civil rights activists. The Moores organized the first Brevard County Branch of the NAACP and remained instrumental in the fight for equality and justice until their untimely deaths. In 1945,

Mr. Moore formed the Florida Progressive Voter's League and became its Executive Director. This organization was instrumental in helping register over 100,000 black voters in the State of Florida.

Section 27. Designates the portion of Beaver Street in Duval County between Laura Street and Rushing Street as “Elizabeth G. Means Memorial Boulevard.”

Elizabeth G. Means, a native of Jacksonville, FL, advanced from an emergency room licensed practical nurse to Vice President of Community Relations at Shands Jacksonville Hospital during her 41 year career. In 2004, Mrs. Means achieved the designation of Fellow from the Health Research and Educational Trust in partnership with the American Hospital Association for Creating Healthier Communities Health Forum.

Section 28. Designates the portion of U.S. 1 Alternate/SR 115/SR 115A/Haines Street Expressway in Duval County between 8th Street and Duval Street as “Louise Steward Memorial Boulevard.”

Louise Steward served as a crossing guard who 45 years and manned the same post for 35 years. She was posthumously honored by the Florida Department of Transportation and the Jacksonville Sheriff’s Office for her dedicated service.

Section 29. Designates the portion of Edgewood Avenue in Duval County between Commonwealth Avenue and Beaver Street as “Isiah J. Williams, III, Memorial Boulevard.”

Isiah “Ike” Jesse Williams was known for his community activism, serving on numerous boards and commissions dealing with equal opportunity. Mr. Williams provided positive stories about the African-American community by founding the Jacksonville Advocate which he published as a weekly newspaper for 30 years.

Section 30: The bill will take effect on July 1, 2011 if passed by the Legislature.

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:

None.

C. Government Sector Impact:

FDOT estimates the cost to erect suitable road designation markers is \$23,200. This is based on the assumption that markers will be erected for 29 road designations at a cost \$400 each, maintaining these signs over time, and for future replacement of signs as necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Budget on April 14, 2011:**

The committee substitute adds the following road designations to the bill:

- State Road 858/Hallandale Beach 7 Boulevard between Interstate 95 and U.S. Highway 441/State Road 7 in Broward County is designated as “Pembroke Park Boulevard.”
- State Road 46 in Brevard County from U.S. 1 to the Volusia County line is designated as “Harry T. and Harriette V. Moore Memorial Highway.”
- Beaver Street in Duval County between Laura Street and Rushing Street is designated as “Elizabeth G. Means Memorial Boulevard.”
- U.S. 1 Alternate/SR 115/SR 115A/Haines Street Expressway in Duval County between 8th Street and Duval Street is designated as “Louise Steward Memorial Boulevard.”
- Edgewood Avenue in Duval County between Commonwealth Avenue and Beaver Street is designated as “Isiah J. Williams, III, Memorial Boulevard.”
- S.W. 27th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 13th Street is designated as “Reverend Max Salvadore Avenue.”

- S.W. 8th Street in Miami-Dade County between S.W. 10th Avenue and S.W. 12th Avenue is designated as “BRIGADA 2506 STREET, Carlos Rodriguez Santana.”
- S.W. 87th Avenue in Miami-Dade County between S.W. 8th Street and S.W. 24th Street is designated as “Reverend Jorge Comesanas Way.”
- S.W. 23rd Street, in front of James G. Pressly Stadium, and 4211 S.W. 23rd Street, located between S.W. 2nd Avenue and Fraternity Row/Drive in Alachua County is designated as “Coach Jimmy Carnes Boulevard.”;

CS by Transportation on March 29, 2011:

This committee substitute incorporates road designations into one bill.

B. Amendments:

None.

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: SB 704

INTRODUCER: Senator Sachs

SUBJECT: Special Observances/Purple Heart Day

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Yune	Carter	MS	Favorable
2.	Mason	Roberts	GO	Favorable
3.	Mason	Phelps	RC	Pre-meeting
4.				
5.				
6.				

I. Summary:

This bill provides that the Governor may annually designate August 7 of each year as “Purple Heart Day” to commemorate those who have been wounded or killed while serving in any branch of the United States Armed Forces.

This bill creates section 683.146 of the Florida Statutes.

II. Present Situation:

Legal Holidays and Special Observance Days

Chapter 683, F.S., establishes legal holidays and special observance days. Legal holidays and special observance days may apply throughout the state or they may be limited to particular counties. For example, “Gasparilla Day”¹ is a legal holiday observed only in Hillsborough County while “Bill of Rights Day,”² if issued by the Governor, is observed throughout the state. Also, designation of a day as a legal holiday does not necessarily make that day a paid holiday for public employees.³ Another provision of statute, s. 110.117, F.S., establishes which legal holidays are paid holidays for public employees.

¹ Section 683.08, F.S.

² Section 683.25, F.S.

³ “Legal holidays” are not necessarily the same as “paid holidays” for governmental employees. Section 110.117(1), F.S., provides the following holidays as paid holidays for all state branches and agencies: New Year’s Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veteran’s Day; Thanksgiving Day and Friday after Thanksgiving; and Christmas Day.

The declaration of a specific day as a legal holiday may impact state contracts. Section 683.02, F.S., provides that whenever reference is made to “legal holidays” in contracts to be performed by the state, the term includes the holidays designated in s. 683.01, F.S., and such others as may be designated by law. Designating a day as a legal holiday may also affect legal notice requirements and result in the need to count additional days to calculate legal filing dates or periods. For example, Florida Rules of Civil Procedure 1.090(a) provides:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a *Saturday, Sunday, or legal holiday*, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 7 days, *intermediate Saturdays, Sundays, and legal holidays shall be excluded* in the computation [emphasis added].

The legal holidays established in s. 683.01(1), F.S., are:

- (a) Sunday, the first day of each week.⁴
- (b) New Year’s Day, January 1.
- (c) Birthday of Martin Luther King, Jr., January 15.
- (d) Birthday of Robert E. Lee, January 19.
- (e) Lincoln’s Birthday, February 12.
- (f) Susan B. Anthony’s Birthday, February 15.
- (g) Washington’s Birthday, the third Monday in February.
- (h) Good Friday.
- (i) Pascua Florida Day, April 2.⁵
- (j) Confederate Memorial Day, April 26.
- (k) Memorial Day, the last Monday in May.
- (l) Birthday of Jefferson Davis, June 3.
- (m) Flag Day, June 14.
- (n) Independence Day, July 4.
- (o) Labor Day, the first Monday in September.
- (p) Columbus Day and Farmers’ Day, the second Monday in October.
- (q) Veterans’ Day, November 11.
- (r) General Election Day.
- (s) Thanksgiving Day, the fourth Thursday in November.
- (t) Christmas Day, December 25.⁶

⁴ Sunday as a holiday has its origins in the Christian Sabbath or day of rest.

⁵ “Pascua Florida” is a Spanish term that means *flowery festival* or *feast of flowers*. It usually refers to the Easter season, though, “Pascua” can, depending on the context, refer to the Jewish Passover, Easter, Christmas, Epiphany or Pentecost. See, <http://www.answers.com/topic/pascua-florida>. April 2 each year is designated as “Florida State Day” and is known as “Pascua Florida Day.” Juan Ponce de León called the land he encountered in 1513 “Pascua florida.” The holiday is to be observed in the same manner as a “patriotic occasion.”

⁶ Public designation of Christmas Day as a holiday has been determined to be constitutionally acceptable as “. . . the Christmas holiday in our national culture contains both secular and sectarian elements.” See, *Silver Rose Entertainment, Inc.*,

(u) Shrove Tuesday, sometimes also known as “Mardi Gras,” in counties where carnival associations are organized for the purpose of celebrating the same.⁷

In addition to legal holidays, Chapter 683 recognizes the following special observances: Arbor Day; Pan-American Day; Pascua Florida Day; Gasparilla Day; DeSoto Day; Grandparents’ and Family Caregivers’ Day; Law Enforcement Appreciation Month; Law Enforcement Memorial Day; Parade Day; State Observance of National Day of Mourning; Patriots’ Day; I Am An American Day; Teachers’ Day; Retired Teachers’ Day; Parents’ and Children’s Day; Save the Florida Panther Day; Rosh Hashanah, Yom Kippur, and Good Friday; Florida Jewish History Month; Juneteenth Day; Law Day and Law Week; Florida Missing Children’s Day; Florida Alzheimer’s Disease Day; Bill of Rights Day; Ronald Reagan Day; Homeless Persons’ Memorial Day; Three Kings Day; Child Welfare Professionals Recognition Day; and Ronshay Dugan’s Act.⁸

The Purple Heart

The Purple Heart was established by General George Washington at Newburgh, New York, on August 7, 1782, during the Revolutionary War.⁹ It was re-established by the President of the United States per War Department General Orders 3, 1932, and is currently awarded pursuant to Executive Order 11016, April 25, 1962, Executive Order 12464, February 23, 1984 and Public Law 98-525, October 19, 1984.¹⁰

Subsection (a) or paragraph 2-8, Army Regulation 600-8-22 provides that the Purple Heart is awarded in the name of the President of the United States to any member of an Armed Force or any civilian national of the US who, while serving under competent authority in any capacity with one of the United States Armed Services after April 5, 1917, has been wounded or killed, or who has died or may hereafter die after being wounded:¹¹

- (1) In any action against an enemy of the US.
- (2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the US are or have been engaged.

v. *Clay County*, 646 So.2d 246 at 253 (1st DCA 1994), citing *Lynch v. Donnelly*, 465 U.S. 668, 104 S. Ct. 1355, 79 L.Ed.2d (1984).

⁷ The day before the beginning of Lent is known as *Shrove Tuesday*. To shrove someone, in old-fashioned English (he shrives, he shrove, he has shriven *or* he shrives, he shrived, he has shrived), is to hear his acknowledgement of his sins, to assure him of God's forgiveness, and to give him appropriate spiritual advice. Shrove Tuesday is also called *Fat Tuesday* (in French, Mardi=Tuesday; gras=fat), because on that day fats normally used in cooking are used up because they will not be used during Lent. The day (or sometimes a longer period immediately preceding Lent) is also called *Carnival*, which means "farewell to meat." "Carni" as in carnivorous, and "vale" as in valediction, valedictorian, etc. One last hamburger before the Lenten fast begins. See, <http://elvis.rowan.edu/~kilroy/JEK/LITCAL/ShroveTuesday.html>

⁸ 683, F.S.

⁹ Paragraph 2-8, Army Regulation 600-8-22 (Military Awards)

¹⁰ *Id.*

¹¹ Subsection (b) of Paragraph 2-8, Army Regulation 600-8-22 states that the Purple Heart Award is not awarded based on a recommendation but rather, the individual is entitled to it upon meeting the specific criteria that is provided throughout paragraphs 2-8. Subsection (b) (1)-(6) provide definitions and examples of what qualifies and what does not qualify as a “wound”. Also, subsections (c)-(h) in paragraphs 2-8 provide other stipulations of who may receive the Purple Heart Award.

- (3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the US is not a belligerent party.
- (4) As a result of an act of any such enemy of opposing armed forces.
- (5) As the result of an act of any hostile foreign force.
- (6) After March 28, 1973, as a result of an international terrorist attack against the UIS or a foreign nation friendly to the US, recognized as such an attack by the Secretary of the Army, or jointly by the Secretaries of the separate armed services concerned if person from more than one service are wounded in the attack.
- (7) After March 28, 1972, as a result of military operations while serving outside the territory of the US as part of the peacekeeping force.

Presently, there are several states that honor and celebrate the Purple Heart Award by designating a specific day of the year as Purple Heart Day. For example, Wisconsin has designated August 7th of each year as Purple Heart Day.¹² Minnesota and Nevada have also designated a specific day as Purple Heart Day.

III. Effect of Proposed Changes:

This bill creates s. 683.146, F.S., designating August 7 of each year as “Purple Heart Day.” The bill specifies that the Governor may annually issue a proclamation designating August 7 as “Purple Heart Day.” The bill also encourages public officials, schools, private organizations, and all residents of the state to honor those who have been wounded or killed while serving in the United States Armed Services by commemorating “Purple Heart Day.”

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.

¹² Wisconsin State Statutes s. 14.16 (11)

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill does not require that local governments issue a proclamation. Issuance of the proclamation by the Governor may give rise to some costs, though it is likely *de minimus*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.



764102

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 790.33, Florida Statutes, is amended to
read:

790.33 Field of regulation of firearms and ammunition
preempted.—

(1) PREEMPTION.—Except as expressly provided by the State
Constitution or general law, the Legislature hereby declares
that it is occupying the whole field of regulation of firearms
and ammunition, including the purchase, sale, transfer,



764102

14 taxation, manufacture, ownership, possession, storage, and
15 transportation thereof, to the exclusion of all existing and
16 future county, city, town, or municipal ordinances or any
17 administrative regulations or rules adopted by local or state
18 government relating thereto. Any such existing ordinances,
19 rules, or regulations are hereby declared null and void. ~~This~~
20 ~~subsection shall not affect zoning ordinances which encompass~~
21 ~~firearms businesses along with other businesses. Zoning~~
22 ~~ordinances which are designed for the purpose of restricting or~~
23 ~~prohibiting the sale, purchase, transfer, or manufacture of~~
24 ~~firearms or ammunition as a method of regulating firearms or~~
25 ~~ammunition are in conflict with this subsection and are~~
26 ~~prohibited.~~

27 ~~(2) LIMITED EXCEPTION; COUNTY WAITING-PERIOD ORDINANCES.—~~

28 ~~(a) Any county may have the option to adopt a waiting-~~
29 ~~period ordinance requiring a waiting period of up to, but not to~~
30 ~~exceed, 3 working days between the purchase and delivery of a~~
31 ~~handgun. For purposes of this subsection, "purchase" means~~
32 ~~payment of deposit, payment in full, or notification of intent~~
33 ~~to purchase. Adoption of a waiting-period ordinance, by any~~
34 ~~county, shall require a majority vote of the county commission~~
35 ~~on votes on waiting-period ordinances. This exception is limited~~
36 ~~solely to individual counties and is limited to the provisions~~
37 ~~and restrictions contained in this subsection.~~

38 ~~(b) Ordinances authorized by this subsection shall apply to~~
39 ~~all sales of handguns to individuals by a retail establishment~~
40 ~~except those sales to individuals exempted in this subsection.~~
41 ~~For purposes of this subsection, "retail establishment" means a~~
42 ~~gun shop, sporting goods store, pawn shop, hardware store,~~



764102

43 ~~department store, discount store, bait or tackle shop, or any~~
44 ~~other store or shop that offers handguns for walk-in retail sale~~
45 ~~but does not include gun collectors shows or exhibits, or gun~~
46 ~~shows.~~

47 ~~(c) Ordinances authorized by this subsection shall not~~
48 ~~require any reporting or notification to any source outside the~~
49 ~~retail establishment, but records of handgun sales must be~~
50 ~~available for inspection, during normal business hours, by any~~
51 ~~law enforcement agency as defined in s. 934.02.~~

52 ~~(d) The following shall be exempt from any waiting period:~~

53 ~~1. Individuals who are licensed to carry concealed firearms~~
54 ~~under the provisions of s. 790.06 or who are licensed to carry~~
55 ~~concealed firearms under any other provision of state law and~~
56 ~~who show a valid license;~~

57 ~~2. Individuals who already lawfully own another firearm and~~
58 ~~who show a sales receipt for another firearm; who are known to~~
59 ~~own another firearm through a prior purchase from the retail~~
60 ~~establishment; or who have another firearm for trade-in;~~

61 ~~3. A law enforcement or correctional officer as defined in~~
62 ~~s. 943.10;~~

63 ~~4. A law enforcement agency as defined in s. 934.02;~~

64 ~~5. Sales or transactions between dealers or between~~
65 ~~distributors or between dealers and distributors who have~~
66 ~~current federal firearms licenses; or~~

67 ~~6. Any individual who has been threatened or whose family~~
68 ~~has been threatened with death or bodily injury, provided the~~
69 ~~individual may lawfully possess a firearm and provided such~~
70 ~~threat has been duly reported to local law enforcement.~~

71 ~~(2)(3) POLICY AND INTENT.-~~



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72 (a) It is the intent of this section to provide uniform
73 firearms laws in the state; to declare all ordinances and
74 regulations null and void which have been enacted by any
75 jurisdictions other than state and federal, which regulate
76 firearms, ammunition, or components thereof; to prohibit the
77 enactment of any future ordinances or regulations relating to
78 firearms, ammunition, or components thereof unless specifically
79 authorized by this section or general law; and to require local
80 jurisdictions to enforce state firearms laws.

81 (b) It is further the intent of this section to deter and
82 prevent the violation of this section and the violation of
83 rights protected under the constitution and laws of this state
84 related to firearms, ammunition, or components thereof, by the
85 abuse of official authority that occurs when enactments are
86 passed in violation of state law or under color of local or
87 state authority.

88 (3) PROHIBITIONS; PENALTIES.-

89 (a) Any person, county, agency, municipality, district, or
90 other entity that violates the Legislature's occupation of the
91 whole field of regulation of firearms and ammunition, as
92 declared in subsection (1), by enacting or causing to be
93 enforced any local ordinance or administrative rule or
94 regulation shall be liable as set forth herein.

95 (b) If any county, city, town, or other local government
96 violates this section, the court shall declare the improper
97 ordinance, regulation, or rule invalid and issue a permanent
98 injunction against the local government prohibiting it from
99 enforcing such ordinance, regulation, or rule. It is no defense
100 that in enacting the ordinance, regulation, or rule the local



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101 government was acting in good faith or upon advice of counsel.

102 (c) If the court determines that a violation was knowing
103 and willful, the court shall assess a civil fine of up to \$5,000
104 against the elected or appointed local government official or
105 officials or administrative agency head under whose jurisdiction
106 the violation occurred.

107 (d) Except as required by s. 16, Art. I of the State
108 Constitution or the Sixth Amendment to the United States
109 Constitution, public funds may not be used to defend the
110 unlawful conduct of any person charged with a knowing and
111 willful violation of this section.

112 (e) A knowing and willful violation of any provision of
113 this section by a person acting in an official capacity for any
114 entity enacting or causing to be enforced a local ordinance or
115 administrative rule or regulation prohibited under paragraph (a)
116 or otherwise under color of law shall be cause for termination
117 of employment or contract or removal from office by the
118 Governor.

119 (f) A person or an organization whose membership is
120 adversely affected by any ordinance, regulation, measure,
121 directive, rule, enactment, order, or policy promulgated or
122 caused to be enforced in violation of this section may file suit
123 against any county, agency, municipality, district, or other
124 entity in any court of this state having jurisdiction over any
125 defendant to the suit for declaratory and injunctive relief and
126 for all actual damages attributable to the violation. A court
127 shall award the prevailing plaintiff in any such suit:

128 1. Reasonable attorneys' fees and costs in accordance with
129 the laws of this state, including a contingency fee multiplier,



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130 as authorized by law; and
131 2. The actual damages incurred, but not more than \$100,000.
132
133 Interest on the sums awarded pursuant to this subsection shall
134 accrue at the legal rate per annum from the date on which suit
135 was filed.
136 (4) EXCEPTIONS.—This section does not prohibit:
137 (a) Zoning ordinances that encompass firearms businesses
138 along with other businesses, except that zoning ordinances that
139 are designed for the purpose of restricting or prohibiting the
140 sale, purchase, transfer, or manufacture of firearms or
141 ammunition as a method of regulating firearms or ammunition are
142 in conflict with this subsection and are prohibited;
143 (b) A duly organized law enforcement agency from enacting
144 and enforcing regulations pertaining to firearms, ammunition, or
145 firearm accessories issued to or used by peace officers in the
146 course of their official duties;
147 (c) Except as provided in s. 790.251, any entity subject to
148 the prohibitions of this section from regulating or prohibiting
149 the carrying of firearms and ammunition by an employee of the
150 entity during and in the course of the employee's official
151 duties;
152 (d) A court or administrative law judge from hearing and
153 resolving any case or controversy or issuing any opinion or
154 order on a matter within the jurisdiction of that court or
155 judge; or
156 (e) The Florida Fish and Wildlife Conservation Commission
157 from regulating the use of firearms or ammunition as a method of
158 taking wildlife and regulating the shooting ranges managed by



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159 the commission.

160 (5) ~~(b)~~ SHORT TITLE.—As created by chapter 87-23, Laws of
161 Florida, this section ~~shall be known and~~ may be cited as the
162 “Joe Carlucci Uniform Firearms Act.”

163 Section 2. This act shall take effect October 1, 2011.

164

165

166 ===== T I T L E A M E N D M E N T =====

167 And the title is amended as follows:

168 Delete everything before the enacting clause
169 and insert:

170

A bill to be entitled

171

An act relating to the regulation of firearms and
172 ammunition; amending s. 790.33, F.S.; clarifying and
173 reorganizing provisions that preempt to the state the
174 entire field of regulation of firearms; prohibiting
175 the violation of the Legislature’s occupation of the
176 whole field of regulation of firearms and ammunition
177 by the enactment or causation of enforcement of any
178 local ordinance or administrative rule or regulation;
179 providing additional intent of the section;
180 eliminating provisions authorizing counties to adopt
181 an ordinance requiring a waiting period between the
182 purchase and delivery of a handgun; providing
183 injunctive relief from the enforcement of an invalid
184 ordinance, regulation, or rule; providing a civil
185 penalty for knowing and willful violation of
186 prohibitions; providing that public funds may not be
187 used to defend the unlawful conduct of any person



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188 charged with a knowing and willful violation of the
189 section; providing for termination of employment or
190 contract or removal from office of a person acting in
191 an official capacity who knowingly and willfully
192 violates any provision of the section; providing for
193 declaratory and injunctive relief for specified
194 persons or organizations; providing for specified
195 damages and interest; providing exceptions to
196 prohibitions of the section; providing an effective
197 date.

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 402

INTRODUCER: Community Affairs Committee, Criminal Justice Committee, and Senators Negron and Evers

SUBJECT: Regulation of Firearms and Ammunition

DATE: April 12, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Wolfgang	Yeatman	CA	Fav/CS
3.	O'Connor	Maclure	JU	Favorable
4.	O'Connor	Phelps	RC	Pre-meeting
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 402 does the following:

- Clarifies that the field of firearms and ammunition is preempted by the State Constitution as well as general law.
- Deletes a provision allowing a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun.
- Adds storage of firearms/ammunition to the list of categories preempted.
- Clarifies that rules and administrative regulations are preempted.
- Penalizes knowing and willful violation of the state's preemption of this field (\$5,000-\$100,000).
- Requires the state attorney to prosecute these violations and provides that if the state attorney fails to prosecute these violations he or she can be held accountable under the rules of professional conduct.
- Prohibits public funds from being used to defend a violation of this section.
- Penalizes a knowing violation of this section (immediate termination of employment).

- Provides persons adversely affected by violation of the preemption can sue and receive costs and damages.
- Provides exceptions.

This bill substantially amends and reorganizes section 790.33, Florida Statutes.

II. Present Situation:

The Joe Carlucci Uniform Firearms Act

The Joe Carlucci Uniform Firearms Act (Act), as s. 790.33, F.S., is known, became law in 1987.¹ The policy and intent of the Act is stated as follows:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.²

The Act accomplished its stated purpose by “occupying the whole field of regulation of firearms and ammunition,” as stated in subsection (1) of the Act:

PREEMPTION.—Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.³

Section 790.33, F.S., contains a limited exception for local ordinances governing a three-day handgun purchase waiting period.⁴ Since 1990 there has been a statewide three-day waiting period as set forth in the Constitution of the State of Florida.⁵ The constitutional provision prevails over any local ordinances that may have been enacted. There are statutory exemptions

¹ Chapter 87-23, Laws of Fla.

² Section 790.33(3)(a), F.S.

³ Section 790.33(1), F.S.

⁴ Section 790.33(2), F.S. (1988). Note: At the time of enactment in 1987, the Act provided the exception for a 48-hour waiting period.

⁵ There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, “purchase” means the transfer of money or other valuable consideration to the retailer, and “handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. ... This restriction shall not apply to a trade in of another gun. FLA. CONST. art. I, s. 8(b), 8(d).

from the waiting period in the Act. Of these exemptions, two were adopted in s. 790.0655, F.S., as required by the Florida Constitution.⁶ The other exemptions are:

- Individuals who already lawfully own another firearm and who show a sales receipt for another firearm or who are known to own another firearm through a prior purchase from the retail establishment;
- A law enforcement or correctional officer as defined in s. 943.10, F.S.;
- A law enforcement agency as defined in s. 934.02, F.S.;
- Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or
- Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.⁷

Since these specific exemptions were not included in the constitutional amendment, and because the Carlucci Act's exemptions pre-date the amendment to the Florida Constitution, they are essentially null and void.

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,⁸ local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits to certain sporting goods stores, and banned recreational shooting.

Discharge of a Firearm

A 2005 Florida Attorney General opinion concluded that a county ordinance prohibiting the discharge of a firearm in proximity to persons or property when such discharge endangers the health, welfare, and safety of the citizens of such county would be preempted by s. 790.33, F.S.⁹ Under s. 790.15, F.S., it is a crime to knowingly discharge a firearm in any public place or on or over roads. This prohibition does not apply to a person lawfully defending life or property or performing official duties requiring the discharge of a firearm, or to a person discharging a firearm on public roads or properties expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry. The backyard of a home is not a "public place" within meaning of the statute; thus, a juvenile could not be adjudicated delinquent based on his discharging a revolver into the ground in his friend's fenced backyard.¹⁰

⁶ The exemptions apply to persons who hold a valid concealed weapons permit at the time of the purchase or who are trading in another handgun. s. 790.0655(2)(a)-(b), F.S.; FLA. CONST. art. I, s. 8(b), 8(d).

⁷ Section 790.33(2)(d)2.-6., F.S.

⁸ *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

⁹ Op. Att'y Gen. Fla. 2005-40 (2005).

¹⁰ *C.C. v. State*, 701 So. 2d 423 (Fla. 4th DCA 1997).

Immunity for Official Conduct

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.¹¹ Absolute immunity for legislators has historically been recognized as a “venerable tradition” that has withstood the development of the law since pre-colonial days.¹² Courts have upheld absolute immunity for legislators at all levels of lawmaking, including federal, state, and local government levels.¹³ The courts’ reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.¹⁴ Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen legislators, and deter service in local government.¹⁵

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.¹⁶ In such instances, affected citizens have been able to challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.¹⁷

Courts have found that legislators may be subject to personal liability when they lack discretion.¹⁸ Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled “ministerial,” as opposed to “legislative,” acts.¹⁹ Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

III. Effect of Proposed Changes:

CS/CS/SB 402 expands and clarifies state preemption of the regulation of firearms and ammunition. In the process, s. 790.33, F.S., is also reorganized.

The bill expands “the whole field of regulation of firearms and ammunition” (including administrative regulations or rules adopted by local or state governments) to include the storage of those items. The preemption language relating to zoning ordinances is stricken from subsection (1) of s. 790.33, F.S., on lines 47-54 of the bill, and relocated to lines 172-78.

¹¹ See *Tenney v. Brandhove*, 341 U.S. 367 (1951).

¹² *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).

¹³ *Bogan*, 523 U.S. 44.

¹⁴ *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).

¹⁵ *Id.* at 52.

¹⁶ *Tenney*, 341 U.S. at 379.

¹⁷ See, e.g., *Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.

¹⁸ *Bogan*, 523 U.S. at 51-52.

¹⁹ See *id.*

Subsection (2) of s. 790.33, F.S., is stricken by the bill. This is the subsection of the Joe Carlucci Act that allows a county the option to adopt a waiting period, not exceeding three days, for the purchase of a handgun. It pre-dates the constitutional amendment and constitutionally required statutory enactment.²⁰ Eliminating this subsection of the Act merely clarifies the current state of the law regarding the three-day waiting period, which is found in the Florida Constitution and s. 790.0655, F.S.

The bill retains the policy and intent language from the original Act, currently found in subsection (3) of s. 790.33, F.S. It also adds language setting forth the 2011 Legislature's intent to deter and prevent the knowing violation of the preemption law.

Any person who knowingly and willfully enacts or enforces any local ordinance or administrative rule or regulation commits a noncriminal violation (punishable by a fine between \$5,000-\$100,000). The fine would be levied against the elected or appointed local government official or officials or administrative agency head under whose jurisdiction the violation occurred. The elected or appointed local government official or officials or administrative agency head is personally liable for the payment of all fines, costs, and fees assessed by the court for the noncriminal violation.

The state attorney in the appropriate jurisdiction shall investigate complaints of noncriminal violations of this section and, if the state attorney determines that probable cause of a violation exists, shall prosecute violators in the circuit court where the complaint arose. Any state attorney who fails to execute his or her duties under this section may be held accountable under the appropriate Florida rules of professional conduct.²¹

Except as required by article I, section 16 of the State Constitution or the Sixth Amendment to the United States Constitution, public funds may not be used to defend the unlawful conduct of any person charged with a knowing and willful violation of this section. The bill does not specify whether an official may be reimbursed for costs if he or she is found to be not guilty of the charge.

Additionally, the bill provides that a knowing and willful violation of the preemption law shall be grounds for the immediate termination of employment or contract or removal from office by the Governor.

Civil actions are also provided for in the bill. A person or organization whose membership is adversely affected by an alleged violation of the preemption law may seek declaratory and injunctive relief. The bill also provides for the assessment of actual and consequential damages.

²⁰ FLA. CONST. art. I, s. 8; s. 790.0655, F.S.

²¹ The Florida Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted to the Florida Bar. The Bar regulates the profession and recommends disciplinary action for attorneys who violate the Rules Regulating the Florida Bar. The Florida Supreme Court must actually impose the discipline on attorneys, which can range from an admonishment to disbarment. The Florida Bar, *Reporter's Handbook*, available at <http://www.floridabar.org/DIVCOM/PI/RHandbook01.nsf/1119bd38ae090a748525676f0053b606/30ceba8bab2146be852568bd00539b14!OpenDocument#I.%20OVERVIEW> (last visited Mar. 31, 2011).

The court is required to award a prevailing plaintiff's attorney fees at three times the federal district court rates as well as related costs. Additionally, the bill provides that 15 percent interest per annum shall accrue on the fees, costs, and damages awarded the plaintiff, retroactive to the date the suit is filed. Payment may be secured by the seizure of vehicles used by elected officeholders or officials in the appropriate jurisdiction if the fees, costs, and damages are not paid within 72 hours of the court's ruling having been filed. It is presumed that the term "appropriate municipality" means the jurisdiction wherein the violation occurred.

In subsection (5) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed in paragraphs (2)(a)-(i) from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S.;²²
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction;
- The Fish and Wildlife Conservation Commission from regulating the use of firearms or ammunition as a method of taking wildlife and regulating the shooting ranges managed by the commission.

The bill provides that it takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²² Section 790.251, F.S., is entitled "Protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes; prohibited acts; duty of public and private employers; immunity from liability; enforcement.— (1) SHORT TITLE.—This section may be cited as the 'Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008.'" See specifically s. 790.251(4), F.S., for the acts of public or private employers that are prohibited.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Government officials who violate the prohibitions in the bill face fines and immediate discharge. Creating significant penalties on government officials for making policy decisions or carrying out invalid regulations or ordinances may deter public service.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Community Affairs on March 21, 2011:**

- Clarifies that the field of firearms and ammunition is preempted by the State Constitution as well as general law.
- Adds storage of firearms/ammunition to the list of categories preempted.
- Clarifies that rules and administrative regulations are preempted.
- Penalizes knowing and willful violation of the state's preemption of this field (\$5,000-\$100,000).
- Requires the state attorney to prosecute these violations and provides that if the state attorney fails to prosecute these violations they can be held accountable under the rules of professional conduct.
- Prohibits public funds from being used to defend a violation of this section.
- Penalizes a knowing violation of this section (immediate termination of employment).
- Provides persons adversely affected by violation of the preemption can sue and receive costs and damages
- Provides exceptions.

CS by Criminal Justice on February 8, 2011:

- Inserts acknowledgement of the Florida Constitution's explicit authority in the regulation of firearms. This is a technical amendment that brings s. 790.33, F.S., which became law in 1987, into conformity with current law.
- Deletes a provision in the bill that specified accounts into which fines assessed in a criminal case would be deposited.
- Clarifies and specifies both the interest rate on money damages, fees and costs, as well as what property may be seized to secure payment of same.

B. Amendments:

None.

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/SJR 1538

INTRODUCER: Judiciary Committee and Senator Flores

SUBJECT: Abortion/Public Funding/Construction of Rights

DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan/Brown	Stovall	HR	Favorable
2.	Munroe	Maclure	JU	Fav/CS
3.	Munroe	Phelps	RC	Pre-meeting
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:

The joint resolution proposes an amendment to the Florida Constitution to prohibit the spending of public funds for any abortion or for health-benefits coverage that includes the coverage of abortion. The prohibition on the spending of public funds for any abortion or for health-benefits coverage that includes the coverage of abortion does not apply to: expenditures *required* by federal law, an abortion to save the life of the mother, or pregnancies that result from rape or incest.

Additionally, the joint resolution specifies that the Florida Constitution may not be interpreted to create broader rights to an abortion than those contained in the U.S. Constitution.

This joint resolution also includes a ballot summary, which outlines the provisions of the joint resolution.

This joint resolution creates section 28, Article I of the Florida Constitution.

II. Present Situation:

Background

Under Florida law the term “abortion” means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.¹ “Viability” means that stage of fetal development when the life of the unborn child may, with a reasonable degree of medical probability, be continued indefinitely outside the womb.² Induced abortion can be elective (performed for nonmedical indications) or therapeutic (performed for medical indications). Abortion can be performed by surgical or medical means (medicines that induce a miscarriage).³ An abortion in Florida must be performed by a physician licensed to practice medicine or osteopathic medicine who is licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.⁴ No person who is a member of, or associated with, the staff of a hospital, or any employee of a hospital or physician in which, or by whom, the termination of a pregnancy has been authorized or performed, who states an objection to the procedure on moral or religious grounds is required to participate in the procedure. The refusal to participate may not form the basis for any disciplinary or other recriminatory action.⁵

In 2007, a total of 91,954 abortions were performed in Florida: for 83,890 of those, the gestational age of the fetus was 12 weeks and under; for 8,063, the gestational age of the fetus was 13 to 24 weeks; and for 1, the gestational age was over 25 weeks.⁶

Abortion Clinics

Abortion clinics are licensed and regulated by the Agency for Health Care Administration (Agency) under ch. 390, F.S., and part II of ch. 408, F.S. The Agency has adopted rules in Chapter 59A-9, Florida Administrative Code, related to abortion clinics. Section 390.012, F.S., requires these rules to address the physical facility, supplies and equipment standards, personnel, medical screening and evaluation of patients, abortion procedures, recovery room standards, and follow-up care. The rules relating to the medical screening and evaluation of each abortion clinic patient, at a minimum, shall require:

- A medical history, including reported allergies to medications, antiseptic solutions, or latex; past surgeries; and an obstetric and gynecological history;
- A physical examination, including a bimanual examination estimating uterine size and palpation of the adnexa;
- The appropriate laboratory tests, including:

¹ Section 390.011, F.S.

² Section 390.0111(4), F.S.

³ Suzanne R. Trupin, M.D., *Elective Abortion*, December 21, 2010, available at <http://www.emedicine.com/med/TOPIC3312.HTM> (last visited Mar. 17, 2011).

⁴ Section 390.0111(2) and s. 390.011(7), F.S.

⁵ Section 390.0111(8), F.S.

⁶ Florida Vital Statistics Annual Report 2007, available at <http://www.flpublichealth.com/VSBOOK/VSBOOK.aspx#> (Last visited on Mar 17, 2011).

- For an abortion in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy performed before the abortion procedure,
- A test for anemia,
- Rh typing, unless reliable written documentation of blood type is available, and
- Other tests as indicated from the physical examination;
- An ultrasound evaluation for patients who elect to have an abortion after the first trimester. If a person who is not a physician performs the ultrasound examination, that person must have documented evidence that he or she has completed a course in the operation of ultrasound equipment. If a patient requests, the physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, or physician assistant must review the ultrasound evaluation results and the estimate of the probable gestational age of the fetus with the patient before the abortion procedure is performed; and
- The physician to estimate the gestational age of the fetus based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of fetal age and write the estimate in the patient's medical history. The physician must keep original prints of each ultrasound examination in the patient's medical history file.

Relevant Case Law

In 1973, the landmark case of *Roe v. Wade* established that restrictions on a woman's access to secure an abortion are subject to a strict scrutiny standard of review.⁷ In *Roe*, the U.S. Supreme Court determined that a woman's right to have an abortion is part of the fundamental right to privacy guaranteed under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, justifying the highest level of review.⁸ Specifically, the Court concluded that: (1) during the first trimester, the state may not regulate the right to an abortion; (2) after the first trimester, the state may impose regulations to protect the health of the mother; and (3) after viability, the state may regulate and proscribe abortions, except when it is necessary to preserve the life or health of the mother.⁹ Therefore, a state regulation limiting these rights may be justified only by a compelling state interest, and the legislative enactments must be narrowly drawn to express only legitimate state interests at stake.¹⁰

In 1992, in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the U.S. Supreme Court relaxed the standard of review in abortion cases involving adult women from strict scrutiny to unduly burdensome, while still recognizing that the right to an abortion emanates from the constitutional penumbra of privacy rights.¹¹ In *Planned Parenthood*, the Court determined that, prior to fetal viability, a woman has the right to an abortion without being unduly burdened by government interference.¹² The Court concluded that the state may regulate the abortion as long as the regulation does not impose an undue burden on a woman's decision to choose an

⁷ 410 U.S. 113 (1973).

⁸ 410 U.S. 113, 154 (1973).

⁹ 410 U.S. 113, 162-65 (1973).

¹⁰ 410 U.S. 113, 152-56 (1973).

¹¹ 505 U.S. 833, 876-79 (1992).

¹² *Id.*

abortion.¹³ If the purpose of a provision of law is to place substantial obstacles in the path of a woman seeking an abortion before viability, it is invalid; however, after viability the state may restrict abortions if the law contains exceptions for pregnancies endangering a woman's life or health.¹⁴

The unduly burdensome standard as applied in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, generally considered to be a hybrid between strict scrutiny and intermediate level scrutiny, shifted the Court's focus to whether a restriction creates a substantial obstacle to access. This is the prevailing standard today applied in cases in which abortion access is statutorily restricted.

However, the undue burden standard was held not to apply in Florida. The 1999 Legislature passed a parental notification law, the Parental Notice of Abortion Act, requiring a physician to give at least 48 hours of actual notice to one parent or to the legal guardian of a pregnant minor before terminating the pregnancy of the minor. Although a judicial waiver procedure was included, the act was never enforced.¹⁵ In 2003, the Florida Supreme Court¹⁶ ruled this legislation unconstitutional on the grounds that it violated a minor's right to privacy, as expressly protected under Article I, s. 23 of the Florida Constitution.¹⁷ Citing the principle holding of *In re T.W.*,¹⁸ the Court reiterated that, as the privacy right is a fundamental right in Florida, any restrictions on privacy warrant a strict scrutiny review, rather than that of an undue burden. Here, the Court held that the state failed to show a compelling state interest.¹⁹

The Hyde Amendment

The Hyde Amendment is a rider to the annual appropriations bill for the U.S. Departments of Labor, Health and Human Services (HHS), and Education, which prevents Medicaid and any other programs under these departments from funding abortions, except in limited cases. The amendment is named after Rep. Henry J. Hyde (R-IL), who, as a freshman legislator, first offered the amendment.

The Hyde Amendment has been enacted into law in various forms since 1976, during both Democratic and Republican administrations. In 1980, the U.S. Supreme Court affirmed the constitutionality of the Hyde Amendment in *Harris v. McRae*.²⁰ In *Harris*, the Court determined that funding restrictions created by the Hyde Amendment did not violate the U.S. Constitution's

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See s. 390.01115, F.S. (repealed by s. 1, ch. 2005-52, Laws of Florida). Subsequent legislation was enacted in s. 390.01114, F.S.

¹⁶ *North Florida Women's Health and Counseling Services, Inc., et al., v. State of Florida*, 866 So. 2d 612, 619-20 (Fla. 2003)

¹⁷ The constitutional right of privacy provision reads: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." FLA. CONST. art. I, s. 23.

¹⁸ 551 So. 2d 1186, 1192 (Fla. 1989).

¹⁹ *North Florida Women's Health and Counseling Services*, *supra* note 16, at 622 and 639-40.

²⁰ 448 U.S. 297 (1980). See also *Rust v. Sullivan*, 500 U.S. 173 (1991), and *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), upholding *Harris v. McRae*.

Fifth Amendment and, therefore, did not contravene the liberty or equal protection guarantees of the Due Process Clause of the Fifth Amendment.²¹ The Court opined that, although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those obstacles that are not created by the government (in this case indigence).²² The Court further opined that, although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all.²³

In Florida, based on the Hyde Amendment, Medicaid reimburses for abortions for one of the following reasons:

- The woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed;
- When the pregnancy is the result of rape (sexual battery) as defined in s. 794.011, F.S.; or
- When the pregnancy is the result of incest as defined in s. 826.04, F.S.²⁴

An Abortion Certification Form must be completed and signed by the physician who performed the abortion for the covered procedures. The form must be submitted with the facility claim, the physician's claim, and the anesthesiologist's claim. The physician must record the reason for the abortion in the physician's medical records for the recipient.²⁵

State Legislation in Response to the Patient Protection and Affordable Care Act²⁶

The federal Patient Protection and Affordable Care Act (PPACA) include provisions that govern insurance coverage of abortion in state insurance exchanges, which are scheduled by the PPACA to be launched in 2014. The "Special Rules" (Section 1303) of the law and the related White House executive order contain these new provisions. The law maintains current Hyde Amendment restrictions that govern abortion policy, which prohibit federal funds from being used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), and extends those restrictions to the health insurance exchanges.

The PPACA also maintains federal "conscience" protections for health care providers who object to performing abortion or sterilization procedures that conflict with their beliefs. In addition, the law provides new protections that prohibit discrimination against health care facilities and providers who are unwilling to provide, pay for, provide coverage of, or refer women for

²¹ *Harris*, 448 U.S. at 326-27.

²² *Harris*, *Id.* at 316-17

²³ *Id.*

²⁴ Agency for Health Care Administration, *Florida Medicaid: Ambulatory Surgery Center Services Coverage and Limitations Handbook*, January 2005, available at http://www.baccinc.org/medi/CD_April_2005/Provider_Handbooks/Medicaid_Coverage_and_Limitations_Handbooks/Ambulatory_Surgical_Center_Updated_January_2005.pdf (last visited Mar. 17, 2011).

²⁵ *Id.*

²⁶ National Conference of State Legislatures, *Health Reform and Abortion Coverage in the Insurance Exchanges*, November 2010, available at <http://www.ncsl.org/default.aspx?tabid=21099> (last visited Mar. 17, 2011).

abortions. The law allows states (through legislation) to prohibit abortion coverage in qualified health plans offered through an exchange. If insurance coverage for abortion is included in a plan in the exchange, a separate premium is required for this coverage, to be paid for by the policyholder. In addition, the “Patient Protection and Affordable Care Act’s Consistency with Longstanding Restrictions on the Use of Federal Funds for Abortion” executive order establishes an enforcement mechanism to ensure that federal funds are not used for abortion services, consistent with existing federal statute.²⁷

Since enactment of the PPACA in March 2010, at least five states (Arizona, Louisiana, Mississippi, Missouri, and Tennessee) have enacted legislation to restrict coverage for abortion in their insurance exchanges.

Arizona law expands on provisions that prohibit the use of public funds to finance abortions, by prohibiting the funding of abortion in insurance coverage; the law also provides a few exemptions. The law prohibits any qualified health insurance policy, contract, or plan offered through any state health care exchange from providing coverage for abortions unless the coverage is offered as a separate optional rider for which an additional insurance premium is charged. The law prohibits public and tax monies of the state or any political subdivision of the state from directly or indirectly paying the costs, premiums, or charges associated with a health insurance policy, contract, or plan that provides coverage, benefits, or services related to the performance of any abortion. Exemptions to this provision include saving the life of the woman having the abortion and averting impairment of a major bodily function. In addition, this law does not prohibit the state from complying with the federal law requirements.

Louisiana law prohibits elective abortions to be included in a policy available through the state health exchange. In accordance with the PPACA as well as longstanding policies of the state related to abortion, the law states that no health care plan required to be established in the state through an exchange shall offer coverage for abortion services.

Mississippi law creates the Federal Abortion-Mandate Opt-Out Act, which prohibits the use of federal funds to pay for elective abortions covered by private insurance in the state through a health care exchange. The law provides that no abortion coverage may be provided by a qualified health plan offered through an exchange created pursuant to the PPACA within the State of Mississippi. The act states that this limitation shall not apply to an abortion performed when the life of the mother is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when the pregnancy is the result of an alleged act of rape or incest. The physician is required to maintain sufficient documentation in the medical record that supports the medical necessity or reason for the abortion.

In Missouri, among other abortion-related provisions, the law prohibits insurance plans or policies that provide coverage for elective abortions from inclusion in the state health insurance exchange. Elective abortions are defined as any abortion for any reason other than a spontaneous abortion or to prevent the death of the woman receiving the abortion. The law also prohibits coverage for elective abortions through the purchase of an optional rider within the exchange.

²⁷ *Id.*

Tennessee law prohibits coverage for abortion services under any health care plan through an exchange required to be established in the state pursuant to PPACA.

State Legislation Prior to the Patient Protection and Affordable Care Act²⁸

Prior to the enactment of the PPACA, at least five states (Idaho, Kentucky, Missouri, North Dakota, and Oklahoma) had laws that restrict health insurance policies covering abortion.

Idaho's law requires various insurance policies to exclude coverage for elective abortions. Exclusion of this coverage may be waived if a separate premium is paid, and the availability of coverage is the option of the insurance carrier. Elective abortion is defined as an abortion for any reason other than to preserve the life of the female upon whom the abortion is performed.

In Kentucky, the law prohibits health insurance and health care contracts in the state from providing coverage for elective abortions, except by an optional rider for which there must be paid an additional premium. Elective abortion is defined as an abortion for any reason other than to preserve the life of the female upon whom the abortion is performed.

In Missouri, the law prohibits health insurance contracts, plans, or policies from providing coverage for elective abortions except by an optional rider for which there must be paid an additional premium. Elective abortion is defined as an abortion for any reason other than a spontaneous abortion or to prevent the death of the female upon whom the abortion is performed.

In North Dakota, the law states that health insurance contracts, plans, or policies may not provide coverage for abortions except by an optional rider for which there must be paid an additional premium. This does not apply to an abortion necessary to prevent the death of the woman.

In Oklahoma, the law prohibits health insurance contracts, plans, or policies from providing coverage for elective abortions except by an optional rider paid by an additional premium. Elective abortion is defined as an abortion for any reason other than a spontaneous miscarriage, to prevent the death of the woman, or when the pregnancy resulted from rape reported to the proper law enforcement authorities or when the pregnancy resulted from incest committed against a minor and the perpetrator has been reported to the proper law enforcement authorities.

Constitutional Amendments

Section 1, Article XI, of the Florida Constitution authorizes the Legislature to propose constitutional amendments by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose.²⁹ Section 5(e), Article XI, of the Florida Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be

²⁸ *Id.*

²⁹ FLA. CONST. art. XI, s. 5(a).

effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.³⁰

III. Effect of Proposed Changes:

This is a joint resolution proposing the creation of Section 28 of Article I of the Florida Constitution, to prohibit the spending of public funds for any abortion or for health-benefits coverage that includes the coverage of abortion. The prohibition does not apply to: expenditures *required* by federal law, an abortion to save the life of the mother, or pregnancies that result from rape or incest. The joint resolution (subsection (b)) specifies that the Florida Constitution may not be interpreted to create broader rights to an abortion than those contained in the U.S. Constitution, meaning that the joint resolution, should it become law, would overrule court decisions³¹ which have concluded that the right of privacy under Article I, Section 23, of the Florida Constitution is broader in scope than that of the U.S. Constitution.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.³²

Subsection (b) of the joint resolution is not a pure conformity clause; the resolution only specifies that the Florida Constitution may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution. As in the case of conformity clauses, the joint resolution would not merely enshrine in the Florida Constitution the analysis that comes from the United States Constitution at the time the amendment is adopted, but would look to the analysis by the U.S. Supreme Court of the United States Constitution as it evolves in subsequent decisions as well.³³

Unlike the conformity clauses in Art. I, Sections 12 and 17 of the Florida Constitution, the joint resolution does not provide that it is to be “construed in conformity with decisions of the United States Supreme Court” or “as interpreted by the United States Supreme Court.” The Florida Supreme Court has construed such references to limit the application of the conformity clause to cases directly and specifically controlled by a decision of the U.S. Supreme Court.³⁴ Although it is unclear in the absence of such a reference how the Florida Supreme Court may interpret the joint resolution in the context of existing conformity clauses, it is possible the Florida Supreme Court may look more broadly to a wider range of federal interpretations in abortion cases beyond decisions by the U.S. Supreme Court that are factually on point.

³⁰ FLA. CONST. art. XI, s. 5(e).

³¹ See, e.g., *supra* note 16.

³² FLA. CONST. art. XI, s. 5(e).

³³ See *State v. Moreno-Gonzalez*, 18 So. 3d 1180, 1182 (Fla. 3rd DCA 2009) (holding that an amendment to the Florida Constitution conforming the search-and-seizure provisions of the Florida Constitution to interpretations of the Fourth Amendment of the U.S. Constitution brings this state’s search-and-seizure laws into conformity with all decisions of the U.S. Supreme Court rendered before and subsequent to the adoption of that amendment); *Bernie v. State*, 524 So. 2d 988, 992 (Fla. 1988) (same).

³⁴ See, e.g., *Soca v. State*, 673 So. 2d 24, 26 (Fla. 1996) (“However, in the absence of a controlling U.S. Supreme Court decision, Florida courts are still ‘free to provide its citizens with a higher standard of protection from governmental intrusion than that afforded by the Federal Constitution.’” (quoting *State v. Lavzoli*, 434 So. 2d 321, 323 (Fla. 1983)).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of the joint resolution have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of the joint resolution have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

See the discussion of relevant case law in the “Present Situation” section of this bill analysis.

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

None.

B. Private Sector Impact:

Persons would not have access to public funding for any abortion or health-benefits coverage that includes coverage of abortion, unless required by federal law, to save the life of the mother, or if the pregnancy was the result of an act of rape or incest.

C. Government Sector Impact:

The state will not incur costs other than the state is presently required to incur under federal law or to provide abortion services for those who qualify for Medicaid and the abortion is required to save the life of the mother, or the pregnancy is the result of an act of rape or incest.³⁵

The Department of State Division of Elections (department) is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14 according to the department. If the joint resolution passes and the proposed constitutional amendment is

³⁵ See *supra* note 24. The state policy mirrors the federal Hyde Amendment, which allows for Medicaid reimbursement under certain circumstances.

placed on the ballot, the department will incur costs to advertise the proposed amendment.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 28, 2011:

The committee substitute excludes pregnancies that result from rape or incest from its prohibition on the spending of public funds for any abortion or for health-benefits coverage that includes the coverage of abortion.

- B. **Amendments:**

None.

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

³⁶ See, e.g., Fiscal Note on SJR 2 prepared by the Florida Department of State (January 4, 2011).



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the resolving clause
and insert:

That the following amendments to Sections 2, 3, 4, 7, 11, 12, and 14 of Article V, and the creation of Section 21 of Article V, of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 2. Administration; practice and procedure.—



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14 (a) The supreme court shall adopt rules for the practice
15 and procedure in all courts including the time for seeking
16 appellate review, the administrative supervision of all courts,
17 the transfer to the court having jurisdiction of any proceeding
18 when the jurisdiction of another court has been improvidently
19 invoked, and a requirement that no cause shall be dismissed
20 because an improper remedy has been sought. The supreme court
21 shall adopt rules to allow it ~~the court~~ and the district courts
22 of appeal to submit questions relating to military law to the
23 federal Court of Appeals for the Armed Forces for an advisory
24 opinion. Rules of court may be repealed by general law that
25 expresses the policy behind the repeal enacted by two-thirds
26 vote of the membership of each house of the legislature. The
27 court may readopt the repealed rule only in conformity with the
28 public policy expressed by the legislature. If the legislature
29 repeals the readopted rule, the rule may not be readopted
30 thereafter without prior approval of the legislature. The
31 divisions of the court shall meet jointly to adopt rules or the
32 court may designate a division to adopt any specific class of
33 rules.

34 (b) (1) The chief justice of the supreme court of Florida
35 ~~shall be chosen by a majority of the members of the court; shall~~
36 ~~be~~ the chief administrative officer of the judicial system, and
37 shall have the power to assign justices or judges, including
38 consenting retired justices or judges, to temporary duty in any
39 court for which the judge is qualified and to delegate to a
40 chief judge of a judicial circuit the power to assign judges for
41 duty in that circuit.

42 (2) The chief justice of a division of the supreme court



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43 shall be designated by the governor, subject to confirmation by
44 the senate. The chief justices of the divisions shall serve
45 staggered terms of eight years and shall be the chief
46 administrative officers of their respective divisions. In the
47 second half of any term as chief justice of a division, the
48 chief justice shall serve as the chief justice of the supreme
49 court. A justice may serve more than one term as chief justice
50 of the division. A chief justice of a division is subject to the
51 same requirements of eligibility and retention as a justice of
52 the supreme court.

53 (3) If there is a vacancy in the position of chief justice
54 of a division, the justice who has served the most time with the
55 division shall be the acting chief justice until a new chief
56 justice of the division is appointed and confirmed for the
57 remainder of the term.

58 (c) A chief judge for each district court of appeal shall
59 be chosen by a majority of the judges thereof or, if there is no
60 majority, by the chief justice. The chief judge of a district
61 court shall be responsible for the administrative supervision of
62 the district court.

63 (d) A chief judge in each circuit shall be chosen from
64 among the circuit judges as provided by supreme court rule. The
65 chief judge of a circuit shall be responsible for the
66 administrative supervision of the circuit courts and county
67 courts in the his circuit.

68 SECTION 3. Supreme court; divisions.-

69 (a) ORGANIZATION.-The supreme court shall consist of ten
70 seven justices. Of the ten justices, five justices shall serve
71 in the civil division and five justices shall serve in the



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72 criminal division. In each division ~~Of the seven justices,~~ each
73 appellate district shall have at least one justice ~~elected or~~
74 appointed from the district to the supreme court division who is
75 a resident of the district at the time of the original
76 appointment ~~or election. Four~~ Five justices of a division shall
77 constitute a quorum for that division and, the concurrence of
78 three ~~four~~ justices shall be necessary to a decision. When
79 vacancies or recusals for cause would prohibit the court from
80 convening because of the requirements of this subsection
81 ~~section,~~ judges assigned to temporary duty may be substituted
82 for justices. The justices of both divisions, with seven
83 justices constituting a quorum, shall jointly meet regarding
84 disciplinary cases, and may jointly meet at the discretion of
85 the chief justice regarding court rules or administrative
86 supervision of the courts. The justices shall not otherwise meet
87 en banc.

88 (b) JURISDICTION.—The appropriate division of the supreme
89 court:

90 (1) Shall hear appeals from ~~final judgments of trial courts~~
91 ~~imposing the death penalty and from~~ decisions of district courts
92 of appeal declaring invalid a state statute or a provision of
93 the state constitution.

94 (2) When provided by general law, shall hear appeals from
95 final judgments entered in proceedings for the validation of
96 bonds or certificates of indebtedness and shall review action of
97 statewide agencies relating to rates or service of utilities
98 providing electric, gas, or telephone service. Only the civil
99 division may have jurisdiction pursuant to this paragraph.

100 (3) May review any decision of a district court of appeal



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101 that expressly declares valid a state statute, or that expressly
102 construes a provision of the state or federal constitution, or
103 that expressly affects a class of constitutional or state
104 officers, or that ~~expressly and directly~~ conflicts with a
105 decision of another district court of appeal or of the supreme
106 court on the same question of law, provided that the conflict
107 appears on the face of the majority, concurring, or dissenting
108 district court opinion.

109 (4) May review any decision of a district court of appeal
110 that passes upon a question certified by the district court of
111 appeal ~~it~~ to be of great public importance, that appears to a
112 division to be of great public importance based on information
113 on the face of the majority, concurring, or dissenting district
114 court opinion, or that is certified by the district court of
115 appeal ~~it~~ to be in direct conflict with a decision of another
116 district court of appeal.

117 (5) May review any order or judgment of a trial court
118 certified by the district court of appeal in which an appeal is
119 pending to be of great public importance, or to have a great
120 effect on the proper administration of justice throughout the
121 state, and certified to require immediate resolution by the
122 supreme court.

123 (6) May review a question of law certified by the Supreme
124 Court of the United States or a United States Court of Appeals
125 which is determinative of the cause and for which there is no
126 controlling precedent of the supreme court of Florida.

127 (7) May issue writs of prohibition to courts and all writs
128 necessary to the complete exercise of its jurisdiction.

129 (8) May issue writs of mandamus and quo warranto to state



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130 officers and state agencies.

131 (9) May, or any justice may, issue writs of habeas corpus
132 returnable before the supreme court or any justice, a district
133 court of appeal or any judge thereof, or any circuit judge. Only
134 a justice in the criminal division may issue a writ of habeas
135 corpus in a criminal case.

136 (10) Shall, when requested by the attorney general pursuant
137 to the provisions of Section 10 of Article IV, render an
138 advisory opinion of the justices, addressing issues as provided
139 by general law.

140 (11) Shall hear appeals from final judgments of trial
141 courts imposing the death penalty. Only the criminal division
142 has any jurisdiction pursuant to this paragraph.

143 (c) ASSIGNMENT OF CASES TO DIVISIONS.—Criminal and civil
144 cases are to be referred to each division in a manner consistent
145 with this section.

146 (1) A criminal case is any case or controversy primarily
147 involving the commission of a felony or misdemeanor. A criminal
148 case shall also include any case or controversy involving
149 criminal law, criminal penalties, criminal procedure, juvenile
150 delinquency, or any related action regarding the interpretation
151 of or resolution of matters directly affecting the criminal law.
152 Equitable relief related to the criminal law, including actions
153 in which a party seeks to enjoin the application or form of a
154 criminal penalty, shall be within the jurisdiction of the
155 criminal division.

156 (2) A civil case is any case or controversy within the
157 traditional concepts of civil law, including tort, contract,
158 family law, probate, trusts, real property, employment law,



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159 taxation, and elections. The civil division shall have no
160 jurisdiction or authority, whether express or implied, to issue
161 a stay of execution or to hear any challenge of any law or
162 procedure regarding the death penalty or the administration of a
163 criminal penalty.

164 (3) The legislature may, by general law, further define the
165 types of cases that are to be referred to each division in a
166 manner consistent with this section.

167 (d) JURISDICTIONAL CONFLICTS.—If both divisions assert
168 jurisdiction over a particular case, the chief justice of the
169 supreme court of Florida shall decide where jurisdiction is
170 appropriate.

171 ~~(c) CLERK AND MARSHAL.—The supreme court shall appoint a~~
172 ~~clerk and a marshal who shall hold office during the pleasure of~~
173 ~~the court and perform such duties as the court directs. Their~~
174 ~~compensation shall be fixed by general law. The marshal shall~~
175 ~~have the power to execute the process of the court throughout~~
176 ~~the state, and in any county may deputize the sheriff or a~~
177 ~~deputy sheriff for such purpose.~~

178 SECTION 4. District courts of appeal.—

179 (a) ORGANIZATION.—There shall be a district court of appeal
180 serving each appellate district. Each district court of appeal
181 shall consist of at least three judges. Three judges shall
182 consider each case and the concurrence of two shall be necessary
183 to a decision.

184 (b) JURISDICTION.—

185 (1) District courts of appeal shall have jurisdiction to
186 hear appeals, that may be taken as a matter of right, from final
187 judgments or orders of trial courts, including those entered on



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188 review of administrative action, not directly appealable to the
189 supreme court or a circuit court. They may review interlocutory
190 orders in such cases to the extent provided by rules adopted by
191 the supreme court.

192 (2) District courts of appeal shall have the power of
193 direct review of administrative action, as prescribed by general
194 law.

195 (3) A district court of appeal or any judge thereof may
196 issue writs of habeas corpus returnable before the court or any
197 judge thereof or before any circuit judge within the territorial
198 jurisdiction of the court. A district court of appeal may issue
199 writs of mandamus, certiorari, prohibition, quo warranto, and
200 other writs necessary to the complete exercise of its
201 jurisdiction. To the extent necessary to dispose of all issues
202 in a cause properly before it, a district court of appeal may
203 exercise any of the appellate jurisdiction of the circuit
204 courts.

205 ~~(c) CLERKS AND MARSHALS. Each district court of appeal~~
206 ~~shall appoint a clerk and a marshal who shall hold office during~~
207 ~~the pleasure of the court and perform such duties as the court~~
208 ~~directs. Their compensation shall be fixed by general law. The~~
209 ~~marshal shall have the power to execute the process of the court~~
210 ~~throughout the territorial jurisdiction of the court, and in any~~
211 ~~county may deputize the sheriff or a deputy sheriff for such~~
212 ~~purpose.~~

213 SECTION 7. Specialized divisions.—The supreme court shall
214 sit in a civil division and a criminal division, except where
215 specifically authorized in this article to sit jointly. All
216 other courts except the supreme court may sit in divisions as



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217 may be established by general law. A circuit or county court may
218 hold civil and criminal trials and hearings in any place within
219 the territorial jurisdiction of the court as designated by the
220 chief judge of the circuit.

221 SECTION 11. Vacancies.—

222 (a) Whenever a vacancy occurs in a judicial office to which
223 election for retention applies, the governor shall fill the
224 vacancy by appointing for a term ending on the first Tuesday
225 after the first Monday in January of the year following the next
226 general election occurring at least one year after the date of
227 appointment, one of not fewer than three persons nor more than
228 six persons nominated by the appropriate judicial nominating
229 commission.

230 (b) The governor shall fill each vacancy on a circuit court
231 or on a county court, wherein the judges are elected by a
232 majority vote of the electors, by appointing for a term ending
233 on the first Tuesday after the first Monday in January of the
234 year following the next primary and general election occurring
235 at least one year after the date of appointment, one of not
236 fewer than three persons nor more than six persons nominated by
237 the appropriate judicial nominating commission. An election
238 shall be held to fill that judicial office for the term of the
239 office beginning at the end of the appointed term.

240 (c) The nominations shall be made within thirty days from
241 the occurrence of a vacancy unless the period is extended by the
242 governor for a time not to exceed thirty days. The governor
243 shall make the appointment within sixty days after the
244 nominations have been certified to the governor.

245 (d) Each appointment of a justice of the supreme court is



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246 subject to confirmation by the senate. The senate shall sit for
247 the purposes of confirmation regardless of whether the house of
248 representatives is in session or not. The senate shall vote on
249 the appointment of a justice within 90 days after the
250 appointment. If the senate votes to not confirm the appointment,
251 the supreme court judicial nominating commission shall reconvene
252 as though a new vacancy had occurred but may not renominate any
253 person whose prior appointment to fill the same vacancy was not
254 confirmed by the senate. The appointment of a justice is
255 effective upon confirmation by the senate. A justice in one
256 division may apply for a position in the other division but may
257 not concurrently serve on both.

258 (e) ~~(d)~~ There shall be a separate judicial nominating
259 commission as provided by general law for the supreme court, one
260 for each district court of appeal, and one for each judicial
261 circuit for all trial courts within the circuit. Uniform rules
262 of procedure shall be established by the judicial nominating
263 commissions at each level of the court system. Such rules, or
264 any part thereof, may be repealed by general law enacted by a
265 majority vote of the membership of each house of the
266 legislature, or by a majority vote of the justices of each
267 division of the supreme court, ~~five justices concurring~~. Except
268 for deliberations of the judicial nominating commissions, the
269 proceedings of the commissions and their records shall be open
270 to the public.

271 SECTION 12. Discipline; removal and retirement.—

272 (a) JUDICIAL QUALIFICATIONS COMMISSION.—A judicial
273 qualifications commission is created.

274 (1) There shall be a judicial qualifications commission



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275 vested with jurisdiction to investigate and recommend to the
276 Supreme Court of Florida the removal from office of any justice
277 or judge whose conduct, during term of office or otherwise,
278 ~~occurring on or after November 1, 1966, (without regard to the~~
279 ~~effective date of this section)~~ demonstrates a present unfitness
280 to hold office, and to investigate and recommend the discipline
281 of a justice or judge whose conduct, during term of office or
282 otherwise ~~occurring on or after November 1, 1966 (without regard~~
283 ~~to the effective date of this section)~~, warrants such
284 discipline. For purposes of this section, discipline is defined
285 as any or all of the following: reprimand, fine, suspension with
286 or without pay, or lawyer discipline. The commission shall have
287 jurisdiction over justices and judges regarding allegations that
288 misconduct occurred before or during service as a justice or
289 judge if a complaint is made no later than one year following
290 service as a justice or judge. The commission shall have
291 jurisdiction regarding allegations of incapacity during service
292 as a justice or judge. The commission shall be composed of:
293 a. Two judges of district courts of appeal selected by the
294 judges of those courts, two circuit judges selected by the
295 judges of the circuit courts and two judges of county courts
296 selected by the judges of those courts;
297 b. Four electors who reside in the state, who are members
298 of the bar of Florida, and who shall be chosen by the governing
299 body of the bar of Florida; and
300 c. Five electors who reside in the state, who have never
301 held judicial office or been members of the bar of Florida, and
302 who shall be appointed by the governor.
303 (2) The members of the judicial qualifications commission



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304 shall serve staggered terms, not to exceed six years, as
305 prescribed by general law. No member of the commission except a
306 judge shall be eligible for state judicial office while acting
307 as a member of the commission and for a period of two years
308 thereafter. No member of the commission shall hold office in a
309 political party or participate in any campaign for judicial
310 office or hold public office; provided that a judge may campaign
311 for judicial office and hold that office. The commission shall
312 elect one of its members as its chairperson.

313 (3) Members of the judicial qualifications commission not
314 subject to impeachment shall be subject to removal from the
315 commission pursuant to the provisions of Article IV, Section 7,
316 Florida Constitution.

317 (4) The commission shall adopt rules regulating its
318 proceedings, the filling of vacancies by the appointing
319 authorities, the disqualification of members, the rotation of
320 members between the panels, and the temporary replacement of
321 disqualified or incapacitated members. The commission's rules,
322 or any part thereof, may be repealed by general law ~~enacted by a~~
323 ~~majority vote of the membership of each house of the~~
324 ~~legislature,~~ or by the supreme court, seven ~~five~~ justices
325 concurring. The commission shall have power to issue subpoenas.
326 Until formal charges against a justice or judge are filed by the
327 investigative panel with the clerk of the supreme court of
328 Florida all proceedings by or before the commission shall be
329 confidential; provided, however, upon a finding of probable
330 cause and the filing by the investigative panel with said clerk
331 of such formal charges against a justice or judge such charges
332 and all further proceedings before the commission shall be



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333 public.

334 (5) The commission shall have access to all information
335 from all executive, legislative and judicial agencies, including
336 grand juries, subject to the rules of the commission. At any
337 time, on request of the speaker of the house of representatives
338 ~~or the governor~~, the commission shall make available to the
339 house of representatives all information in the possession of
340 the commission, which information shall remain confidential
341 during any investigation and until such information is used in
342 the pursuit for use in consideration of impeachment ~~or~~
343 ~~suspension~~, respectively.

344 (b) PANELS.—The commission shall be divided into an
345 investigative panel and a hearing panel as established by rule
346 of the commission. The investigative panel is vested with the
347 jurisdiction to receive or initiate complaints, conduct
348 investigations, dismiss complaints, and upon a vote of a simple
349 majority of the panel submit formal charges to the hearing
350 panel. The hearing panel is vested with the authority to receive
351 and hear formal charges from the investigative panel and upon a
352 two-thirds vote of the panel recommend to the supreme court the
353 removal of a justice or judge or the involuntary retirement of a
354 justice or judge for any permanent disability that seriously
355 interferes with the performance of judicial duties. Upon a
356 simple majority vote of the membership of the hearing panel, the
357 panel may recommend to the supreme court that the justice or
358 judge be subject to appropriate discipline.

359 (c) SUPREME COURT.—The supreme court shall receive
360 recommendations from the judicial qualifications commission's
361 hearing panel.



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362 (1) The supreme court may accept, reject, or modify in
363 whole or in part the findings, conclusions, and recommendations
364 of the commission and it may order that the justice or judge be
365 subjected to appropriate discipline, or be removed from office
366 with termination of compensation for willful or persistent
367 failure to perform judicial duties or for other conduct
368 unbecoming a member of the judiciary demonstrating a present
369 unfitness to hold office, or be involuntarily retired for any
370 permanent disability that seriously interferes with the
371 performance of judicial duties. Malafides, scienter or moral
372 turpitude on the part of a justice or judge shall not be
373 required for removal from office of a justice or judge whose
374 conduct demonstrates a present unfitness to hold office. After
375 the filing of a formal proceeding and upon request of the
376 investigative panel, the supreme court may suspend the justice
377 or judge from office, with or without compensation, pending
378 final determination of the inquiry.

379 (2) The supreme court may award costs to the prevailing
380 party.

381 (d) REMOVAL POWER.—The power of removal conferred by this
382 section shall be both alternative and cumulative to the power of
383 impeachment.

384 (e) PROCEEDINGS INVOLVING SUPREME COURT JUSTICE.—
385 Notwithstanding any of the foregoing provisions of this section,
386 if the person who is the subject of proceedings by the judicial
387 qualifications commission is a justice of the supreme court of
388 Florida all justices of such court automatically shall be
389 disqualified to sit as justices of such court with respect to
390 all proceedings therein concerning such person and the supreme



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391 court for such purposes shall be composed of a panel consisting
392 of the seven chief judges of the judicial circuits of the state
393 of Florida most senior in tenure of judicial office as circuit
394 judge. For purposes of determining seniority of such circuit
395 judges in the event there be judges of equal tenure in judicial
396 office as circuit judge the judge or judges from the lower
397 numbered circuit or circuits shall be deemed senior. In the
398 event any such chief circuit judge is under investigation by the
399 judicial qualifications commission or is otherwise disqualified
400 or unable to serve on the panel, the next most senior chief
401 circuit judge or judges shall serve in place of such
402 disqualified or disabled chief circuit judge.

403 (f) SCHEDULE TO SECTION 12.-

404 (1) Except to the extent inconsistent with the provisions
405 of this section, all provisions of law and rules of court in
406 force on the effective date of this article shall continue in
407 effect until superseded in the manner authorized by the
408 constitution.

409 (2) After this section becomes effective and until adopted
410 by rule of the commission consistent with it:

411 a. The commission shall be divided, as determined by the
412 chairperson, into one investigative panel and one hearing panel
413 to meet the responsibilities set forth in this section.

414 b. The investigative panel shall be composed of:

- 415 1. Four judges,
416 2. Two members of the bar of Florida, and
417 3. Three non-lawyers.

418 c. The hearing panel shall be composed of:

- 419 1. Two judges,



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- 420 2. Two members of the bar of Florida, and
421 3. Two non-lawyers.
- 422 d. Membership on the panels may rotate in a manner
423 determined by the rules of the commission provided that no
424 member shall vote as a member of the investigative and hearing
425 panel on the same proceeding.
- 426 e. The commission shall hire separate staff for each panel.
- 427 f. The members of the commission shall serve for staggered
428 terms of six years.
- 429 ~~g. The terms of office of the present members of the~~
430 ~~judicial qualifications commission shall expire upon the~~
431 ~~effective date of the amendments to this section approved by the~~
432 ~~legislature during the regular session of the legislature in~~
433 ~~1996 and new members shall be appointed to serve the following~~
434 ~~staggered terms:~~
- 435 ~~1. Group I. The terms of five members, composed of two~~
436 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
437 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
438 ~~V, one judge from the district courts of appeal and one circuit~~
439 ~~judge as set forth in s. 12(a)(1)a. of Article V, shall expire~~
440 ~~on December 31, 1998.~~
- 441 ~~2. Group II. The terms of five members, composed of one~~
442 ~~elector as set forth in s. 12(a)(1)c. of Article V, two members~~
443 ~~of the bar of Florida as set forth in s. 12(a)(1)b. of Article~~
444 ~~V, one circuit judge and one county judge as set forth in s.~~
445 ~~12(a)(1)a. of Article V shall expire on December 31, 2000.~~
- 446 ~~3. Group III. The terms of five members, composed of two~~
447 ~~electors as set forth in s. 12(a)(1)c. of Article V, one member~~
448 ~~of the bar of Florida as set forth in s. 12(a)(1)b., one judge~~



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449 ~~from the district courts of appeal and one county judge as set~~
450 ~~forth in s. 12(a)(1)a. of Article V, shall expire on December~~
451 ~~31, 2002.~~

452 ~~g.h.~~ An appointment to fill a vacancy of the commission
453 shall be for the remainder of the term.

454 ~~h.i.~~ Selection of members by district courts of appeal
455 judges, circuit judges, and county court judges, shall be by no
456 less than a majority of the members voting at the respective
457 courts' conferences. Selection of members by the board of
458 governors of the bar of Florida shall be by no less than a
459 majority of the board.

460 ~~i.j.~~ The commission shall be entitled to recover the costs
461 of investigation and prosecution, in addition to any penalty
462 levied by the supreme court.

463 ~~j.k.~~ The compensation of members and referees shall be the
464 travel expenses or transportation and per diem allowance as
465 provided by general law.

466 SECTION 14. Funding.—

467 (a) All justices and judges shall be compensated only by
468 state salaries fixed by general law. Funding for the state
469 courts system, state attorneys' offices, public defenders'
470 offices, and court-appointed counsel, except as otherwise
471 provided in subsection (c), shall be provided from state
472 revenues appropriated by general law.

473 (b) All funding for the offices of the clerks of the
474 circuit and county courts performing court-related functions,
475 except as otherwise provided in this subsection and subsection
476 (c), shall be provided by adequate and appropriate filing fees
477 for judicial proceedings and service charges and costs for



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478 performing court-related functions as required by general law.
479 Selected salaries, costs, and expenses of the state courts
480 system may be funded from appropriate filing fees for judicial
481 proceedings and service charges and costs for performing court-
482 related functions, as provided by general law. Where the
483 requirements of either the United States Constitution or the
484 Constitution of the State of Florida preclude the imposition of
485 filing fees for judicial proceedings and service charges and
486 costs for performing court-related functions sufficient to fund
487 the court-related functions of the offices of the clerks of the
488 circuit and county courts, the state shall provide, as
489 determined by the legislature, adequate and appropriate
490 supplemental funding from state revenues appropriated by general
491 law.

492 (c) No county or municipality, except as provided in this
493 subsection, shall be required to provide any funding for the
494 state courts system, state attorneys' offices, public defenders'
495 offices, court-appointed counsel or the offices of the clerks of
496 the circuit and county courts performing court-related
497 functions. Counties shall be required to fund the cost of
498 communications services, existing radio systems, existing multi-
499 agency criminal justice information systems, and the cost of
500 construction or lease, maintenance, utilities, and security of
501 facilities for the trial courts, public defenders' offices,
502 state attorneys' offices, and the offices of the clerks of the
503 circuit and county courts performing court-related functions.
504 Counties shall also pay reasonable and necessary salaries,
505 costs, and expenses of the state courts system to meet local
506 requirements as determined by general law.



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507 (d) The judiciary shall have no power to fix
508 appropriations.

509 (e) The total appropriation of all fund sources to the
510 judicial branch shall equal no less than 2.25 percent of the
511 total general revenue funds appropriated in the general
512 appropriation bill referred to in Section 19(b) of Article III.
513 Any adjustments to the total appropriations of all fund sources
514 to the judicial branch made in any special appropriations act
515 shall equal no more than the percent of total general revenue
516 appropriations adjusted in such special appropriations act. For
517 purposes of this subsection, the judicial branch does not
518 include the Justice Administrative Commission or any of the
519 entities for which the Justice Administrative Commission
520 provides administrative services.

521 SECTION 21. Schedule to Article V revision increasing the
522 membership of the supreme court and creating divisions thereof.-

523 (a) Except to the extent inconsistent with this article,
524 all provisions of law and rules of court in force on the
525 effective date of this article shall continue in effect until
526 superseded in the manner authorized by the constitution.

527 (b) The effective date of the revision creating two
528 divisions of the supreme court shall be upon passage by the
529 electorate.

530 (1) On the first day after the election approving the
531 revision, the supreme court shall rank all of the justices then
532 in office by seniority in service on the supreme court. The
533 three who have the most seniority shall be the initial justices
534 assigned to the criminal division, and the remaining justices
535 shall be the initial justices assigned to the civil division.



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536 Initial appointments of existing justices to either division
537 shall not be limited by the district court from which the
538 justice was appointed. A justice assigned to a division of the
539 supreme court pursuant to this paragraph shall remain in the
540 same term of office and shall sit for future retention elections
541 on the same cycle. The supreme court shall immediately transmit
542 to the governor the names of the justices, their division
543 assignments, and the districts from which they were appointed.
544 The governor shall then direct the supreme court nominating
545 commission to make its recommendations for the open seats of
546 justices for both divisions, which recommendations must be
547 delivered to the governor no later than the 60th day after the
548 election. Before the 90th day after the election, the governor
549 shall make the appointments for the open seats of justices for
550 both divisions and shall also designate the chief justices of
551 each division. The appointments and designations shall, in this
552 instance only, not be subject to the advice and consent of the
553 senate.

554 (2) The supreme court shall inventory all cases in its
555 possession and determine as to each case whether it will be
556 assigned to the criminal division or the civil division. Newly
557 filed cases shall be designated between the two new divisions as
558 they are filed. The supreme court shall retain full jurisdiction
559 and power over all cases until such cases are actually assigned
560 to a division, including the power to issue final process that
561 would have the effect of removing the case from the inventory of
562 cases to be assigned.

563 (c) The two divisions of the supreme court shall begin
564 formal operations on the 120th day after the election. On that



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565 day:

566 (1) Newly appointed justices shall take office.

567 (2) The jurisdiction of the supreme court shall be divided
568 between the divisions, the jurisdictional changes in Sections
569 3(b)(3) and 3(b)(4) shall take effect, and all pending cases
570 shall be assigned to the appropriate division.

571 (3) The term of the supreme court shall be deemed to have
572 ended. All mandates issued by the supreme court prior to the end
573 of the term shall be final and not subject to recall. No motion
574 for reconsideration shall be considered.

575 (d) The initial chief justice of the civil division shall
576 also be the chief justice of the supreme court of Florida and
577 shall serve in that position from the 120th day after the
578 election through June 30, 2016. The initial chief justice of the
579 criminal division shall be the chief justice of the criminal
580 division from the 120th day after the election through June 30,
581 2020. Thereafter, the offices of the chief justices of the
582 divisions shall alternate as provided in Section 2.

583 (e) All court rules adopted by the supreme court shall
584 continue in full force and effect after the effective date of
585 this revision, subject to future amendment or repeal.

586 (f) The legislature may, by general law, otherwise provide
587 for the administrative transfer of employees, property, duties,
588 and functions between the divisions.

589 (g) The change in court funding provided in Section 14(e)
590 shall be effective commencing in fiscal year 2013-2014.

591 (h) The legislature shall have the power, by concurrent
592 resolution, to delete from this article any subsection of this
593 section 21, including this subsection, when all events to which



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594 the subsection to be deleted is or could become applicable have
595 occurred.

596 BE IT FURTHER RESOLVED that the following statement be
597 placed on the ballot:

598 CONSTITUTIONAL AMENDMENT

599 ARTICLE V, SECTIONS 2, 3, 4, 7, 11, 12, 14, AND 21
600 STATE COURTS.—Proposing a revision of Article V of the
601 State Constitution relating to the judiciary.

602 Under current law, the Florida Supreme Court is the highest
603 court in Florida and hears both civil and criminal cases. It has
604 7 appointed justices. This revision would divide the current
605 Supreme Court into two divisions, one hearing civil cases and
606 the other hearing criminal cases. Each division would have 5
607 appointed justices who are permanently assigned. The 3 current
608 justices who have the most service with the Florida Supreme
609 Court would be assigned to the criminal division, the remaining
610 4 current justices would be assigned to the civil division, and
611 the Governor would appoint 3 new justices to fill the remaining
612 openings in the two divisions. The existing jurisdiction of the
613 Supreme Court would be expanded to allow discretionary review of
614 certain district court of appeal decisions. This revision
615 generally defines the civil law and criminal law jurisdiction of
616 each division, provides for assignment of cases to each
617 respective division, and allows the Legislature, by general law,
618 to further define the jurisdictions of each division. The
619 jurisdiction of a division will be limited to the division's
620 area, whether civil or criminal. The power of justices of the
621 criminal division to hear appeals from final judgments entered
622 in proceedings for the validation of bonds or certificates of



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623 indebtedness and to review action of statewide agencies relating
624 to rates or service of utilities providing electric, gas, or
625 telephone service is limited by this revision and granted
626 exclusively to the civil division. The power of justices of the
627 civil division to issue a writ of habeas corpus and to hear
628 appeals from final judgments of trial courts imposing the death
629 penalty is limited by this revision and granted exclusively to
630 the justices of the criminal division. This revision provides
631 that if both divisions assert jurisdiction over a case, the
632 Chief Justice of the Supreme Court of Florida will decide where
633 jurisdiction is appropriate.

634 This proposed revision also creates a title of chief
635 justice in each of the divisions with an 8-year term. The
636 constitution currently provides that the Chief Justice of the
637 Supreme Court is the administrative head of the state judicial
638 system. This revision provides that the position of Chief
639 Justice of the Supreme Court will rotate every 4 years between
640 the chief justice of the civil division and the chief justice of
641 the criminal division. The constitution currently also provides
642 that the chief justice is chosen by vote of the justices. This
643 revision provides that the initial new justices and the initial
644 chief justice of each division will be selected by the Governor
645 and future chief justices will be selected by the Governor
646 subject to Senate confirmation. A chief justice is, like a
647 regular justice under current law, subject to retention election
648 and mandatory retirement requirements applicable to all Florida
649 justices and judges.

650 Under current law, the Governor appoints a justice from a
651 list of nominees provided by a judicial nominating commission,



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652 and appointments by the Governor are not subject to
653 confirmation. Other than the initial 3 new appointees, this
654 revision requires Senate confirmation of a justice before the
655 appointee can take office. If the Senate votes not to confirm
656 the appointment, the judicial nominating commission must
657 reconvene and may not renominate any person whose prior
658 appointment to fill the same vacancy was not confirmed by the
659 Senate. For the purpose of confirmation, the Senate shall meet
660 regardless of whether the House of Representatives is in
661 session. The Senate shall vote on the appointment of a justice
662 within 90 days after the appointment.

663 The State Constitution authorizes the Supreme Court to
664 adopt rules for the practice and procedure in all courts. The
665 constitution further provides that a rule of court may be
666 repealed by a general law enacted by a two-thirds vote of the
667 membership of each house of the Legislature. This proposed
668 constitutional revision eliminates the requirement that a
669 general law repealing a court rule pass by a two-thirds vote of
670 each house. The Legislature could repeal a rule of court by a
671 general law approved by a majority vote of each house of the
672 Legislature that expresses the policy behind the repeal. The
673 court could readopt the rule in conformity with the public
674 policy expressed by the Legislature, but if the Legislature
675 repeals the readopted rule, this proposed revision prohibits the
676 court from readopting the repealed rule without the
677 Legislature's prior approval. Court rules may be adopted by both
678 divisions of the Supreme Court meeting jointly, or the court may
679 elect to divide classes of rules between the divisions.

680 The Judicial Qualifications Commission is an independent



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681 commission created by the State Constitution to investigate and
682 prosecute before the Florida Supreme Court alleged misconduct by
683 a justice or judge. Currently under the constitution, commission
684 proceedings are confidential until formal charges are filed by
685 the investigative panel of the commission. Once formal charges
686 are filed, the formal charges and all further proceedings of the
687 commission are public. Currently, the constitution authorizes
688 the House of Representatives to impeach a justice or judge.
689 Further, the Speaker of the House of Representatives may
690 request, and the Judicial Qualifications Commission must make
691 available, all information in the commission's possession for
692 use in deciding whether to impeach a justice or judge. This
693 proposed revision requires the commission to make all of its
694 files available to the Speaker of the House of Representatives,
695 rather than just the file of a justice or judge under
696 investigation by the House of Representatives. Such files would
697 maintain their confidentiality unless the House of
698 Representatives initiates impeachment proceedings against a
699 justice or judge, in which case the files related to that
700 justice or judge may be open. This revision deletes a
701 requirement that a general law repealing a commission rule be
702 passed by a majority vote of the membership of each house of the
703 Legislature and revises the number of Supreme Court justices
704 needed to repeal such a rule.

705 State appropriations are made annually by general law.
706 Current law does not require any specific level of funding for
707 any agency or department. This revision requires that the courts
708 be appropriated a minimum of 2.25 percent of general revenue
709 funding beginning with the 2013-2014 fiscal year.



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710 This revision will take effect upon its passage by the
711 electorate and provides a schedule for implementation of its
712 provisions. This revision makes other conforming and modernizing
713 changes to the State Constitution regarding the judicial system,
714 including removing the positions of clerk and marshal of the
715 Supreme Court and the courts of appeal from the constitution;
716 providing for transition to the new divisions; removing outdated
717 schedules related to the Judicial Qualifications Commission; and
718 making conforming and technical changes in the judicial articles
719 of the constitution.

720
721 BE IT FURTHER RESOLVED that the following statement be
722 placed on the ballot if a court declares the preceding statement
723 defective and the decision of the court is not reversed:

724 CONSTITUTIONAL AMENDMENT

725 ARTICLE V, SECTIONS 2, 3, 4, 7, 11, 12, 14, AND 21
726 JUDICIARY.—Proposing a revision of the Judiciary Article of
727 the Florida Constitution; reorganizing the Florida Supreme Court
728 into divisions; requiring Senate confirmation for appointment of
729 a Supreme Court justice; providing standards and procedures for
730 legislative repeal of a court rule; providing a minimum level of
731 court funding; allowing legislative review of confidential files
732 of the Judicial Qualifications Commission; providing for
733 transition; and making other ancillary amendments, including,
734 but not limited to, technical and conforming amendments.

735
736 BE IT FURTHER RESOLVED that the following statement be
737 placed on the ballot if a court declares the preceding
738 statements defective and the decision of the court is not



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739 reversed:

740 CONSTITUTIONAL AMENDMENT

741 ARTICLE V, SECTIONS 2, 3, 4, 7, 11, 12, 14, AND 21

742 STATE COURTS.—Proposing a revision to Article V of the
743 State Constitution relating to the judiciary; changing the
744 authority of the Legislature to repeal a court rule by 2/3 vote
745 of the membership of each house to a simple majority of each
746 house; limiting the Supreme Court's ability to readopt a rule
747 repealed by the Legislature; replacing the current seven-member
748 Supreme Court with two five-member divisions of the Supreme
749 Court, one with civil jurisdiction and one with criminal
750 jurisdiction; establishing a Chief Justice of the Supreme Court
751 who shall serve as the chief administrative officer for the
752 courts; establishing a chief justice for the civil division of
753 the Supreme Court; establishing a chief justice for the criminal
754 division of the Supreme Court; providing for the manner of
755 selection and term for the chief justice of each division of the
756 Supreme Court; changing the manner of designation and term of
757 office of the Chief Justice of the Supreme Court; providing that
758 a chief justice of a division of the Supreme Court is subject to
759 a retention election and eligibility requirements as currently
760 established in the State Constitution; providing for manner of
761 replacement of a chief justice of a division; providing for
762 apportionment of current justices among the civil and criminal
763 divisions of the Supreme Court; changing the requirements for a
764 quorum from four to three as being necessary for a decision;
765 providing authority and circumstances where the divisions of the
766 Supreme Court may meet en banc; providing jurisdiction for each
767 division of the Supreme Court, including matters which will be



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768 exclusive to each division; clarifying the jurisdiction of the
769 Supreme Court to hear appeals from certain district court of
770 appeal decisions; providing that the Legislature may further
771 define the split of jurisdiction between civil and criminal
772 matters; providing that the Chief Justice of the Supreme Court
773 decides jurisdiction should both divisions claim jurisdiction
774 over the same case; removing references to clerks and marshals;
775 requiring Senate confirmation before a justice may take office;
776 requiring the Senate to vote on the appointee within 90 days
777 after appointment; requiring the Senate to meet regardless of
778 whether the House of Representatives is convened at the same
779 time; deleting outdated references; requiring the Judicial
780 Qualifications Commission to provide the House of
781 Representatives access to records; providing for confidentiality
782 of records; requiring a minimum level of funding for the
783 judicial system; providing for transition; requiring the current
784 Supreme Court to list its members by seniority in office;
785 providing that the three most senior justices be assigned to the
786 criminal division and the remaining justices assigned to the
787 criminal division; providing time limits for appointments by the
788 Governor for the remaining seats; providing an exception to
789 Senate confirmation for initial appointments; requiring the
790 Governor to name the initial chief justice of each division;
791 providing that the initial chief justice of the civil division
792 be named the Chief Justice of the Supreme Court; requiring that
793 existing cases be split between the divisions; providing that
794 cases decided before the split into divisions are final and not
795 subject to rehearing or recall of the mandate; providing for the
796 terms of the initial chief justices of the divisions; providing



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797 for adoption of court rules; allowing the Legislature by general
798 law to further provide for transition; providing that the
799 transition schedules may be deleted by general law when they
800 have become outdated.

801

802 ===== T I T L E A M E N D M E N T =====

803 And the title is amended as follows:

804 Delete everything before the resolving clause
805 and insert:

806

A bill to be entitled

807

A joint resolution proposing a revision of Article V
808 of the State Constitution, relating to the judiciary,
809 consisting of amendments to Sections 2, 3, 4, 7, 11,
810 12, and 14 of Article V, and the creation of Section
811 21 of Article V, of the State Constitution to divide
812 the current Supreme Court into two divisions, one
813 hearing civil cases and the other hearing criminal
814 cases; providing for administration of the divisions;
815 defining the jurisdiction of the divisions; providing
816 for transition from the present Supreme Court;
817 revising provisions relating to repeal of court rules;
818 limiting readoption of a repealed court rule;
819 providing for Senate confirmation of Supreme Court
820 justices; expanding the jurisdiction of the Supreme
821 Court; requiring the Judicial Qualifications
822 Commission to make all of its files available to the
823 Speaker of the House of Representatives; revising
824 provisions relating to repeal of commission rules;
825 requiring that a specified minimum percentage of



826 general revenue funds be appropriated to the courts;
827 making other conforming and modernizing changes to the
828 State Constitution regarding the judicial system.

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: SJR 1664

INTRODUCER: Senators Bogdanoff and Gaetz

SUBJECT: Senate Confirmation/Appointments to Supreme Court

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Maclure	JU	Favorable
2.	Naf	Roberts	GO	Favorable
3.	Naf	Phelps	RC	Pre-meeting
4.				
5.				
6.				

I. Summary:

This joint resolution proposes an amendment to the State Constitution to provide that each appointment of a justice of the Supreme Court is subject to confirmation by the Senate. If the Senate votes to not confirm the appointment, the judicial nominating commission (JNC) will reconvene to nominate new potential appointees to the Governor. The JNC will be barred from re-nominating a person whose prior appointment to fill the same vacancy was not confirmed.

This joint resolution amends section 11, Article V of the Florida Constitution.

II. Present Situation:

History of Senate Confirmation of Supreme Court Justices in Florida

Florida's 1868 Constitution provided for a Supreme Court with a chief justice and two associate justices.¹ Similar to analogous provisions in the U.S. Constitution,² justices were appointed by the Governor and confirmed by the Senate for life terms during good behavior.³ The practice of Senate confirmation was thoroughly debated by the judicial article committee at the 1885 constitutional convention, but was ultimately not adopted in the 1885 revision of the State Constitution.⁴ The practice of Senate confirmation was replaced by provisions requiring election of Supreme Court justices.⁵

¹ FLA. CONST. art. VI, s. 3 (1868).

² U.S. CONST., art. 2, s. 2, cl. 2; U.S. CONST., art. 3, s. 1.

³ FLA. CONST. art. VI, s. 3 (1868).

⁴ Walter W. Manley, et al., THE SUPREME COURT OF FLORIDA AND ITS PREDECESSOR COURTS, 1821-1917, 273 (1997).

⁵ FLA. CONST. art. V, s. 2 (1885).

Current Florida Supreme Court Appointment Process

Judicial Nominating Commission

Currently in Florida, appellate judgeships⁶ are filled through a process of nomination and appointment that divides power between the Governor and constitutionally created judicial nominating commissions (JNCs).⁷ There is a separate JNC for the Supreme Court and each district court of appeal, but the current appointment process for both judgeships is the same.⁸ Although the JNCs are created by the Constitution, the details of their composition are provided in statute.⁹

Section 43.291, F.S., provides the following direction for the membership of each JNC:

- Four members of the Florida Bar, appointed by the Governor. These positions are filled by the Governor from a list submitted by the Board of Governors of The Florida Bar containing three nominees recommended for each position. The Governor has the option to reject all of the nominees recommended for a position and request a new list of nominees who have not been previously recommended for the same position; and¹⁰
- Five members appointed by the Governor, at least two of whom are practicing members of The Florida Bar.¹¹

Vacancies on the Supreme Court

In order to appoint a new justice to the Supreme Court, the Governor is required to choose one person from a list containing between three and six potential nominees provided by the appropriate JNC.¹² Under the current system, once the Governor chooses from the JNC's list, that person is officially appointed to the Supreme Court, without requirement for Senate confirmation.

A vacancy on the Supreme Court triggers the Governor's duty to fill the vacancy by appointing one person from the list of candidates provided by the JNC.¹³ The term for the Governor's appointee ends "on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of the appointment."¹⁴ In the next general election at least one year after the appointment, the justice must qualify for retention by a vote of the majority of qualified voters.¹⁵ Once elected for retention, the justice serves a term of six years.¹⁶

⁶ The Governor also fills vacancies on a circuit or county court where judges are elected by a majority vote of the electors in a similar manner. FLA. CONST. art. V, s. 11(b).

⁷ FLA. CONST. art. V, s. 11.

⁸ FLA. CONST. art. V, s. 11(d).

⁹ Section 43.291, F.S.

¹⁰ Section 43.291(1)(a), F.S.

¹¹ Section 43.291(1)(b), F.S.

¹² FLA. CONST. art. V, s. 11(a).

¹³ FLA. CONST. art. V, s. 11(a).

¹⁴ *Id.*

¹⁵ FLA. CONST. art. V, s. 10(a).

¹⁶ *Id.*

Florida Senate Confirmation of Other Appointments

The State Constitution currently provides for Senate confirmation of certain appointees. For example, under article IV, section 6 of the State Constitution, when provided by law, Senate confirmation or the approval of three members of the cabinet shall be required for appointment to any designated executive statutory office. In turn, the Florida Statutes contain numerous references to Senate confirmation of heads of state agencies and other positions. For example, s. 20.05, F.S., specifies that gubernatorial appointment of a department secretary must be confirmed by the Senate.

Section 114.05, F.S., prescribes the procedures employed when a vacancy in office is filled by appointment that requires Senate confirmation. When an appointment is made, the Governor is required to transmit a letter of appointment to the Secretary of State. The letter sets forth the legal authority for the appointment, the office, the name and address of the appointee, the term of the office, and the effective date of the appointment. Upon receipt of the letter of appointment, the Secretary of State transmits to the appointee an oath of office, questionnaire for executive appointment, and a bond form, when required. Once the appropriate paperwork is completed by the appointee and returned to the Secretary of State, a certificate is issued by the Secretary of State and sent to the appointee. A copy of the certificate and the completed questionnaire are then sent to the Senate for confirmation consideration. Once received by the Senate, the President lays the appointment before the Senate for confirmation “in accordance with this section and the applicable Senate rules.”¹⁷

Senate Confirmation of U.S. Supreme Court Justices

The U.S. Constitution empowers the President to nominate Supreme Court justices for appointment, “by and with the Advice and Consent of the Senate.”¹⁸ After the President formally selects a nominee, the “advice and consent” requirement is fulfilled by a confirmation vote in the Senate, which requires a simple majority.¹⁹ In between presidential nomination and final Senate confirmation, the nominee is referred to and considered by the Judiciary Committee before being acted on by the full Senate. The constitutionally prescribed federal model for Supreme Court appointments represents a sharing of power between the executive and legislative branches.²⁰ U.S. Supreme Court justices serve lifetime appointments, as long as they exhibit good behavior.²¹

Constitutional Amendments

Section 1, Article X of the State Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State’s office, or at a special election

¹⁷ Section 114.05(1), F.S.

¹⁸ U.S. CONST., art. 2, s. 2, cl. 2.

¹⁹ Congressional Research Service, *Supreme Court Appointment Process: Roles of the President, Judiciary Committee, and Senate*, 2 (Feb. 19, 2010), available at <http://www.fas.org/sgp/crs/misc/RL31989.pdf> (last visited Mar. 15, 2011).

²⁰ *Id.*

²¹ U.S. CONST., art. 3, s. 1.

held for that purpose. Section 5(e), Article XI of the State Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.²²

III. Effect of Proposed Changes:

This joint resolution proposes a constitutional amendment to add an additional step to the appointment of justices to the Florida Supreme Court by creating the requirement for Senate confirmation of the Governor's appointments. If the Senate votes to not confirm the appointment, the judicial nominating commission (JNC) will reconvene to nominate new potential appointees to the Governor as though a new vacancy had occurred. The JNC will be barred from re-nominating a person whose prior appointment to fill the same vacancy was not confirmed. This measure in effect adds a level of legislative oversight to a process that is currently carried out within the executive branch and the JNC, which is a constitutional entity whose membership the Governor has a role in selecting. It also has the effect of distinguishing the appointment of Supreme Court justices from other appellate judgeships in the state. The joint resolution specifies that the appointment of a justice is effective on the date of Senate confirmation.

The joint resolution provides four different ballot summaries. The first ballot summary directs that it will be placed on the ballot, and each subsequent ballot summary provides that it will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed. This feature appears to have the effect of allowing the proposed amendment to survive up to three successful challenges to the amendment for a defective ballot summary.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²² FLA. CONST. art. XI, s. 5(e).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the joint resolution is passed by the Legislature, the Department of State will bear the costs associated with publishing notice of the proposed amendment and the date of the election at which it will be submitted to electors in one newspaper of general circulation in each county where a newspaper is published.²³

There could also potentially be some cost associated with additional meetings of the Senate to confirm appointees if a vacancy occurs on the Supreme Court at a time when the Legislature would not otherwise be meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

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

²³ FLA. CONST. art. XI, s. 5(d).



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (16) is added to section 97.012,
Florida Statutes, to read:

97.012 Secretary of State as chief election officer.—The
Secretary of State is the chief election officer of the state,
and it is his or her responsibility to:

(16) Provide direction and opinions to the 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.



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14 Section 2. Subsection (18) of section 97.021, Florida
15 Statutes, is amended to read:

16 97.021 Definitions.—For the purposes of this code, except
17 where the context clearly indicates otherwise, the term:

18 (18) "Minor political party" is any group as specified
19 ~~defined in s. 103.095 this subsection~~ which on January 1
20 preceding a primary election does not have registered as members
21 5 percent of the total registered electors of the state. ~~Any~~
22 ~~group of citizens organized for the general purposes of electing~~
23 ~~to office qualified persons and determining public issues under~~
24 ~~the democratic processes of the United States may become a minor~~
25 ~~political party of this state by filing with the department a~~
26 ~~certificate showing the name of the organization, the names of~~
27 ~~its current officers, including the members of its executive~~
28 ~~committee, and a copy of its constitution or bylaws. It shall be~~
29 ~~the duty of the minor political party to notify the department~~
30 ~~of any changes in the filing certificate within 5 days of such~~
31 ~~changes.~~

32 Section 3. Section 97.025, Florida Statutes, is amended to
33 read:

34 97.025 Election Code; copies thereof.—A pamphlet of a
35 reprint of the Election Code, adequately indexed, shall be
36 prepared by the Department of State. The pamphlet shall be made
37 available ~~It shall have a sufficient number of these pamphlets~~
38 ~~printed so that one may be given, upon request, to each~~
39 ~~candidate who qualifies with the department. The pamphlet shall~~
40 be made available ~~A sufficient number may be sent to each~~
41 ~~supervisor, prior to the first day of qualifying, so that for~~
42 ~~distribution, upon request, to each candidate who qualifies with~~



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43 the supervisor and ~~to~~ each clerk of elections have access to the
44 pamphlet. The cost of making printing the pamphlets available
45 shall be paid out of funds appropriated for conducting
46 elections.

47 Section 4. Section 97.0575, Florida Statutes, is amended to
48 read:

49 97.0575 Third-party voter registrations.-

50 (1) Before engaging in any voter registration activities, a
51 third-party voter registration organization must register and
52 provide to the division, in an electronic format, the following
53 information:

54 (a) The names of the officers of the organization and the
55 name and permanent address of the organization.

56 (b) The name and address of the organization's registered
57 agent in the state.

58 (c) The names, permanent addresses, temporary addresses, if
59 any, and dates of birth of each registration agent registering
60 persons to vote in this state on behalf of the organization.

61 (d) A sworn statement from each registration agent employed
62 by or volunteering for the organization stating that the agent
63 will obey all state laws and rules regarding the registration of
64 voters. Such statement must be on a form containing notice of
65 applicable criminal penalties for false registration.

66 (2) The division or the supervisor of elections shall make
67 voter registration forms available to third-party voter
68 registration organizations. All such forms must contain
69 information identifying the organization to which the forms are
70 provided. The division and each supervisor of elections shall
71 maintain a database of all third-party registration



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72 organizations and the voter registration forms assigned to the
73 third-party registration organizations. Such information must be
74 provided in an electronic format as provided by division rule.
75 By noon of each day, such information must also be updated, made
76 publicly available, and, with respect to records in each
77 supervisor's database, contemporaneously provided to the
78 division.

79 (3) (a) A third-party voter registration organization that
80 collects voter registration applications serves as a fiduciary
81 to the applicant, ensuring that any voter registration
82 application entrusted to the organization, irrespective of party
83 affiliation, race, ethnicity, or gender, shall be promptly
84 delivered to the division or the supervisor of elections within
85 48 hours after the applicant completes it or the next business
86 day if the appropriate office is closed for that 48-hour period.
87 If a voter registration application collected by any third-party
88 voter registration organization is not promptly delivered to the
89 division or supervisor of elections, the third-party voter
90 registration organization is liable for the following fines:

91 1. A fine in the amount of \$50 for each application
92 received by the division or the supervisor of elections more
93 than 10 days after the applicant delivered the completed voter
94 registration application to the third-party voter registration
95 organization or any person, entity, or agent acting on its
96 behalf. A fine in the amount of \$250 for each application
97 received if the third-party registration organization or person,
98 entity, or agency acting on its behalf acted willfully.

99 2. A fine in the amount of \$100 for each application
100 collected by a third-party voter registration organization or



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101 any person, entity, or agent acting on its behalf, before book
102 closing for any given election for federal or state office and
103 received by the division or the supervisor of elections after
104 the book-closing deadline for such election. A fine in the
105 amount of \$500 for each application received if the third-party
106 registration organization or person, entity, or agency acting on
107 its behalf acted willfully.

108 3. A fine in the amount of \$500 for each application
109 collected by a third-party voter registration organization or
110 any person, entity, or agent acting on its behalf, which is not
111 submitted to the division or supervisor of elections. A fine in
112 the amount of \$1,000 for any application not submitted if the
113 third-party registration organization or person, entity, or
114 agency acting on its behalf acted willfully.

115
116 The aggregate fine pursuant to this paragraph which may be
117 assessed against a third-party voter registration organization,
118 including affiliate organizations, for violations committed in a
119 calendar year is \$1,000. The fines provided in this subsection
120 shall be reduced by three-fourths in cases in which the third-
121 party voter registration organization has complied with
122 subsection (1).

123 (b) A showing by the organization that the failure to
124 deliver the voter registration application within the required
125 timeframe is based upon force majeure or impossibility of
126 performance shall be an affirmative defense to a violation of
127 this subsection. The Secretary of State may waive the fines
128 described in this subsection upon a showing that the failure to
129 deliver the voter registration application promptly is based



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130 upon force majeure or impossibility of performance.

131 (4) If the Secretary of State reasonably believes that a
132 person has committed a violation of any provision of this
133 section, the secretary shall refer the matter to the Attorney
134 General for enforcement. The Attorney General may institute a
135 civil action for a violation of this section or to prevent a
136 violation of this section. An action for relief may include a
137 permanent or temporary injunction, a restraining order, or any
138 other appropriate order.

139 ~~(1) Prior to engaging in any voter registration activities,~~
140 ~~a third-party voter registration organization shall name a~~
141 ~~registered agent in the state and submit to the division, in a~~
142 ~~form adopted by the division, the name of the registered agent~~
143 ~~and the name of those individuals responsible for the day-to-day~~
144 ~~operation of the third-party voter registration organization,~~
145 ~~including, if applicable, the names of the entity's board of~~
146 ~~directors, president, vice president, managing partner, or such~~
147 ~~other individuals engaged in similar duties or functions. On or~~
148 ~~before the 15th day after the end of each calendar quarter, each~~
149 ~~third-party voter registration organization shall submit to the~~
150 ~~division a report providing the date and location of any~~
151 ~~organized voter registration drives conducted by the~~
152 ~~organization in the prior calendar quarter.~~

153 ~~(2) The failure to submit the information required by~~
154 ~~subsection (1) does not subject the third-party voter~~
155 ~~registration organization to any civil or criminal penalties for~~
156 ~~such failure, and the failure to submit such information is not~~
157 ~~a basis for denying such third-party voter registration~~
158 ~~organization with copies of voter registration application~~



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159 forms.

160 ~~(3) A third-party voter registration organization that~~
161 ~~collects voter registration applications serves as a fiduciary~~
162 ~~to the applicant, ensuring that any voter registration~~
163 ~~application entrusted to the third-party voter registration~~
164 ~~organization, irrespective of party affiliation, race,~~
165 ~~ethnicity, or gender shall be promptly delivered to the division~~
166 ~~or the supervisor of elections. If a voter registration~~
167 ~~application collected by any third-party voter registration~~
168 ~~organization is not promptly delivered to the division or~~
169 ~~supervisor of elections, the third-party voter registration~~
170 ~~organization shall be liable for the following fines:~~

171 ~~(a) A fine in the amount of \$50 for each application~~
172 ~~received by the division or the supervisor of elections more~~
173 ~~than 10 days after the applicant delivered the completed voter~~
174 ~~registration application to the third-party voter registration~~
175 ~~organization or any person, entity, or agent acting on its~~
176 ~~behalf. A fine in the amount of \$250 for each application~~
177 ~~received if the third-party registration organization or person,~~
178 ~~entity, or agency acting on its behalf acted willfully.~~

179 ~~(b) A fine in the amount of \$100 for each application~~
180 ~~collected by a third-party voter registration organization or~~
181 ~~any person, entity, or agent acting on its behalf, prior to book~~
182 ~~closing for any given election for federal or state office and~~
183 ~~received by the division or the supervisor of elections after~~
184 ~~the book closing deadline for such election. A fine in the~~
185 ~~amount of \$500 for each application received if the third-party~~
186 ~~registration organization or person, entity, or agency acting on~~
187 ~~its behalf acted willfully.~~



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188 ~~(c) A fine in the amount of \$500 for each application~~
189 ~~collected by a third-party voter registration organization or~~
190 ~~any person, entity, or agent acting on its behalf, which is not~~
191 ~~submitted to the division or supervisor of elections. A fine in~~
192 ~~the amount of \$1,000 for any application not submitted if the~~
193 ~~third-party registration organization or person, entity, or~~
194 ~~agency acting on its behalf acted willfully.~~

195
196 ~~The aggregate fine pursuant to this subsection which may be~~
197 ~~assessed against a third-party voter registration organization,~~
198 ~~including affiliate organizations, for violations committed in a~~
199 ~~calendar year shall be \$1,000. The fines provided in this~~
200 ~~subsection shall be reduced by three-fourths in cases in which~~
201 ~~the third-party voter registration organization has complied~~
202 ~~with subsection (1). The secretary shall waive the fines~~
203 ~~described in this subsection upon a showing that the failure to~~
204 ~~deliver the voter registration application promptly is based~~
205 ~~upon force majeure or impossibility of performance.~~

206 ~~(5)-(4)-(a)~~ The division shall adopt by rule a form to elicit
207 specific information concerning the facts and circumstances from
208 a person who claims to have been registered to vote by a third-
209 party voter registration organization but who does not appear as
210 an active voter on the voter registration rolls. The division
211 shall also adopt rules to ensure the integrity of the
212 registration process, including rules requiring that third-party
213 voter registration organizations account for all state and
214 federal registration forms used by their registration agents.

215 ~~(b) The division may investigate any violation of this~~
216 ~~section. Civil fines shall be assessed by the division and~~



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217 ~~enforced through any appropriate legal proceedings.~~

218 ~~(5) The date on which an applicant signs a voter~~
219 ~~registration application is presumed to be the date on which the~~
220 ~~third party voter registration organization received or~~
221 ~~collected the voter registration application.~~

222 (6) The civil fines provided in this section are in
223 addition to any applicable criminal penalties.

224 ~~(7) Fines collected pursuant to this section shall be~~
225 ~~annually appropriated by the Legislature to the department for~~
226 ~~enforcement of this section and for voter education.~~

227 ~~(8) The division may adopt rules to administer this~~
228 ~~section.~~

229 Section 5. Section 97.071, Florida Statutes, is amended to
230 read:

231 97.071 Voter information card.—

232 (1) A voter information card shall be furnished by the
233 supervisor to all registered voters residing in the supervisor's
234 county. The card must contain:

235 (a) Voter's registration number.

236 (b) Date of registration.

237 (c) Full name.

238 (d) Party affiliation.

239 (e) Date of birth.

240 (f) Address of legal residence.

241 (g) Precinct number.

242 (h) Polling place address.

243 (i) ~~(h)~~ Name of supervisor and contact information of
244 supervisor.

245 (j) ~~(i)~~ Other information deemed necessary by the



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246 supervisor.

247 (2) A voter may receive a replacement voter information
248 card by providing a signed, written request for a replacement
249 card to a voter registration official. Upon verification of
250 registration, the supervisor shall issue the voter a duplicate
251 card without charge.

252 (3) In the case of a change of name, address of legal
253 residence, polling place address, or party affiliation, the
254 supervisor shall issue the voter a new voter information card.

255 Section 6. The supervisor must meet the requirements of
256 section 5 of this act for any elector who registers to vote or
257 who is issued a new voter information card pursuant to s.
258 97.071(2) or (3), Florida Statutes, on or after August 1, 2012.

259 Section 7. Subsection (1) of section 97.073, Florida
260 Statutes, is amended to read:

261 97.073 Disposition of voter registration applications;
262 cancellation notice.—

263 (1) The supervisor must notify each applicant of the
264 disposition of the applicant's voter registration application as
265 follows within 5 business days after the voter registration
266 information is entered into the statewide voter registration
267 system:

268 (a) If an application is approved, the supervisor shall
269 mail a voter information card. A voter information card sent to
270 an applicant constitutes a notice of registration.

271 (b) If an application is incomplete for failure to provide
272 any of the information required by s. 97.053(5), the supervisor
273 shall mail a notice requesting the missing information.

274 (c) If an application is a duplicate of a current



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275 registration record, the supervisor shall process the
276 application as if it were an update, including a signature
277 update, to the record and send a new voter information card.

278 (d) If an application is denied, the supervisor shall mail-
279 ~~The notice must inform the applicant that the application has~~
280 ~~been approved, is incomplete, has been denied, or is a duplicate~~
281 ~~of a current registration. A voter information card sent to an~~
282 ~~applicant constitutes notice of approval of registration. If the~~
283 ~~application is incomplete, the supervisor must request that the~~
284 ~~applicant supply the missing information using a voter~~
285 ~~registration application signed by the applicant. a notice of~~
286 ~~denial informing ~~must inform~~ the applicant of the reason the~~
287 ~~application was denied.~~

288 Section 8. Subsections (1) and (2) of section 97.1031,
289 Florida Statutes, are amended to read:

290 97.1031 Notice of change of residence, change of name, or
291 change of party affiliation.-

292 (1) (a) When an elector changes his or her residence
293 address, the elector must notify the supervisor of elections.
294 Except as provided in paragraph (b), an address change must be
295 submitted using a voter registration application.

296 (b) If the address change is within the state and notice is
297 provided to the supervisor of elections of the county where the
298 elector has moved, the elector may do so by:

299 1. Contacting the supervisor of elections via telephone or
300 electronic means, in which case the elector must provide his or
301 her date of birth; or

302 2. Submitting the change on a voter registration
303 application or other signed written notice. ~~moves from the~~



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304 ~~address named on that person's voter registration record to~~
305 ~~another address within the same county, the elector must provide~~
306 ~~notification of such move to the supervisor of elections of that~~
307 ~~county. The elector may provide the supervisor a signed, written~~
308 ~~notice or may notify the supervisor by telephone or electronic~~
309 ~~means. However, notification of such move other than by signed,~~
310 ~~written notice must include the elector's date of birth. An~~
311 ~~elector may also provide notification to other voter~~
312 ~~registration officials as provided in subsection (2). A voter~~
313 ~~information card reflecting the new information shall be issued~~
314 ~~to the elector as provided in subsection (3).~~

315 (2) ~~When an elector moves from the address named on that~~
316 ~~person's voter registration record to another address in a~~
317 ~~different county but within the state, the elector seeks to~~
318 ~~change party affiliation, or the name of an elector is changed~~
319 ~~by marriage or other legal process, the elector shall notify his~~
320 ~~or her supervisor of elections or other provide notice of such~~
321 ~~change to a voter registration official by using a voter~~
322 ~~registration application signed written notice that contains the~~
323 ~~elector's date of birth by the elector. When an elector changes~~
324 ~~his or her name by marriage or other legal process, the elector~~
325 ~~shall notify his or her supervisor of elections or other voter~~
326 ~~registration official by using a signed written notice that~~
327 ~~contains the elector's date of birth or voter's registration~~
328 ~~number. A voter information card reflecting the new information~~
329 ~~shall be issued to the elector as provided in subsection (3).~~

330 Section 9. Subsections (3) and (6) of section 98.075,
331 Florida Statutes, are amended to read:

332 98.075 Registration records maintenance activities;



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333 ineligibility determinations.-

334 (3) DECEASED PERSONS.-

335 (a)1. The department shall identify those registered voters
336 who are deceased by comparing information ~~on the lists of~~
337 ~~deceased persons~~ received from either:

338 a. The Department of Health as provided in s. 98.093; ~~or-~~

339 b. The United States Social Security Administration,
340 including, but not limited to, any master death file or index
341 compiled by the United States Social Security Administration.

342 2. Within 7 days after ~~Upon~~ receipt of such information
343 through the statewide voter registration system, the supervisor
344 shall remove the name of the registered voter.

345 (b) The supervisor shall remove the name of a deceased
346 registered voter from the statewide voter registration system
347 upon receipt of a copy of a death certificate issued by a
348 governmental agency authorized to issue death certificates.

349 (6) OTHER BASES FOR INELIGIBILITY.-If the department or
350 supervisor receives information ~~other than~~ from ~~the~~ sources
351 other than those identified in subsections (2)-(5) that a
352 registered voter is ineligible because he or she is deceased,
353 adjudicated a convicted felon without having had his or her
354 civil rights restored, adjudicated mentally incapacitated
355 without having had his or her voting rights restored, does not
356 meet the age requirement pursuant to s. 97.041, is not a United
357 States citizen, is a fictitious person, or has listed a
358 residence that is not his or her legal residence, the supervisor
359 must ~~shall~~ adhere to the procedures set forth in subsection (7)
360 prior to the removal of a registered voter's name from the
361 statewide voter registration system.



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362 Section 10. Section 98.093, Florida Statutes, is amended to
363 read:

364 98.093 Duty of officials to furnish information relating to
365 ~~lists of~~ deceased persons, persons adjudicated mentally
366 incapacitated, and persons convicted of a felony.-

367 (1) In order to identify ineligible registered voters and
368 maintain ~~ensure the maintenance of~~ accurate and current voter
369 registration records in the statewide voter registration system
370 pursuant to procedures in s. 98.065 or s. 98.075, it is
371 necessary for the department and supervisors of elections to
372 receive or access certain information from state and federal
373 officials and entities in the format prescribed. ~~The department~~
374 ~~and supervisors of elections shall use the information provided~~
375 ~~from the sources in subsection (2) to maintain the voter~~
376 ~~registration records.~~

377 (2) To the maximum extent feasible, state and local
378 government agencies shall facilitate provision of information
379 and access to data to the department, including, but not limited
380 to, databases that contain reliable criminal records and records
381 of deceased persons. State and local government agencies that
382 provide such data shall do so without charge if the direct cost
383 incurred by those agencies is not significant.

384 (a) The Department of Health shall furnish monthly to the
385 department a list containing the name, address, date of birth,
386 date of death, social security number, race, and sex of each
387 deceased person 17 years of age or older.

388 (b) Each clerk of the circuit court shall furnish monthly
389 to the department a list of those persons who have been
390 adjudicated mentally incapacitated with respect to voting during



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391 the preceding calendar month, a list of those persons whose
392 mental capacity with respect to voting has been restored during
393 the preceding calendar month, and a list of those persons who
394 have returned signed jury notices during the preceding months to
395 the clerk of the circuit court indicating a change of address.
396 Each list shall include the name, address, date of birth, race,
397 sex, and, whichever is available, the Florida driver's license
398 number, Florida identification card number, or social security
399 number of each such person.

400 (c) Upon receipt of information from the United States
401 Attorney, listing persons convicted of a felony in federal
402 court, the department shall use such information to identify
403 registered voters or applicants for voter registration who may
404 be potentially ineligible based on information provided in
405 accordance with s. 98.075.

406 (d) The Department of Law Enforcement shall identify those
407 persons who have been convicted of a felony who appear in the
408 voter registration records supplied by the statewide voter
409 registration system, in a time and manner that enables the
410 department to meet its obligations under state and federal law.

411 (e) The Florida Parole Commission Board of Executive
412 Clemency shall furnish at least bimonthly ~~monthly~~ to the
413 department data, including the identity ~~a list~~ of those persons
414 granted clemency in the preceding month or any updates to prior
415 records which have occurred in the preceding month. The data
416 ~~list~~ shall contain the commission's Board of Executive Clemency
417 case number and the person's name, address, date of birth,
418 race, gender ~~sex~~, Florida driver's license number, Florida
419 identification card number, or the last four digits of the



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420 social security number, if available, and references to record
421 identifiers assigned by the Department of Corrections and the
422 Department of Law Enforcement, a unique identifier of each
423 clemency case, and the effective date of clemency of each
424 person.

425 (f) The Department of Corrections shall identify those
426 persons who have been convicted of a felony and committed to its
427 custody or placed on community supervision. The information must
428 be provided to the department at a time and in manner that
429 enables the department to identify registered voters who are
430 convicted felons and to meet its obligations under state and
431 federal law. ~~furnish monthly to the department a list of those~~
432 ~~persons transferred to the Department of Corrections in the~~
433 ~~preceding month or any updates to prior records which have~~
434 ~~occurred in the preceding month. The list shall contain the~~
435 ~~name, address, date of birth, race, sex, social security number,~~
436 ~~Department of Corrections record identification number, and~~
437 ~~associated Department of Law Enforcement felony conviction~~
438 ~~record number of each person.~~

439 (g) The Department of Highway Safety and Motor Vehicles
440 shall furnish monthly to the department a list of those persons
441 whose names have been removed from the driver's license database
442 because they have been licensed in another state. The list shall
443 contain the name, address, date of birth, sex, social security
444 number, and driver's license number of each such person.

445 (3) ~~Nothing in~~ This section does not ~~shall~~ limit or
446 restrict the supervisor in his or her duty to remove the names
447 of persons from the statewide voter registration system pursuant
448 to s. 98.075(7) based upon information received from other



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449 sources.

450 Section 11. Effective July 1, 2012, subsections (1) and (2)
451 of section 98.0981, Florida Statutes, are amended to read:

452 98.0981 Reports; voting history; statewide voter
453 registration system information; precinct-level election
454 results; book closing statistics.—

455 (1) VOTING HISTORY AND STATEWIDE VOTER REGISTRATION SYSTEM
456 INFORMATION.—

457 (a) Within 30 ~~45~~ days after certification by the Elections
458 Canvassing Commission of a presidential preference primary,
459 special election, primary election, or a general election,
460 supervisors of elections shall transmit to the department, in a
461 uniform electronic format specified in paragraph (d) ~~by the~~
462 ~~department~~, completely updated voting history information for
463 each qualified voter who voted.

464 (b) After receipt of the information in paragraph (a), the
465 department shall prepare a report in electronic format which
466 contains the following information, separately compiled for the
467 primary and general election for all voters qualified to vote in
468 either election:

469 1. The unique identifier assigned to each qualified voter
470 within the statewide voter registration system;

471 2. All information provided by each qualified voter on his
472 or her voter registration application pursuant to s. 97.052(2),
473 except that which is confidential or exempt from public records
474 requirements;

475 3. Each qualified voter's date of registration;

476 4. Each qualified voter's current state representative
477 district, state senatorial district, and congressional district,



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478 assigned by the supervisor of elections;

479 5. Each qualified voter's current precinct; and

480 6. Voting history as transmitted under paragraph (a) to
481 include whether the qualified voter voted at a precinct
482 location, voted during the early voting period, voted by
483 absentee ballot, attempted to vote by absentee ballot that was
484 not counted, attempted to vote by provisional ballot that was
485 not counted, or did not vote.

486 (c) Within 15 ~~60~~ days after certification by the Elections
487 Canvassing Commission of a presidential preference primary,
488 special election, primary election, or a general election, the
489 department shall send to the President of the Senate, the
490 Speaker of the House of Representatives, the Senate Minority
491 Leader, and the House Minority Leader a report in electronic
492 format that includes all information set forth in paragraph (b).

493 (d) File specifications are as follows:

494 1. The file shall contain records designated by the
495 categories below for all qualified voters who, regardless of the
496 voter's county of residence or active or inactive registration
497 status at the book closing for the corresponding election that
498 the file is being created for:

499 a. Voted a regular ballot at a precinct location.

500 b. Voted at a precinct location using a provisional ballot
501 that was subsequently counted.

502 c. Voted a regular ballot during the early voting period.

503 d. Voted during the early voting period using a provisional
504 ballot that was subsequently counted.

505 e. Voted by absentee ballot.

506 f. Attempted to vote by absentee ballot, but the ballot was



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507 not counted.

508 g. Attempted to vote by provisional ballot, but the ballot
509 was not counted in that election.

510 2. Each file shall be created or converted into a tab-
511 delimited format.

512 3. File names shall adhere to the following convention:

513 a. Three-character county identifier as established by the
514 department followed by an underscore.

515 b. Followed by four-character file type identifier of
516 'VH03' followed by an underscore.

517 c. Followed by FVRS election ID followed by an underscore.

518 d. Followed by Date Created followed by an underscore.

519 e. Date format is YYYYMMDD.

520 f. Followed by Time Created - HHMMSS.

521 g. Followed by ".txt".

522 4. Each record shall contain the following columns: Record
523 Identifier, FVRS Voter ID Number, FVRS Election ID Number, Vote
524 Date, Vote History Code, Precinct, Congressional District, House
525 District, Senate District, County Commission District, and
526 School Board District.

527 (e) Each supervisor of elections shall reconcile the voting
528 data within 25 days after a presidential preference primary,
529 special election, primary election, or general election to
530 compare the aggregate total of ballots cast in each precinct as
531 reported in the precinct-level election results to the aggregate
532 total number of voters with voter history for the election for
533 each district.

534 (f) Each supervisor of elections shall submit the results
535 of the data reconciliation as described in paragraph (e) to the



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536 department in an electronic format and give a written
537 explanation for any precincts where the reconciliation as
538 described in paragraph (e) results in a discrepancy between the
539 voter history and the election results.

540 (g) A supervisor of elections shall be required to pay \$50
541 per day for each day the required reports are late or not
542 complete. Fines must be paid from a supervisor of elections'
543 personal funds. Fines shall be remitted to the department, which
544 shall transmit the remitted fines for deposit into the General
545 Revenue Fund.

546 (2) (a) PRECINCT-LEVEL ELECTION RESULTS.—Within 25 ~~45~~ days
547 after the date of a presidential preference primary election, a
548 special election, primary election, or a general election, the
549 supervisors of elections shall collect and submit to the
550 department precinct-level election results for the election in a
551 uniform electronic format specified by paragraph (c) ~~the~~
552 ~~department~~. The precinct-level election results shall be
553 compiled separately for the primary or special primary election
554 that preceded the general or special general election,
555 respectively. The results shall specifically include for each
556 precinct the ~~aggregate~~ total of all ballots cast for each
557 candidate or nominee to fill a national, state, county, or
558 district office or proposed constitutional amendment, with
559 subtotals for each candidate and ballot type. "All ballots cast"
560 means ballots cast by voters who cast a ballot whether at a
561 precinct location, by absentee ballot including overseas
562 absentee ballots, during the early voting period, or by
563 provisional ballot.

564 (b) The department shall make such information available on



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565 a searchable, sortable, and downloadable database via its
566 website that also includes the file layout and codes. The
567 database shall be searchable and sortable by county, precinct,
568 and candidate. The database shall be downloadable in a tab-
569 delimited format. The database shall be available for download
570 county-by-county and also as a statewide file. Such report shall
571 also be made available upon request.

572 (c) The files containing the precinct-level election
573 results shall be created in accordance with the applicable file
574 specification:

575 1. The precinct-level results file shall be created or
576 converted into a tab-delimited text file.

577 2. The row immediately before the first data record shall
578 contain the column names of the data elements that make up the
579 data records. There shall be one header record followed by
580 multiple data records.

581 3. The data records shall include the following columns:
582 County Name, Election Number, Election Date, Unique Precinct
583 Identifier, Precinct Polling Location, Total Registered Voters,
584 Total Registered Republicans, Total Registered Democrats, Total
585 Registered All Other Parties, Contest Name,
586 Candidate/Retention/Issue Name, Candidate Ethnicity, Division of
587 Elections Unique Candidate Identifying Number, Candidate Party,
588 District, Undervote Total, Overvote Total, Write-in Total, and
589 Vote Total.

590 (d) A supervisor of elections shall be required to pay \$50
591 per day for each day the required reports are late or not
592 complete. Fines must be paid from a supervisor of elections'
593 personal funds. Fines shall be remitted to the department, which



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594 shall transmit the remitted fines for deposit into the General
595 Revenue Fund.

596 Section 12. Subsection (5) of section 99.012, Florida
597 Statutes, is amended to read:

598 99.012 Restrictions on individuals qualifying for public
599 office.—

600 (5) A person may not be qualified as a candidate for an
601 election or appear on the ballot unless the person complies with
602 this section. The name of any person who does not comply with
603 this section may be removed from every ballot on which it
604 appears when ordered by a circuit court upon the petition of an
605 elector or the Department of State.

606 Section 13. Paragraphs (a) and (b) of subsection (1) of
607 section 99.021, Florida Statutes, are amended, and subsection
608 (3) is added to that section, to read:

609 99.021 Form of candidate oath.—

610 (1) (a) 1. Each candidate, whether a party candidate, a
611 candidate with no party affiliation, or a write-in candidate, in
612 order to qualify for nomination or election to any office other
613 than a judicial office as defined in chapter 105 or a federal
614 office, shall take and subscribe to an oath or affirmation in
615 writing. A ~~printed~~ copy of the oath or affirmation shall be made
616 available ~~furnished~~ to the candidate by the officer before whom
617 such candidate seeks to qualify and shall be substantially in
618 the following form:

619
620 State of Florida

621 County of....

622 Before me, an officer authorized to administer oaths,



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623 personally appeared ...(please print name as you wish it to
624 appear on the ballot)..., to me well known, who, being sworn,
625 says that he or she is a candidate for the office of; that
626 he or she is a qualified elector of County, Florida; that
627 he or she is qualified under the Constitution and the laws of
628 Florida to hold the office to which he or she desires to be
629 nominated or elected; ~~that he or she has taken the oath required~~
630 ~~by ss. 876.05-876.10, Florida Statutes;~~ that he or she has
631 qualified for no other public office in the state, the term of
632 which office or any part thereof runs concurrent with that of
633 the office he or she seeks; ~~and~~ that he or she has resigned from
634 any office from which he or she is required to resign pursuant
635 to s. 99.012, Florida Statutes; and that he or she will support
636 the Constitution of the United States and the Constitution of
637 the State of Florida.

638 ... (Signature of candidate)...

639 ... (Address)...

640
641 Sworn to and subscribed before me this day of,
642 ...(year)..., at County, Florida.
643 ... (Signature and title of officer administering oath)...

644
645 2. Each candidate for federal office, whether a party
646 candidate, a candidate with no party affiliation, or a write-in
647 candidate, in order to qualify for nomination or election to
648 office shall take and subscribe to an oath or affirmation in
649 writing. A ~~printed~~ copy of the oath or affirmation shall be made
650 available ~~furnished~~ to the candidate by the officer before whom
651 such candidate seeks to qualify and shall be substantially in



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652 the following form:

653

654 State of Florida

655 County of

656 Before me, an officer authorized to administer oaths,
657 personally appeared ... (please print name as you wish it to
658 appear on the ballot) ..., to me well known, who, being sworn,
659 says that he or she is a candidate for the office of; that
660 he or she is qualified under the Constitution and laws of the
661 United States to hold the office to which he or she desires to
662 be nominated or elected; ~~and~~ that he or she has qualified for no
663 other public office in the state, the term of which office or
664 any part thereof runs concurrent with that of the office he or
665 she seeks; and that he or she will support the Constitution of
666 the United States.

667 ... (Signature of candidate) ...

668 ... (Address) ...

669

670 Sworn to and subscribed before me this day of,

671 ... (year) ..., at County, Florida.

672 ... (Signature and title of officer administering oath) ...

673

674 (b) In addition, any person seeking to qualify for
675 nomination as a candidate of any political party shall, at the
676 time of subscribing to the oath or affirmation, state in
677 writing:

678 1. The party of which the person is a member.

679 2. That the person ~~is not a registered member of any other~~
680 ~~political party and~~ has not been a registered member of



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681 ~~candidate for nomination for any other political party in the~~
682 ~~calendar year leading up to the general election for a period of~~
683 ~~6 months preceding the general election~~ for which the person
684 seeks to qualify.

685 3. That the person has paid the assessment levied against
686 him or her, if any, as a candidate for said office by the
687 executive committee of the party of which he or she is a member.

688 (3) This section does not apply to a person who seeks to
689 qualify for election pursuant to ss. 103.021 and 103.101.

690 Section 14. Subsections (5) and (7) of section 99.061,
691 Florida Statutes, are amended, and subsection (11) is added to
692 that section, to read:

693 99.061 Method of qualifying for nomination or election to
694 federal, state, county, or district office.-

695 (5) At the time of qualifying for office, each candidate
696 for a constitutional office shall file a full and public
697 disclosure of financial interests pursuant to s. 8, Art. II of
698 the State Constitution, which must be verified under oath or
699 affirmation pursuant to s. 92.525(1)(a), and a candidate for any
700 other office, including local elective office, shall file a
701 statement of financial interests pursuant to s. 112.3145.

702 (7) (a) In order for a candidate to be qualified, the
703 original of the following items must be received by the filing
704 officer by the end of the qualifying period:

705 1. A properly executed check drawn upon the candidate's
706 campaign account payable to the person or entity as prescribed
707 by the filing officer in an amount not less than the fee
708 required by s. 99.092, unless the candidate obtained the
709 required number of signatures on petitions ~~or, in lieu thereof,~~



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710 ~~as applicable, the copy of the notice of obtaining ballot~~
711 ~~position~~ pursuant to s. 99.095. The filing fee for a special
712 district candidate is not required to be drawn upon the
713 candidate's campaign account. If a candidate's check is returned
714 by the bank for any reason, the filing officer shall immediately
715 notify the candidate and the candidate shall have until, the end
716 of qualifying ~~notwithstanding, have 48 hours from the time such~~
717 ~~notification is received, excluding Saturdays, Sundays, and~~
718 ~~legal holidays,~~ to pay the fee with a cashier's check purchased
719 from funds of the campaign account. Failure to pay the fee as
720 provided in this subparagraph shall disqualify the candidate.

721 2. The candidate's oath required by s. 99.021, which must
722 contain the name of the candidate as it is to appear on the
723 ballot; the office sought, including the district or group
724 number if applicable; and the signature of the candidate, which
725 must be verified under oath or affirmation pursuant to s.
726 92.525(1)(a) duly acknowledged.

727 ~~3. The loyalty oath required by s. 876.05, signed by the~~
728 ~~candidate and duly acknowledged.~~

729 ~~3.4.~~ If the office sought is partisan, the written
730 statement of political party affiliation required by s.
731 99.021(1)(b).

732 ~~4.5.~~ Unless the original is filed with the qualifying
733 officer before the beginning of the qualifying period for the
734 office sought, the completed form for the appointment of
735 campaign treasurer and designation of campaign depository, as
736 required by s. 106.021.

737 ~~5.6.~~ The full and public disclosure or statement of
738 financial interests required by subsection (5). A public officer



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739 who has filed the full and public disclosure or statement of
740 financial interests with the Commission on Ethics or the
741 supervisor of elections prior to qualifying for office may file
742 a copy of that disclosure at the time of qualifying.

743 (b) If the filing officer receives qualifying papers during
744 the qualifying period prescribed in this section which ~~that~~ do
745 not include all items as required by paragraph (a) prior to the
746 last day of qualifying, the filing officer shall make a
747 reasonable effort to notify the candidate of the missing or
748 incomplete items and shall inform the candidate that all
749 required items must be received by the close of qualifying. A
750 candidate's name as it is to appear on the ballot may not be
751 changed after the end of qualifying.

752 (c) The filing officer performs a ministerial function in
753 reviewing qualifying papers. In determining whether a candidate
754 is qualified, the filing officer shall review the qualifying
755 papers to determine whether all items required by paragraph (a)
756 have been properly filed and whether each item is complete on
757 its face, including whether items that must be verified have
758 been properly verified pursuant to s. 92.525(1)(a). The filing
759 officer may not determine whether the contents of the qualifying
760 papers are accurate.

761 (11) The decision of the filing officer concerning whether
762 a candidate is qualified is exempt from the provisions of
763 chapter 120.

764 Section 15. Subsection (2) of section 99.063, Florida
765 Statutes, is amended to read:

766 99.063 Candidates for Governor and Lieutenant Governor.—

767 (2) No later than 5 p.m. of the 9th day following the



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768 primary election, each designated candidate for Lieutenant
769 Governor shall file with the Department of State:

770 (a) The candidate's oath required by s. 99.021, which must
771 contain the name of the candidate as it is to appear on the
772 ballot; the office sought; and the signature of the candidate,
773 which must be verified under oath or affirmation pursuant to s.
774 92.525(1) (a) ~~duly acknowledged.~~

775 ~~(b) The loyalty oath required by s. 876.05, signed by the~~
776 ~~candidate and duly acknowledged.~~

777 ~~(b)(e)~~ If the office sought is partisan, the written
778 statement of political party affiliation required by s.
779 99.021(1) (b) .

780 ~~(c)(d)~~ The full and public disclosure of financial
781 interests pursuant to s. 8, Art. II of the State Constitution. A
782 public officer who has filed the full and public disclosure with
783 the Commission on Ethics prior to qualifying for office may file
784 a copy of that disclosure at the time of qualifying.

785 Section 16. Subsection (1) of section 99.092, Florida
786 Statutes, is amended to read:

787 99.092 Qualifying fee of candidate; notification of
788 Department of State.—

789 (1) Each person seeking to qualify for nomination or
790 election to any office, except a person seeking to qualify by
791 the petition process pursuant to s. 99.095 and except a person
792 seeking to qualify as a write-in candidate, shall pay a
793 qualifying fee, which shall consist of a filing fee and election
794 assessment, to the officer with whom the person qualifies, and
795 any party assessment levied, and shall attach the original or
796 signed duplicate of the receipt for his or her party assessment



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797 or pay the same, in accordance with the provisions of s.
798 103.121, at the time of filing his or her other qualifying
799 papers. The amount of the filing fee is 3 percent of the annual
800 salary of the office. The amount of the election assessment is 1
801 percent of the annual salary of the office sought. The election
802 assessment shall be ~~deposited into the Clearing Funds Trust Fund~~
803 ~~and~~ transferred to the Elections Commission Trust Fund ~~within~~
804 ~~the Department of Legal Affairs~~. The amount of the party
805 assessment is 2 percent of the annual salary. The annual salary
806 of the office for purposes of computing the filing fee, election
807 assessment, and party assessment shall be computed by
808 multiplying 12 times the monthly salary, excluding any special
809 qualification pay, authorized for such office as of July 1
810 immediately preceding the first day of qualifying. No qualifying
811 fee shall be returned to the candidate unless the candidate
812 withdraws his or her candidacy before the last date to qualify.
813 If a candidate dies prior to an election and has not withdrawn
814 his or her candidacy before the last date to qualify, the
815 candidate's qualifying fee shall be returned to his or her
816 designated beneficiary, and, if the filing fee or any portion
817 thereof has been transferred to the political party of the
818 candidate, the Secretary of State shall direct the party to
819 return that portion to the designated beneficiary of the
820 candidate.

821 Section 17. Subsection (1) of section 99.093, Florida
822 Statutes, is amended to read:

823 99.093 Municipal candidates; election assessment.—

824 (1) Each person seeking to qualify for nomination or
825 election to a municipal office shall pay, at the time of



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826 qualifying for office, an election assessment. The election
827 assessment shall be an amount equal to 1 percent of the annual
828 salary of the office sought. Within 30 days after the close of
829 qualifying, the qualifying officer shall forward all assessments
830 collected pursuant to this section to the Florida Elections
831 Commission ~~Department of State~~ for deposit in ~~transfer to~~ the
832 Elections Commission Trust Fund ~~within the Department of Legal~~
833 ~~Affairs~~.

834 Section 18. Paragraph (d) is added to subsection (2) of
835 section 99.095, Florida Statutes, to read:

836 99.095 Petition process in lieu of a qualifying fee and
837 party assessment.-

838 (2)

839 (d) In a year of apportionment, any candidate for county or
840 district office seeking ballot position by the petition process
841 may obtain the required number of signatures from any registered
842 voter in the respective county, regardless of district
843 boundaries. The candidate shall obtain at least the number of
844 signatures equal to 1 percent of the total number of registered
845 voters, as shown by a compilation by the department for the
846 immediately preceding general election, divided by the total
847 number of districts of the office involved.

848 Section 19. Subsections (1), (3), and (5) of section
849 99.097, Florida Statutes, are amended, and subsection (6) is
850 added to that section, to read:

851 99.097 Verification of signatures on petitions.-

852 (1) (a) As determined by each supervisor, based upon local
853 conditions, the checking of names on petitions may be based on
854 the most inexpensive and administratively feasible of either of



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855 the following methods of verification:

856 ~~1.(a) A name-by-name, signature-by-signature~~ check of each
857 petition ~~the number of authorized signatures on the petitions;~~
858 or

859 ~~2.(b) A check of a random sample, as provided by the~~
860 Department of State, of ~~names and signatures on~~ the petitions.
861 The sample must be such that a determination can be made as to
862 whether or not the required number of signatures has ~~have~~ been
863 obtained with a reliability of at least 99.5 percent.

864 (b) Rules and guidelines for this method of petition
865 verification shall be adopted promulgated by the Department of
866 State. Rules and guidelines for a random sample method of
867 verification, which may include a requirement that petitions
868 bear an additional number of names and signatures, not to exceed
869 15 percent of the names and signatures otherwise required. If
870 the petitions do not meet such criteria or if the petitions are
871 prescribed by s. 100.371, then the use of the random sample
872 method of verification is ~~method described in this paragraph~~
873 ~~shall not be~~ available to supervisors.

874 (3) (a) If all other requirements for the petition are met,
875 a signature on a petition shall be verified and counted as valid
876 for a registered voter if, after comparing the signature on the
877 petition and the signature of the registered voter in the voter
878 registration system, the supervisor is able to determine that
879 the petition signer is the same as the registered voter, even if
880 the name on the petition is not in substantially the same form
881 as in the voter registration system. A name on a petition, which
882 ~~name is not in substantially the same form as a name on the~~
883 ~~voter registration books, shall be counted as a valid signature~~



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884 ~~if, after comparing the signature on the petition with the~~
885 ~~signature of the alleged signer as shown on the registration~~
886 ~~books, the supervisor determines that the person signing the~~
887 ~~petition and the person who registered to vote are one and the~~
888 ~~same.~~

889 **(b)** In any situation in which this code requires the form
890 of the petition to be prescribed by the division, no signature
891 shall be counted toward the number of signatures required unless
892 it is on a petition form prescribed by the division.

893 **(c)** ~~(b)~~ If a voter signs a petition and lists an address
894 other than the legal residence where the voter is registered,
895 the supervisor shall treat the signature as if the voter had
896 listed the address where the voter is registered.

897 (5) The results of a verification pursuant to subparagraph
898 (1) (a) 2. ~~paragraph (1) (b)~~ may be contested in the circuit court
899 by the candidate; an announced opponent; a representative of a
900 designated political committee; or a person, party, or other
901 organization submitting the petition. The contestant shall file
902 a complaint, together with the fees prescribed in chapter 28,
903 with the clerk of the circuit court in the county in which the
904 petition is certified or in Leon County if the petition covers
905 more than one county within 10 days after midnight of the date
906 the petition is certified; and the complaint shall set forth the
907 grounds on which the contestant intends to establish his or her
908 right to require a complete check of the petition names and
909 ~~signatures~~ pursuant to subparagraph (1) (a) 1. ~~paragraph (1) (a).~~
910 In the event the court orders a complete check of the petition
911 and the result is not changed as to the success or lack of
912 success of the petitioner in obtaining the requisite number of



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913 valid signatures, then such candidate, unless the candidate has
914 filed the oath stating that he or she is unable to pay such
915 charges; announced opponent; representative of a designated
916 political committee; or party, person, or organization
917 submitting the petition, unless such person or organization has
918 filed the oath stating inability to pay such charges, shall pay
919 to the supervisor of elections of each affected county for the
920 complete check an amount calculated at the rate of 10 cents for
921 each additional signature checked or the actual cost of checking
922 such additional signatures, whichever is less.

923 (6) (a) If any person is paid to solicit signatures on a
924 petition, an undue burden oath may not subsequently be filed in
925 lieu of paying the fee to have signatures verified for that
926 petition.

927 (b) If an undue burden oath has been filed and payment is
928 subsequently made to any person to solicit signatures on a
929 petition, the undue burden oath is no longer valid and a fee for
930 all signatures previously submitted to the supervisor of
931 elections and any that are submitted thereafter shall be paid by
932 the candidate, person, or organization that submitted the undue
933 burden oath. If contributions as defined in s. 106.011 are
934 received, any monetary contributions must first be used to
935 reimburse the supervisor of elections for any signature
936 verification fees that were not paid because of the filing of an
937 undue burden oath.

938 Section 20. Section 100.061, Florida Statutes, is amended
939 to read:

940 100.061 Primary election.—In each year in which a general
941 election is held, a primary election for nomination of



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942 candidates of political parties shall be held on the Tuesday 9
943 ~~10~~ weeks prior to the general election. The candidate receiving
944 the highest number of votes cast in each contest in the primary
945 election shall be declared nominated for such office. If two or
946 more candidates receive an equal and highest number of votes for
947 the same office, such candidates shall draw lots to determine
948 which candidate is nominated.

949 Section 21. Section 100.111, Florida Statutes, is amended
950 to read:

951 100.111 Filling vacancy.—

952 (1) (a) If any vacancy occurs in any office which is
953 required to be filled pursuant to s. 1(f), Art. IV of the State
954 Constitution and the remainder of the term of such office is 28
955 months or longer, then at the next general election a person
956 shall be elected to fill the unexpired portion of such term,
957 commencing on the first Tuesday after the first Monday following
958 such general election.

959 (b) If such a vacancy occurs prior to the first day set by
960 law for qualifying for election to office at such general
961 election, any person seeking nomination or election to the
962 unexpired portion of the term shall qualify within the time
963 prescribed by law for qualifying for other offices to be filled
964 by election at such general election.

965 (c) If such a vacancy occurs prior to the primary election
966 but on or after the first day set by law for qualifying, the
967 Secretary of State shall set dates for qualifying for the
968 unexpired portion of the term of such office. Any person seeking
969 nomination or election to the unexpired portion of the term
970 shall qualify within the time set by the Secretary of State. If



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971 time does not permit party nominations to be made in conjunction
972 with the primary election, the Governor may call a special
973 primary election to select party nominees for the unexpired
974 portion of such term.

975 ~~(2)(a) If, in any state or county office required to be~~
976 ~~filled by election, a vacancy occurs during an election year by~~
977 ~~reason of the incumbent having qualified as a candidate for~~
978 ~~federal office pursuant to s. 99.061, no special election is~~
979 ~~required. Any person seeking nomination or election to the~~
980 ~~office so vacated shall qualify within the time prescribed by s.~~
981 ~~99.061 for qualifying for state or county offices to be filled~~
982 ~~by election.~~

983 ~~(b) If such a vacancy occurs in an election year other than~~
984 ~~the one immediately preceding expiration of the present term,~~
985 ~~the Secretary of State shall notify the supervisor of elections~~
986 ~~in each county served by the office that a vacancy has been~~
987 ~~created. Such notice shall be provided to the supervisor of~~
988 ~~elections not later than the close of the first day set for~~
989 ~~qualifying for state or county office. The supervisor shall~~
990 ~~provide public notice of the vacancy in any manner the Secretary~~
991 ~~of State deems appropriate.~~

992 (2)~~(3)~~ Whenever there is a vacancy for which a special
993 election is required pursuant to s. 100.101, the Governor, after
994 consultation with the Secretary of State, shall fix the dates of
995 a special primary election and a special election. Nominees of
996 political parties shall be chosen under the primary laws of this
997 state in the special primary election to become candidates in
998 the special election. Prior to setting the special election
999 dates, the Governor shall consider any upcoming elections in the



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1000 jurisdiction where the special election will be held. The dates
1001 fixed by the Governor shall be specific days certain and shall
1002 not be established by the happening of a condition or stated in
1003 the alternative. The dates fixed shall provide a minimum of 2
1004 weeks between each election. In the event a vacancy occurs in
1005 the office of state senator or member of the House of
1006 Representatives when the Legislature is in regular legislative
1007 session, the minimum times prescribed by this subsection may be
1008 waived upon concurrence of the Governor, the Speaker of the
1009 House of Representatives, and the President of the Senate. If a
1010 vacancy occurs in the office of state senator and no session of
1011 the Legislature is scheduled to be held prior to the next
1012 general election, the Governor may fix the dates for the special
1013 primary election and for the special election to coincide with
1014 the dates of the primary election and general election. If a
1015 vacancy in office occurs in any district in the state Senate or
1016 House of Representatives or in any congressional district, and
1017 no session of the Legislature, or session of Congress if the
1018 vacancy is in a congressional district, is scheduled to be held
1019 during the unexpired portion of the term, the Governor is not
1020 required to call a special election to fill such vacancy.

1021 (a) The dates for candidates to qualify in such special
1022 election or special primary election shall be fixed by the
1023 Department of State, and candidates shall qualify not later than
1024 noon of the last day so fixed. The dates fixed for qualifying
1025 shall allow a minimum of 14 days between the last day of
1026 qualifying and the special primary election.

1027 (b) The filing of campaign expense statements by candidates
1028 in such special elections or special primaries and by committees



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1029 making contributions or expenditures to influence the results of
1030 such special primaries or special elections shall be not later
1031 than such dates as shall be fixed by the Department of State,
1032 and in fixing such dates the Department of State shall take into
1033 consideration and be governed by the practical time limitations.

1034 (c) The dates for a candidate to qualify by the petition
1035 process pursuant to s. 99.095 in such special primary or special
1036 election shall be fixed by the Department of State. In fixing
1037 such dates the Department of State shall take into consideration
1038 and be governed by the practical time limitations. Any candidate
1039 seeking to qualify by the petition process in a special primary
1040 election shall obtain 25 percent of the signatures required by
1041 s. 99.095.

1042 (d) The qualifying fees and party assessments of such
1043 candidates as may qualify shall be the same as collected for the
1044 same office at the last previous primary for that office. The
1045 party assessment shall be paid to the appropriate executive
1046 committee of the political party to which the candidate belongs.

1047 (e) Each county canvassing board shall make as speedy a
1048 return of the result of such special primary elections and
1049 special elections as time will permit, and the Elections
1050 Canvassing Commission likewise shall make as speedy a canvass
1051 and declaration of the nominees as time will permit.

1052 ~~(3)-(4)~~(a) In the event that death, resignation, withdrawal,
1053 removal, or any other cause or event should cause a party to
1054 have a vacancy in nomination which leaves no candidate for an
1055 office from such party, the filing officer before whom the
1056 candidate qualified ~~Department of State~~ shall notify the chair
1057 of the ~~appropriate state and county, district, or county~~



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1058 political party executive committee of such party~~r~~ and,
1059 1. If the vacancy in nomination is for a statewide office,
1060 the state party chair shall, within 5 days, the chair shall call
1061 a meeting of his or her executive board committee to consider
1062 designation of a nominee to fill the vacancy.
1063 2. If the vacancy in nomination is for a legislative or
1064 multicounty office, the state party chair shall notify the
1065 appropriate county chair or chairs and, within 5 days, the
1066 appropriate county chair or chairs shall call a meeting of the
1067 members of the executive committee in the affected county or
1068 counties to consider designation of a nominee to fill the
1069 vacancy.
1070 3. If the vacancy in nomination is for a county office, the
1071 state party chair shall notify the appropriate county chair and,
1072 within 5 days, the appropriate county chair shall call a meeting
1073 of his or her executive committee to consider designation of a
1074 nominee to fill the vacancy.
1075
1076 The name of any person so designated shall be submitted to the
1077 filing officer before whom the candidate qualified ~~Department of~~
1078 ~~State~~ within 7 days after notice to the chair in order that the
1079 person designated may have his or her name on the ballot of the
1080 ensuing general election. If the name of the new nominee is
1081 submitted after the certification of results of the preceding
1082 primary election, however, the ballots shall not be changed and
1083 the former party nominee's name will appear on the ballot. Any
1084 ballots cast for the former party nominee will be counted for
1085 the person designated by the political party to replace the
1086 former party nominee. If there is no opposition to the party



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1087 nominee, the person designated by the political party to replace
1088 the former party nominee will be elected to office at the
1089 general election. ~~For purposes of this paragraph, the term~~
1090 ~~"district political party executive committee" means the members~~
1091 ~~of the state executive committee of a political party from those~~
1092 ~~counties comprising the area involving a district office.~~

1093 (b) When, under the circumstances set forth in the
1094 preceding paragraph, vacancies in nomination are required to be
1095 filled by committee nominations, such vacancies shall be filled
1096 by party rule. In any instance in which a nominee is selected by
1097 a committee to fill a vacancy in nomination, such nominee shall
1098 pay the same filing fee and take the same oath as the nominee
1099 would have taken had he or she regularly qualified for election
1100 to such office.

1101 (c) Any person who, at the close of qualifying as
1102 prescribed in ss. 99.061 and 105.031, was qualified for
1103 nomination or election to or retention in a public office to be
1104 filled at the ensuing general election or who attempted to
1105 qualify and failed to qualify is prohibited from qualifying as a
1106 candidate to fill a vacancy in nomination for any other office
1107 to be filled at that general election, even if such person has
1108 withdrawn or been eliminated as a candidate for the original
1109 office sought. However, this paragraph does not apply to a
1110 candidate for the office of Lieutenant Governor who applies to
1111 fill a vacancy in nomination for the office of Governor on the
1112 same ticket or to a person who has withdrawn or been eliminated
1113 as a candidate and who is subsequently designated as a candidate
1114 for Lieutenant Governor under s. 99.063.

1115 (4) A vacancy in nomination is not created if an order of a



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1116 court that has become final determines that a nominee did not
1117 properly qualify or did not meet the necessary qualifications to
1118 hold the office for which he or she sought to qualify.

1119 (5) In the event of unforeseeable circumstances not
1120 contemplated in these general election laws concerning the
1121 calling and holding of special primary elections and special
1122 elections resulting from court order or other unpredictable
1123 circumstances, the Department of State shall have the authority
1124 to provide for the conduct of orderly elections.

1125 Section 22. Subsections (1), (3), (6), (7), and (8) of
1126 section 100.371, Florida Statutes, are amended to read:

1127 100.371 Initiatives; procedure for placement on ballot.—

1128 (1) Constitutional amendments proposed by initiative shall
1129 be placed on the ballot for the general election, provided the
1130 initiative petition has been filed with the Secretary of State
1131 no later than February 1 of the year the general election is
1132 held. A petition shall be deemed to be filed with the Secretary
1133 of State upon the date the secretary determines that valid and
1134 verified petition forms have been signed by the constitutionally
1135 required number and distribution of electors under this code,
1136 ~~subject to the right of revocation established in this section.~~

1137 (3) An initiative petition form circulated for signature
1138 may not be bundled with or attached to any other petition. Each
1139 signature shall be dated when made and shall be valid for a
1140 period of 2 4 years following such date, provided all other
1141 requirements of law are met. The sponsor shall submit signed and
1142 dated forms to the ~~appropriate~~ supervisor of elections for the
1143 county of residence listed by the person signing the form for
1144 verification of ~~as to~~ the number of ~~registered electors whose~~



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1145 valid signatures obtained ~~appear thereon~~. If a signature on a
1146 petition is from a registered voter in another county, the
1147 supervisor shall notify the petition sponsor of the misfiled
1148 petition. The supervisor shall promptly verify the signatures
1149 within 30 days after ~~of~~ receipt of the petition forms and
1150 payment of the fee required by s. 99.097. The supervisor shall
1151 promptly record, in the manner prescribed by the Secretary of
1152 State, the date each form is received by the supervisor, and the
1153 date the signature on the form is verified as valid. The
1154 supervisor may verify that the signature on a form is valid only
1155 if:

1156 (a) The form contains the original signature of the
1157 purported elector.

1158 (b) The purported elector has accurately recorded on the
1159 form the date on which he or she signed the form.

1160 (c) The form ~~accurately~~ sets forth the purported elector's
1161 name, ~~street~~ address, city, county, and voter registration
1162 number or date of birth.

1163 (d) The purported elector is, at the time he or she signs
1164 the form and at the time the form is verified, a duly qualified
1165 and registered elector ~~authorized to vote in the state county in~~
1166 ~~which his or her signature is submitted.~~

1167
1168 The supervisor shall retain the signature forms for at least 1
1169 year following the election in which the issue appeared on the
1170 ballot or until the Division of Elections notifies the
1171 supervisors of elections that the committee that ~~which~~
1172 circulated the petition is no longer seeking to obtain ballot
1173 position.



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1174 ~~(6) (a) An elector's signature on a petition form may be~~
1175 ~~revoked within 150 days of the date on which he or she signed~~
1176 ~~the petition form by submitting to the appropriate supervisor of~~
1177 ~~elections a signed petition revocation form.~~

1178 ~~(b) The petition revocation form and the manner in which~~
1179 ~~signatures are obtained, submitted, and verified shall be~~
1180 ~~subject to the same relevant requirements and timeframes as the~~
1181 ~~corresponding petition form and processes under this code and~~
1182 ~~shall be approved by the Secretary of State before any signature~~
1183 ~~on a petition revocation form is obtained.~~

1184 ~~(c) In those circumstances in which a petition revocation~~
1185 ~~form for a corresponding initiative petition has not been~~
1186 ~~submitted and approved, an elector may complete and submit a~~
1187 ~~standard petition revocation form directly to the supervisor of~~
1188 ~~elections. All other requirements and processes apply for the~~
1189 ~~submission and verification of the signatures as for initiative~~
1190 ~~petitions.~~

1191 ~~(d) Supervisors of elections shall provide petition~~
1192 ~~revocation forms to the public at all main and branch offices.~~

1193 ~~(e) The petition revocation form shall be filed with the~~
1194 ~~supervisor of elections by February 1 preceding the next general~~
1195 ~~election or, if the initiative amendment is not certified for~~
1196 ~~ballot position in that election, by February 1 preceding the~~
1197 ~~next successive general election. The supervisor of elections~~
1198 ~~shall promptly verify the signature on the petition revocation~~
1199 ~~form and process such revocation upon payment, in advance, of a~~
1200 ~~fee of 10 cents or the actual cost of verifying such signature,~~
1201 ~~whichever is less. The supervisor shall promptly record each~~
1202 ~~valid and verified signature on a petition revocation form in~~



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1203 ~~the manner prescribed by the Secretary of State.~~

1204 ~~(f) The division shall adopt by rule the petition-~~
1205 ~~revocation forms to be used under this subsection.~~

1206 (6)~~(7)~~ The Department of State may adopt rules in
1207 accordance with s. 120.54 to carry out the provisions of
1208 subsections (1)-(5) ~~subsections (1)-(6)~~.

1209 (7)~~(8)~~ No provision of this code shall be deemed to
1210 prohibit a private person exercising lawful control over
1211 privately owned property, including property held open to the
1212 public for the purposes of a commercial enterprise, from
1213 excluding from such property persons seeking to engage in
1214 activity supporting or opposing initiative amendments.

1215 Section 23. Subsection (1) of section 101.043, Florida
1216 Statutes, is amended to read:

1217 101.043 Identification required at polls.—

1218 (1) The precinct register, as prescribed in s. 98.461,
1219 shall be used at the polls for the purpose of identifying the
1220 elector at the polls prior to allowing him or her to vote. The
1221 clerk or inspector shall require each elector, upon entering the
1222 polling place, to present one of the following current and valid
1223 picture identifications:

1224 (a) Florida driver's license.

1225 (b) Florida identification card issued by the Department of
1226 Highway Safety and Motor Vehicles.

1227 (c) United States passport.

1228 (d) Debit or credit card.

1229 (e) Military identification.

1230 (f) Student identification.

1231 (g) Retirement center identification.



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1232 (h) Neighborhood association identification.

1233 (i) Public assistance identification.

1234

1235 If the picture identification does not contain the signature of
1236 the elector ~~voter~~, an additional identification that provides
1237 the elector's ~~voter's~~ signature shall be required. The address
1238 appearing on the identification presented by the elector may not
1239 be used as the basis to confirm an elector's legal residence or
1240 otherwise challenge an elector's legal residence. The elector
1241 shall sign his or her name in the space provided on the precinct
1242 register or on an electronic device provided for recording the
1243 elector's ~~voter's~~ signature. The clerk or inspector shall
1244 compare the signature with that on the identification provided
1245 by the elector and enter his or her initials in the space
1246 provided on the precinct register or on an electronic device
1247 provided for that purpose and allow the elector to vote if the
1248 clerk or inspector is satisfied as to the identity of the
1249 elector.

1250 Section 24. Section 101.045, Florida Statutes, is amended
1251 to read:

1252 (Substantial rewording of section. See

1253 s. 101.045, F.S., for present text.)

1254 101.045 Electors must be registered in precinct.-

1255 (1) A person is not permitted to vote in any election
1256 precinct or district other than the one in which the person has
1257 his or her legal residence and in which the person is
1258 registered. However, a person temporarily residing outside the
1259 county shall be registered in the precinct in which the main
1260 office of the supervisor, as designated by the supervisor, is



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1261 located when the person has no permanent address in the county
1262 and it is the person's intention to remain a resident of Florida
1263 and of the county in which he or she is registered to vote. Such
1264 persons who are registered in the precinct in which the main
1265 office of the supervisor, as designated by the supervisor, is
1266 located and who are residing outside the county with no
1267 permanent address in the county may not be registered electors
1268 of a municipality and therefore are not permitted to vote in any
1269 municipal elections.

1270 (2) If the elector's eligibility to vote cannot be
1271 determined, he or she is entitled to vote using a provisional
1272 ballot, subject to the requirements and procedures in s.
1273 101.048.

1274 Section 25. Subsection (2) of section 101.131, Florida
1275 Statutes, is amended, and subsections (4) and (5) are added to
1276 that section, to read:

1277 101.131 Watchers at polls.-

1278 (2) Each party, each political committee, and each
1279 candidate requesting to have poll watchers shall designate, in
1280 writing to the supervisors of elections, on a form prescribed by
1281 the division, before ~~prior to~~ noon of the second Tuesday
1282 preceding the election poll watchers for each polling room on
1283 election day. Designations of poll watchers for early voting
1284 areas shall be submitted in writing to the supervisor of
1285 elections, on a form prescribed by the division, before noon at
1286 least 14 days before early voting begins. The poll watchers for
1287 each polling rooms ~~room~~ shall be approved by the supervisor of
1288 elections on or before the Tuesday before the election. Poll
1289 watchers for early voting areas shall be approved by the



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1290 supervisor of elections no later than 7 days before early voting
1291 begins. The supervisor shall furnish to each election board a
1292 list of the poll watchers designated and approved for such
1293 polling rooms ~~room~~ or early voting areas ~~area~~. Designation of
1294 poll watchers shall be made by the chair of the county executive
1295 committee of a political party, the chair of a political
1296 committee, or the candidate requesting to have poll watchers.

1297 (4) All poll watchers shall be allowed to enter and watch
1298 polls in all polling rooms and early voting areas within the
1299 county in which they have been designated if the number of poll
1300 watchers at any particular polling place does not exceed the
1301 number provided in this section.

1302 (5) The supervisor of elections shall provide to each
1303 designated poll watcher, no later than 7 days before early
1304 voting begins, a poll watcher identification badge that
1305 identifies the poll watcher by name. Each poll watcher must wear
1306 his or her identification badge while in the polling room or
1307 early voting area.

1308 Section 26. Subsections (1), (2), and (3) of section
1309 101.151, Florida Statutes, are amended to read:

1310 101.151 Specifications for ballots.—

1311 (1) (a) Marksense ballots shall be printed on paper of such
1312 thickness that the printing cannot be distinguished from the
1313 back and shall meet the specifications of the voting system that
1314 will be used to tabulate the ballots.

1315 (b) Early voting sites may employ a ballot-on-demand
1316 production system to print individual marksense ballots,
1317 including provisional ballots, for eligible electors pursuant to
1318 s. 101.657. Ballot-on-demand technology may be used to produce



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1319 ~~marksense absentee and election-day ballots. Not later than 30~~
1320 ~~days before an election, the Secretary of State may also~~
1321 ~~authorize in writing the use of ballot on-demand technology for~~
1322 ~~the production of election-day ballots.~~

1323 (2) (a) The ballot shall have the following office titles
1324 ~~headings~~ under which shall appear ~~the names of the offices and~~
1325 the names of the candidates for the respective offices in the
1326 following order:

1327 1. The office titles of heading "President and Vice
1328 President of the United States" and thereunder the names of the
1329 candidates for President and Vice President of the United States
1330 nominated by the political party that received the highest vote
1331 for Governor in the last general election of the Governor in
1332 this state. Then shall appear the names of other candidates for
1333 President and Vice President of the United States who have been
1334 properly nominated.

1335 2. The office titles ~~Then shall follow the heading~~
1336 ~~"Congressional"~~ and thereunder the offices of United States
1337 Senator and Representative in Congress.†

1338 3. The office titles ~~then the heading "State" and~~
1339 ~~thereunder the offices~~ of Governor and Lieutenant Governor,
1340 Attorney General, Chief Financial Officer, Commissioner of
1341 Agriculture, State Attorney, with the applicable judicial
1342 circuit printed beneath the office, and Public Defender, with
1343 the applicable judicial circuit printed beneath the office.
1344 ~~together with the names of the candidates for each office and~~
1345 ~~the title of the office which they seek; then the heading~~
1346 ~~"Legislative" and thereunder~~

1347 4. The office titles ~~offices~~ of State Senator and State



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1348 Representative, with the applicable district for the office
1349 printed beneath.; then the heading "County" and thereunder

1350 5. The office titles of County Clerk of the Circuit Court,
1351 or Clerk of the Circuit Court and Comptroller, whichever is
1352 applicable and when authorized by law, Clerk of the County
1353 Court, (when authorized by law), County Sheriff, County Property
1354 Appraiser, County Tax Collector, District Superintendent of
1355 Schools, and County Supervisor of Elections.

1356 6. The office titles ~~Thereafter follows: members of the~~
1357 Board of County Commissioners, with the applicable district
1358 printed beneath each office, and such other county and district
1359 offices as are involved in the election, in the order fixed by
1360 the Department of State, followed, in the year of their
1361 election, by "Party Offices," and thereunder the offices of
1362 state and county party executive committee members.

1363 (b) In a general election, in addition to the names printed
1364 on the ballot, a blank space shall be provided under each
1365 ~~heading for an~~ office for which a write-in candidate has
1366 qualified. With respect to write-in candidates, if two or more
1367 candidates are seeking election to one office, only one blank
1368 space shall be provided.

1369 (c) ~~(b)~~ When more than one candidate is nominated for
1370 office, the candidates for such office shall qualify and run in
1371 a group or district, and the group or district number shall be
1372 printed beneath the name of the office. Each nominee of a
1373 political party chosen in a primary shall appear on the general
1374 election ballot in the same numbered group or district as on the
1375 primary election ballot.

1376 (d) ~~(c)~~ If in any election all the offices as set forth in



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1377 paragraph (a) are not involved, those offices not to be filled
1378 shall be omitted and the remaining offices shall be arranged on
1379 the ballot in the order named.

1380 (3) (a) The names of the candidates of the party that
1381 received the highest number of votes for Governor in the last
1382 election in which a Governor was elected shall be placed first
1383 ~~under the heading~~ for each office on the general election
1384 ballot, together with an appropriate abbreviation of the party
1385 name; the names of the candidates of the party that received the
1386 second highest vote for Governor shall be placed second ~~under~~
1387 ~~the heading~~ for each office, together with an appropriate
1388 abbreviation of the party name.

1389 (b) Minor political party candidates ~~and candidates with no~~
1390 ~~party affiliation~~ shall have their names appear on the general
1391 election ballot following the names of recognized political
1392 parties, in the same order as they were qualified, certified
1393 followed by the names of candidates with no party affiliation,
1394 in the order as they were qualified.

1395 Section 27. Subsection (2) of section 101.161, Florida
1396 Statutes, is amended to read:

1397 101.161 Referenda; ballots.—

1398 (2) (a) The substance and ballot title of a constitutional
1399 amendment proposed by initiative shall be prepared by the
1400 sponsor and approved by the Secretary of State in accordance
1401 with rules adopted pursuant to s. 120.54. The Department of
1402 State shall give each proposed constitutional amendment a
1403 designating number for convenient reference. This number
1404 designation shall appear on the ballot. Designating numbers
1405 shall be assigned in the order of filing or certification and in



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1406 accordance with rules adopted by the Department of State. The
1407 Department of State shall furnish the designating number, the
1408 ballot title, and the substance of each amendment to the
1409 supervisor of elections of each county in which such amendment
1410 is to be voted on.

1411 (b) Any action for a judicial determination that the ballot
1412 title or substance embodied in a joint resolution is inaccurate,
1413 misleading, or otherwise defective must be commenced within 30
1414 days after the joint resolution is filed with the Secretary of
1415 State or at least 150 days before the election at which the
1416 amendment will appear on the ballot, whichever occurs later. The
1417 court, including any appellate court, shall accord the case
1418 priority over other pending cases and render a decision as
1419 expeditiously as possible. If the court determines that the
1420 ballot title or substance embodied in the joint resolution is
1421 defective and further appeals are declined, abandoned, or
1422 exhausted, the Attorney General shall promptly prepare a revised
1423 ballot title and substance that correct the deficiencies
1424 identified by the court, and the Department of State shall
1425 furnish a designating number and the revised ballot title and
1426 substance to the supervisors of elections for placement on the
1427 ballot. A defect in the ballot title or substance embodied in
1428 the joint resolution is not grounds to remove the proposed
1429 amendment from the ballot.

1430 Section 28. Paragraph (a) of subsection (2) of section
1431 101.5605, Florida Statutes, is amended to read:

1432 101.5605 Examination and approval of equipment.—

1433 (2) (a) Any person owning or interested in an electronic or
1434 electromechanical voting system may submit it to the Department



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1435 of State for examination. The vote counting segment shall be
1436 certified after a satisfactory evaluation testing has been
1437 performed according to the standards adopted under s. 101.015(1)
1438 ~~electronic industry standards~~. This testing shall include, but
1439 is not limited to, testing of all software required for the
1440 voting system's operation; the ballot reader; the rote
1441 processor, especially in its logic and memory components; the
1442 digital printer; the fail-safe operations; the counting center
1443 environmental requirements; and the equipment reliability
1444 estimate. For the purpose of assisting in examining the system,
1445 the department shall employ or contract for services of at least
1446 one individual who is expert in one or more fields of data
1447 processing, mechanical engineering, and public administration
1448 and shall require from the individual a written report of his or
1449 her examination.

1450 Section 29. Subsection (11) of section 101.5606, Florida
1451 Statutes, is amended to read

1452 101.5606 Requirements for approval of systems.—No
1453 electronic or electromechanical voting system shall be approved
1454 by the Department of State unless it is so constructed that:

1455 (11) It is capable of automatically producing precinct
1456 totals in printed, ~~marked, or punched form, or a combination~~
1457 ~~thereof~~.

1458 Section 30. Paragraph (a) of subsection (4) of section
1459 101.5612, Florida Statutes, is amended to read:

1460 101.5612 Testing of tabulating equipment.—

1461 (4) (a) 1. For electronic or electromechanical voting systems
1462 configured to include electronic or electromechanical tabulation
1463 devices which are distributed to the precincts, all or a sample



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1464 of the devices to be used in the election shall be publicly
1465 tested. If a sample is to be tested, the sample shall consist of
1466 a random selection of at least 5 percent or 10 of the devices
1467 for an optical scan system ~~or 2 percent of the devices for a~~
1468 ~~touchscreen system or 10 of the devices for either system, as~~
1469 ~~applicable~~, whichever is greater. For touchscreen systems used
1470 for voters having a disability, a sample of at least 2 percent
1471 of the devices must be tested. The test shall be conducted by
1472 processing a group of ballots, causing the device to output
1473 results for the ballots processed, and comparing the output of
1474 results to the results expected for the ballots processed. The
1475 group of ballots shall be produced so as to record a
1476 predetermined number of valid votes for each candidate and on
1477 each measure and to include for each office one or more ballots
1478 which have activated voting positions in excess of the number
1479 allowed by law in order to test the ability of the tabulating
1480 device to reject such votes.

1481 2. If any tested tabulating device is found to have an
1482 error in tabulation, it shall be deemed unsatisfactory. For each
1483 device deemed unsatisfactory, the canvassing board shall take
1484 steps to determine the cause of the error, shall attempt to
1485 identify and test other devices that could reasonably be
1486 expected to have the same error, and shall test a number of
1487 additional devices sufficient to determine that all devices are
1488 satisfactory. Upon deeming any device unsatisfactory, the
1489 canvassing board may require all devices to be tested or may
1490 declare that all devices are unsatisfactory.

1491 3. If the operation or output of any tested tabulation
1492 device, such as spelling or the order of candidates on a report,



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1493 is in error, such problem shall be reported to the canvassing
1494 board. The canvassing board shall then determine if the reported
1495 problem warrants its deeming the device unsatisfactory.

1496 Section 31. Subsection (4) of section 101.5614, Florida
1497 Statutes, is amended to read:

1498 101.5614 Canvass of returns.—

1499 ~~(4) If ballot cards are used, and separate write-in ballots~~
1500 ~~or envelopes for casting write-in votes are used, write-in~~
1501 ~~ballots or the envelopes on which write-in ballots have been~~
1502 ~~cast shall be serially numbered, starting with the number one,~~
1503 ~~and the same number shall be placed on the ballot card of the~~
1504 ~~voter. This process may be completed at either the precinct by~~
1505 ~~the election board or at the central counting location. For each~~
1506 ~~ballot or ballot image and ballot envelope on which write-in~~
1507 ~~votes have been cast, the canvassing board shall compare the~~
1508 ~~write-in votes with the votes cast on the ballot card; if the~~
1509 ~~total number of votes for any office exceeds the number allowed~~
1510 ~~by law, a notation to that effect, specifying the office~~
1511 ~~involved, shall be entered on the back of the ballot card or in~~
1512 ~~a margin if voting areas are printed on both sides of the ballot~~
1513 ~~card. such votes shall not be counted. All valid votes shall be~~
1514 tallied by the canvassing board.

1515 Section 32. Subsection (6) is added to section 101.591,
1516 Florida Statutes, to read:

1517 101.591 Voting system audit.—

1518 (6) If a manual recount is undertaken pursuant to s.
1519 102.166, the canvassing board is not required to perform the
1520 audit provided for in this section.

1521 Section 33. Paragraphs (a) and (b) of subsection (1), and



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1522 subsections (3) and (4) of section 101.62, Florida Statutes, are
1523 amended to read:

1524 101.62 Request for absentee ballots.—

1525 (1)(a) The supervisor shall accept a request for an
1526 absentee ballot from an elector in person or in writing. One
1527 request shall be deemed sufficient to receive an absentee ballot
1528 for all elections through the end of the calendar year of the
1529 next two regularly scheduled general elections ~~election~~, unless
1530 the elector or the elector's designee indicates at the time the
1531 request is made the elections for which the elector desires to
1532 receive an absentee ballot. Such request may be considered
1533 canceled when any first-class mail sent by the supervisor to the
1534 elector is returned as undeliverable.

1535 (b) The supervisor may accept a written or telephonic
1536 request for an absentee ballot from the elector, or, if directly
1537 instructed by the elector, a member of the elector's immediate
1538 family, or the elector's legal guardian. For purposes of this
1539 section, the term "immediate family" has the same meaning as
1540 specified in paragraph (4)(c) ~~paragraph (4)(b)~~. The person
1541 making the request must disclose:

- 1542 1. The name of the elector for whom the ballot is
1543 requested.
- 1544 2. The elector's address.
- 1545 3. The elector's date of birth.
- 1546 4. The requester's name.
- 1547 5. The requester's address.
- 1548 6. The requester's driver's license number, if available.
- 1549 7. The requester's relationship to the elector.
- 1550 8. The requester's signature (written requests only).



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1551 (3) For each request for an absentee ballot received, the
1552 supervisor shall record the date the request was made, the date
1553 the absentee ballot was delivered to the voter or the voter's
1554 designee or the date the absentee ballot was delivered to the
1555 post office or other carrier, the date the ballot was received
1556 by the supervisor, and such other information he or she may deem
1557 necessary. This information shall be provided in electronic
1558 format as provided by rule adopted by the division. The
1559 information shall be updated and made available no later than 8
1560 a.m. noon of each day, including weekends, beginning 60 days
1561 before the primary until 15 days after the general election and
1562 shall be contemporaneously provided to the division. This
1563 information shall be confidential and exempt from the provisions
1564 of s. 119.07(1) and shall be made available to or reproduced
1565 only for the voter requesting the ballot, a canvassing board, an
1566 election official, a political party or official thereof, a
1567 candidate who has filed qualification papers and is opposed in
1568 an upcoming election, and registered political committees or
1569 registered committees of continuous existence, for political
1570 purposes only.

1571 (4) (a) No later than 45 days before each presidential
1572 preference primary election, primary election, and general
1573 election, the supervisor of elections shall send an absentee
1574 ballot as provided in subparagraph (c)2. ~~subparagraph (b)2.~~ to
1575 each absent uniformed services voter and to each overseas voter
1576 who has requested an absentee ballot.

1577 (b) The supervisor shall begin mailing absentee ballots
1578 between the 35th and 30th day before the presidential preference
1579 primary election, special election, primary election, and



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1580 general election to each absent qualified voter, other than
1581 those listed in paragraph (a), who has requested such a ballot.
1582 Except as otherwise provided in subsection (2) and after the
1583 period described in this paragraph, the supervisor shall mail
1584 absentee ballots within 48 hours after receiving a request for
1585 such a ballot.

1586 ~~(c)(b)~~ The supervisor shall provide an absentee ballot to
1587 each elector by whom a request for that ballot has been made by
1588 one of the following means:

1589 1. By nonforwardable, return-if-undeliverable mail to the
1590 elector's current mailing address on file with the supervisor
1591 ~~or, unless the elector specifies in the request that:~~

1592 ~~a. The elector is absent from the county and does not plan~~
1593 ~~to return before the day of the election;~~

1594 ~~b. The elector is temporarily unable to occupy the~~
1595 ~~residence because of hurricane, tornado, flood, fire, or other~~
1596 ~~emergency or natural disaster; or~~

1597 ~~e. The elector is in a hospital, assisted living facility,~~
1598 ~~nursing home, short term medical or rehabilitation facility, or~~
1599 ~~correctional facility,~~

1600
1601 ~~in which case the supervisor shall mail the ballot by~~
1602 ~~nonforwardable, return-if-undeliverable mail to any other~~
1603 ~~address the elector specifies in the request.~~

1604 2. By forwardable mail, e-mail, or facsimile machine
1605 transmission to absent uniformed services voters and overseas
1606 voters. The absent uniformed services voter or overseas voter
1607 may designate in the absentee ballot request the preferred
1608 method of transmission. If the voter does not designate the



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1609 method of transmission, the absentee ballot shall be mailed.
1610 3. By personal delivery before 7 p.m. on election day to
1611 the elector, upon presentation of the identification required in
1612 s. 101.043.

1613 4. By delivery to a designee on election day or up to 5
1614 days prior to the day of an election. Any elector may designate
1615 in writing a person to pick up the ballot for the elector;
1616 however, the person designated may not pick up more than two
1617 absentee ballots per election, other than the designee's own
1618 ballot, except that additional ballots may be picked up for
1619 members of the designee's immediate family. For purposes of this
1620 section, "immediate family" means the designee's spouse or the
1621 parent, child, grandparent, or sibling of the designee or of the
1622 designee's spouse. The designee shall provide to the supervisor
1623 the written authorization by the elector and a picture
1624 identification of the designee and must complete an affidavit.
1625 The designee shall state in the affidavit that the designee is
1626 authorized by the elector to pick up that ballot and shall
1627 indicate if the elector is a member of the designee's immediate
1628 family and, if so, the relationship. The department shall
1629 prescribe the form of the affidavit. If the supervisor is
1630 satisfied that the designee is authorized to pick up the ballot
1631 and that the signature of the elector on the written
1632 authorization matches the signature of the elector on file, the
1633 supervisor shall give the ballot to that designee for delivery
1634 to the elector.

1635 Section 34. Section 101.65, Florida Statutes, is amended to
1636 read:

1637 101.65 Instructions to absent electors.—The supervisor



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1638 shall enclose with each absentee ballot separate printed
1639 instructions in substantially the following form:

1640

1641 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING BALLOT.

1642 1. VERY IMPORTANT. In order to ensure that your absentee
1643 ballot will be counted, it should be completed and returned as
1644 soon as possible so that it can reach the supervisor of
1645 elections of the county in which your precinct is located no
1646 later than 7 p.m. on the day of the election.

1647 2. Mark your ballot in secret as instructed on the ballot.
1648 You must mark your own ballot unless you are unable to do so
1649 because of blindness, disability, or inability to read or write.

1650 3. Mark only the number of candidates or issue choices for
1651 a race as indicated on the ballot. If you are allowed to "Vote
1652 for One" candidate and you vote for more than one candidate,
1653 your vote in that race will not be counted.

1654 4. Place your marked ballot in the enclosed secrecy
1655 envelope.

1656 5. Insert the secrecy envelope into the enclosed mailing
1657 envelope which is addressed to the supervisor.

1658 6. Seal the mailing envelope and completely fill out the
1659 Voter's Certificate on the back of the mailing envelope.

1660 7. VERY IMPORTANT. In order for your absentee ballot to be
1661 counted, you must sign your name on the line above (Voter's
1662 Signature). An absentee ballot will be considered illegal and
1663 not be counted if the signature on the voter's certificate does
1664 not match the signature on record. The signature on file at the
1665 start of the canvass of the absentee ballots is the signature
1666 that will be used to verify your signature on the voter's



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1667 certificate. If you need to update your signature for this
1668 election, send your signature update on a voter registration
1669 application to your supervisor of elections so that it is
1670 received no later than the start of the canvassing of absentee
1671 ballots, which occurs no earlier than the Wednesday before
1672 election day.

1673 8. VERY IMPORTANT. If you are an overseas voter, you must
1674 include the date you signed the Voter's Certificate on the line
1675 above (Date) or your ballot may not be counted.

1676 9. Mail, deliver, or have delivered the completed mailing
1677 envelope. Be sure there is sufficient postage if mailed.

1678 10. FELONY NOTICE. It is a felony under Florida law to
1679 accept any gift, payment, or gratuity in exchange for your vote
1680 for a candidate. It is also a felony under Florida law to vote
1681 in an election using a false identity or false address, or under
1682 any other circumstances making your ballot false or fraudulent.

1683 Section 35. Subsection (1) of section 101.657, Florida
1684 Statutes, is amended to read:

1685 101.657 Early voting.-

1686 (1) (a) As a convenience to the voter, the supervisor of
1687 elections shall allow an elector to vote early in the main or
1688 branch office of the supervisor. The supervisor shall mark,
1689 code, indicate on, or otherwise track the voter's precinct for
1690 each early voted ballot. In order for a branch office to be used
1691 for early voting, it shall be a permanent facility of the
1692 supervisor and shall have been designated and used as such for
1693 at least 1 year prior to the election. The supervisor may also
1694 designate any city hall or permanent public library facility as
1695 early voting sites; however, if so designated, the sites must be



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1696 geographically located so as to provide all voters in the county
1697 an equal opportunity to cast a ballot, insofar as is
1698 practicable. The results or tabulation of votes cast during
1699 early voting may not be made before the close of the polls on
1700 election day. Results shall be reported by precinct.

1701 (b) The supervisor shall designate each early voting site
1702 by no later than the 30th day prior to an election and shall
1703 designate an early voting area, as defined in s. 97.021, at each
1704 early voting site.

1705 (c) All early voting sites in a county shall be open on the
1706 same days for the same amount of time and shall allow any person
1707 in line at the closing of an early voting site to vote.

1708 (d) Early voting shall begin on the 7th ~~15th~~ day before an
1709 election which contains state or federal races and end on the
1710 2nd day before the ~~an~~ election and. ~~For purposes of a special~~
1711 ~~election held pursuant to s. 100.101, early voting shall begin~~
1712 ~~on the 8th day before an election and end on the 2nd day before~~
1713 ~~an election. Early voting shall be provided for 8 hours per~~
1714 ~~weekday and 8 hours in the aggregate each weekend at each site~~
1715 ~~during the applicable periods. The supervisor of elections may~~
1716 provide early voting for elections that are not held in
1717 conjunction with a state or federal election. However, the
1718 supervisor has the discretion to determine the hours of
1719 operation of early voting sites in those elections ~~Early voting~~
1720 ~~sites shall open no sooner than 7 a.m. and close no later than 7~~
1721 ~~p.m. on each applicable day.~~

1722 (e) Notwithstanding the requirements of s. 100.3605,
1723 municipalities may provide early voting in municipal elections
1724 that are not held in conjunction with county or state elections.



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1725 If a municipality provides early voting, it may designate as
1726 many sites as necessary and shall conduct its activities in
1727 accordance with the provisions of paragraphs (a)-(c). The
1728 supervisor is not required to conduct early voting if it is
1729 provided pursuant to this subsection.

1730 (f) Notwithstanding the requirements of s. 189.405, special
1731 districts may provide early voting in any district election not
1732 held in conjunction with county or state elections. If a special
1733 district provides early voting, it may designate as many sites
1734 as necessary and shall conduct its activities in accordance with
1735 the provisions of paragraphs (a)-(c). The supervisor is not
1736 required to conduct early voting if it is provided pursuant to
1737 this subsection.

1738 Section 36. Paragraph (a) of subsection (2) of section
1739 101.68, Florida Statutes, is amended to read:

1740 101.68 Canvassing of absentee ballot.—

1741 (2) (a) The county canvassing board may begin the canvassing
1742 of absentee ballots at 7 a.m. on the 15th ~~sixth~~ day before the
1743 election, but not later than noon on the day following the
1744 election. In addition, for any county using electronic
1745 tabulating equipment, the processing of absentee ballots through
1746 such tabulating equipment may begin at 7 a.m. on the 15th ~~sixth~~
1747 day before the election. However, notwithstanding any such
1748 authorization to begin canvassing or otherwise processing
1749 absentee ballots early, no result shall be released until after
1750 the closing of the polls in that county on election day. Any
1751 supervisor of elections, deputy supervisor of elections,
1752 canvassing board member, election board member, or election
1753 employee who releases the results of a canvassing or processing



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1754 of absentee ballots prior to the closing of the polls in that
1755 county on election day commits a felony of the third degree,
1756 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1757 Section 37. Subsection (2) of section 101.6923, Florida
1758 Statutes, is amended to read:

1759 101.6923 Special absentee ballot instructions for certain
1760 first-time voters.-

1761 (2) A voter covered by this section shall be provided with
1762 printed instructions with his or her absentee ballot in
1763 substantially the following form:

1764

1765 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT.
1766 FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT
1767 TO COUNT.

1768

1769 1. In order to ensure that your absentee ballot will be
1770 counted, it should be completed and returned as soon as possible
1771 so that it can reach the supervisor of elections of the county
1772 in which your precinct is located no later than 7 p.m. on the
1773 date of the election.

1774 2. Mark your ballot in secret as instructed on the ballot.
1775 You must mark your own ballot unless you are unable to do so
1776 because of blindness, disability, or inability to read or write.

1777 3. Mark only the number of candidates or issue choices for
1778 a race as indicated on the ballot. If you are allowed to "Vote
1779 for One" candidate and you vote for more than one, your vote in
1780 that race will not be counted.

1781 4. Place your marked ballot in the enclosed secrecy
1782 envelope and seal the envelope.



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1783 5. Insert the secrecy envelope into the enclosed envelope
1784 bearing the Voter's Certificate. Seal the envelope and
1785 completely fill out the Voter's Certificate on the back of the
1786 envelope.

1787 a. You must sign your name on the line above (Voter's
1788 Signature).

1789 b. If you are an overseas voter, you must include the date
1790 you signed the Voter's Certificate on the line above (Date) or
1791 your ballot may not be counted.

1792 c. An absentee ballot will be considered illegal and will
1793 not be counted if the signature on the Voter's Certificate does
1794 not match the signature on record. The signature on file at the
1795 start of the canvass of the absentee ballots is the signature
1796 that will be used to verify your signature on the Voter's
1797 Certificate. If you need to update your signature for this
1798 election, send your signature update on a voter registration
1799 application to your supervisor of elections so that it is
1800 received no later than the start of canvassing of absentee
1801 ballots, which occurs no earlier than the Wednesday before
1802 election day.

1803 6. Unless you meet one of the exemptions in Item 7., you
1804 must make a copy of one of the following forms of
1805 identification:

1806 a. Identification which must include your name and
1807 photograph: United States passport; debit or credit card;
1808 military identification; student identification; retirement
1809 center identification; neighborhood association identification;
1810 or public assistance identification; or

1811 b. Identification which shows your name and current



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1812 residence address: current utility bill, bank statement,
1813 government check, paycheck, or government document (excluding
1814 voter identification card).

1815 7. The identification requirements of Item 6. do not apply
1816 if you meet one of the following requirements:

1817 a. You are 65 years of age or older.

1818 b. You have a temporary or permanent physical disability.

1819 c. You are a member of a uniformed service on active duty
1820 who, by reason of such active duty, will be absent from the
1821 county on election day.

1822 d. You are a member of the Merchant Marine who, by reason
1823 of service in the Merchant Marine, will be absent from the
1824 county on election day.

1825 e. You are the spouse or dependent of a member referred to
1826 in paragraph c. or paragraph d. who, by reason of the active
1827 duty or service of the member, will be absent from the county on
1828 election day.

1829 f. You are currently residing outside the United States.

1830 8. Place the envelope bearing the Voter's Certificate into
1831 the mailing envelope addressed to the supervisor. Insert a copy
1832 of your identification in the mailing envelope. DO NOT PUT YOUR
1833 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR
1834 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR
1835 BALLOT WILL NOT COUNT.

1836 9. Mail, deliver, or have delivered the completed mailing
1837 envelope. Be sure there is sufficient postage if mailed.

1838 10. FELONY NOTICE. It is a felony under Florida law to
1839 accept any gift, payment, or gratuity in exchange for your vote
1840 for a candidate. It is also a felony under Florida law to vote



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1841 in an election using a false identity or false address, or under
1842 any other circumstances making your ballot false or fraudulent.

1843 Section 38. Subsection (3) of section 101.75, Florida
1844 Statutes, is amended to read:

1845 101.75 Municipal elections; change of dates for cause.—

1846 (3) Notwithstanding any provision of local law or municipal
1847 charter, the governing body of a municipality may, by ordinance,
1848 move the date of any municipal election to a date concurrent
1849 with any statewide or countywide election. The dates for
1850 qualifying for the election moved by the passage of such
1851 ordinance shall be specifically provided for in the ordinance
1852 ~~and shall run for no less than 14 days.~~ The term of office for
1853 any elected municipal official shall commence as provided by the
1854 relevant municipal charter or ordinance.

1855 Section 39. Subsection (4) of section 102.168, Florida
1856 Statutes, is amended, and subsection (8) is added to that
1857 section, to read:

1858 102.168 Contest of election.—

1859 (4) The ~~county~~ canvassing board responsible for canvassing
1860 the election is an indispensable ~~and proper~~ party defendant in
1861 county and local elections. ~~†~~ The Elections Canvassing Commission
1862 is an indispensable ~~and proper~~ party defendant in federal,
1863 state, and multicounty elections and in elections for justice of
1864 the Supreme Court, judge of a district court of appeal, and
1865 judge of a circuit court. ~~faces; and~~ The successful candidate is
1866 an indispensable party to any action brought to contest the
1867 election or nomination of a candidate.

1868 (8) In any contest that requires a review of the canvassing
1869 board's decision on the legality of an absentee ballot pursuant



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1870 to s. 101.68 based upon a comparison of the signature on the
1871 voter's certificate and the signature of the elector in the
1872 registration records, the circuit court may not review or
1873 consider any evidence other than the signatures on the voter's
1874 certificate and the signature of the elector in the registration
1875 records. The court's review of such issue shall be to determine
1876 only if the canvassing board abused its discretion in making its
1877 decision.

1878 Section 40. Subsection (4) of section 103.021, Florida
1879 Statutes, is amended to read:

1880 103.021 Nomination for presidential electors.—Candidates
1881 for presidential electors shall be nominated in the following
1882 manner:

1883 (4) (a) A minor political party that is affiliated with a
1884 national party holding a national convention to nominate
1885 candidates for President and Vice President of the United States
1886 may have the names of its candidates for President and Vice
1887 President of the United States printed on the general election
1888 ballot by filing with the Department of State a certificate
1889 naming the candidates for President and Vice President and
1890 listing the required number of persons to serve as electors.
1891 Notification to the Department of State under this subsection
1892 shall be made by September 1 of the year in which the election
1893 is held. When the Department of State has been so notified, it
1894 shall order the names of the candidates nominated by the minor
1895 political party to be included on the ballot and shall permit
1896 the required number of persons to be certified as electors in
1897 the same manner as other party candidates. As used in this
1898 section, the term "national party" means a political party that



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1899 is registered with and recognized as a qualified national
1900 committee of a political party by the Federal Election
1901 Commission established and admitted to the ballot in at least
1902 one state other than Florida.

1903 (b) A minor political party that is not affiliated with a
1904 national party holding a national convention to nominate
1905 candidates for President and Vice President of the United States
1906 may have the names of its candidates for President and Vice
1907 President printed on the general election ballot if a petition
1908 is signed by a number of electors in each of one-half of the
1909 congressional districts of the state, and of the state as a
1910 whole, equal to 2 percent of the votes cast in each of such
1911 districts respectively and in the state as a whole in the last
1912 preceding election in which presidential electors were chosen $\frac{1}{2}$
1913 percent of the registered electors of this state, as shown by
1914 the compilation by the Department of State for the preceding
1915 general election. A separate petition from each county for which
1916 signatures are solicited shall be submitted to the supervisors
1917 of elections of the respective county no later than July 15 of
1918 each presidential election year. The supervisor shall check the
1919 names and, on or before the date of the primary election, shall
1920 certify the number shown as registered electors of the county.
1921 The supervisor shall be paid by the person requesting the
1922 certification the cost of checking the petitions as prescribed
1923 in s. 99.097. The supervisor shall then forward the certificate
1924 to the Department of State, which shall determine whether or not
1925 the percentage factor required in this section has been met.
1926 When the percentage factor required in this section has been
1927 met, the Department of State shall order the names of the



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1928 candidates for whom the petition was circulated to be included
1929 on the ballot and shall permit the required number of persons to
1930 be certified as electors in the same manner as other party
1931 candidates.

1932 Section 41. Section 103.095, Florida Statutes, is created
1933 to read:

1934 103.095 Minor political parties.-

1935 (1) Any group of citizens organized for the general
1936 purposes of electing to office qualified persons and determining
1937 public issues under the democratic processes of the United
1938 States may become a minor political party of this state by
1939 filing with the department a certificate showing the name of the
1940 organization, the names and addresses of its current officers,
1941 including the members of its executive committee, accompanied by
1942 a completed uniform statewide voter registration application as
1943 specified in s. 97.052 for each of its current officers and
1944 members of its executive committee which reflect their
1945 affiliation with the proposed minor political party, and a copy
1946 of its constitution, bylaws, and rules and regulations.

1947 (2) All electors registered to vote in the minor political
1948 party in which he or she has so designated has a fundamental
1949 right to fully and meaningfully participate in the business and
1950 affairs of the minor political party without any monetary
1951 encumbrance. The constitution, bylaws, rules, regulations, or
1952 other equivalent documents must reflect this fundamental right
1953 and must provide for and contain reasonable provisions which at
1954 a minimum must prescribe procedures to: prescribe its
1955 membership, conduct its meetings according to generally accepted
1956 parliamentary practices, timely notify its members as to the



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1957 time, date, and place of all of its meetings, timely publish
1958 notice on its public and functioning website as to the time,
1959 date, and place of all of its meetings, elect its officers,
1960 remove its officers, make party nominations when required by
1961 law, conduct campaigns for party nominees, raise and expend
1962 party funds, select delegates to its national convention, select
1963 presidential electors, and alter or amend all of its governing
1964 documents.

1965 (3) The members of the executive committee must elect a
1966 chair, vice chair, secretary, and treasurer, all of whom shall
1967 be members of the minor political party and no member may hold
1968 more than one office, except that one person may hold the
1969 offices of secretary and treasurer.

1970 (4) Upon approval of the minor political party's filing,
1971 the department shall process the voter registration applications
1972 submitted by the minor political party's officers and members of
1973 its executive committee. It shall be the duty of the minor
1974 political party to notify the department of any changes in the
1975 filing certificate within 5 days after such changes.

1976 (5) The Division of Elections shall adopt rules to
1977 prescribe the manner in which political parties, including minor
1978 political parties, may have their filings with the Department of
1979 State canceled. Such rules shall, at a minimum, provide for:

1980 (a) Notice, which must contain the facts and conduct that
1981 warrant the intended action, including, but not limited to, the
1982 failure to have any voters registered in the party, the failure
1983 to notify the department of replacement officers, and the
1984 failure to file campaign finance reports, the failure to adopt
1985 or file with the department all governing documents containing



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1986 the provisions specified in subsection (2), and limited
1987 activity.

1988 (b) Adequate opportunity to respond.

1989 (c) Appeal of the decision to the Florida Elections
1990 Commission. Such appeals are exempt from the confidentiality
1991 provisions of s. 106.25.

1992 (6) The requirements of this section are retroactive for
1993 any minor political party registered with the department on July
1994 1, 2011, and must be complied with within 180 days after the
1995 department provides notice to the minor political party of the
1996 requirements contained in this section. Failure of the minor
1997 political party to comply with the requirements within 180 days
1998 after receipt of the notice shall automatically result in the
1999 cancellation of the minor political party's registration.

2000 Section 42. Subsection (2) of section 103.101, Florida
2001 Statutes, is amended to read:

2002 103.101 Presidential preference primary.-

2003 ~~(2) (a) There shall be a Presidential Candidate Selection~~
2004 ~~Committee composed of the Secretary of State, who shall be a~~
2005 ~~nonvoting chair; the Speaker of the House of Representatives;~~
2006 ~~the President of the Senate; the minority leader of each house~~
2007 ~~of the Legislature; and the chair of each political party~~
2008 ~~required to have a presidential preference primary under this~~
2009 ~~section.~~

2010 ~~(b)~~ By October 31 of the year preceding the presidential
2011 preference primary, each political party shall submit to the
2012 Secretary of State a list of its presidential candidates to be
2013 placed on the presidential preference primary ballot or
2014 candidates entitled to have delegates appear on the presidential



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2015 preference primary ballot. The Secretary of State shall prepare
2016 and publish a list of the names of the presidential candidates
2017 submitted not later than on the first Tuesday after the first
2018 Monday in November of the year preceding the presidential
2019 preference primary. ~~The Secretary of State shall submit such~~
2020 ~~list of names of presidential candidates to the selection~~
2021 ~~committee on the first Tuesday after the first Monday in~~
2022 ~~November of the year preceding the presidential preference~~
2023 ~~primary. Each person designated as a presidential candidate~~
2024 ~~shall have his or her name appear, or have his or her delegates'~~
2025 ~~names appear, on the presidential preference primary ballot~~
2026 ~~unless all committee members of the same political party as the~~
2027 ~~candidate agree to delete such candidate's name from the ballot.~~

2028 ~~(c) The selection committee shall meet in Tallahassee on~~
2029 ~~the first Tuesday after the first Monday in November of the year~~
2030 ~~preceding the presidential preference primary. The selection~~
2031 ~~committee shall publicly announce and submit to the Department~~
2032 ~~of State no later than 5 p.m. on the following day the names of~~
2033 ~~presidential candidates who shall have their names appear, or~~
2034 ~~who are entitled to have their delegates' names appear, on the~~
2035 ~~presidential preference primary ballot. The Department of State~~
2036 ~~shall immediately notify each presidential candidate listed~~
2037 ~~designated by the Secretary of State committee. Such~~
2038 ~~notification shall be in writing, by registered mail, with~~
2039 ~~return receipt requested.~~

2040 Section 43. Section 103.141, Florida Statutes, is amended
2041 to read:

2042 103.141 Removal of county executive committee member for
2043 violation of oath.-



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2044 ~~(1) If~~ Where the county executive committee by at least a
2045 two-thirds majority vote of the members of the committee,
2046 attending a meeting held after due notice has been given and at
2047 which meeting a quorum is present, determines an incumbent
2048 county executive committee member is ~~to be~~ guilty of an offense
2049 involving a violation of the member's oath of office, the said
2050 member ~~so violating his or her oath~~ shall be removed from office
2051 and the office shall be deemed vacant. ~~Provided,~~ However, if the
2052 county committee wrongfully removes a county committee member
2053 and the committee member ~~so~~ wrongfully removed files suit in the
2054 circuit court alleging his or her removal was wrongful and wins
2055 the said suit, the committee member shall be restored to office
2056 and the county committee shall pay the costs incurred by the
2057 wrongfully removed committee member in bringing the suit,
2058 including reasonable attorney's fees.

2059 ~~(2) Any officer, county committeeman, county~~
2060 ~~committeewoman, precinct committeeman, precinct committeewoman,~~
2061 ~~or member of a county executive committee may be removed from~~
2062 ~~office pursuant to s. 103.161.~~

2063 Section 44. Section 103.161, Florida Statutes, is repealed.

2064 Section 45. Section 104.29, Florida Statutes, is amended to
2065 read:

2066 104.29 Inspectors refusing to allow watchers while ballots
2067 are counted.—The inspectors or other election officials at the
2068 polling place shall, after the polls close ~~at all times while~~
2069 ~~the ballots are being counted~~, allow as many as three persons
2070 near to them to see whether the ballots are being reconciled
2071 correctly. ~~read and called and the votes correctly tallied, and~~
2072 Any official who denies this privilege or interferes therewith



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2073 commits ~~is guilty of~~ a misdemeanor of the first degree,
2074 punishable as provided in s. 775.082 or s. 775.083.

2075 Section 46. Subsection (3), paragraph (b) of subsection
2076 (5), subsection (15), and paragraph (c) of subsection (16) of
2077 section 106.011, Florida Statutes, are amended to read:

2078 106.011 Definitions.—As used in this chapter, the following
2079 terms have the following meanings unless the context clearly
2080 indicates otherwise:

2081 (3) "Contribution" means:

2082 (a) A gift, subscription, conveyance, deposit, loan,
2083 payment, or distribution of money or anything of value,
2084 including contributions in kind having an attributable monetary
2085 value in any form, made for the purpose of influencing the
2086 results of an election or making an electioneering
2087 communication.

2088 (b) A transfer of funds between political committees,
2089 between committees of continuous existence, between
2090 electioneering communications organizations, or between any
2091 combination of these groups.

2092 (c) The payment, by any person other than a candidate or
2093 political committee, of compensation for the personal services
2094 of another person which are rendered to a candidate or political
2095 committee without charge to the candidate or committee for such
2096 services.

2097 (d) The transfer of funds by a campaign treasurer or deputy
2098 campaign treasurer between a primary depository and a separate
2099 interest-bearing account or certificate of deposit, and the term
2100 includes any interest earned on such account or certificate.

2101



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2102 Notwithstanding the foregoing meanings of "contribution," the
2103 term may ~~word shall~~ not be construed to include services,
2104 including, but not limited to, legal and accounting services,
2105 provided without compensation by individuals volunteering a
2106 portion or all of their time on behalf of a candidate or
2107 political committee. ~~This definition shall not be construed to~~
2108 ~~include~~ editorial endorsements.

2109 (5)

2110 (b) An expenditure for the purpose of expressly advocating
2111 the election or defeat of a candidate which is made by the
2112 national, state, or county executive committee of a political
2113 party, including any subordinate committee of a national, state,
2114 or county committee of a political party, or by any political
2115 committee or committee of continuous existence, or any other
2116 person, shall not be considered an independent expenditure if
2117 the committee or person:

2118 1. Communicates with the candidate, the candidate's
2119 campaign, or an agent of the candidate acting on behalf of the
2120 candidate, including any pollster, media consultant, advertising
2121 agency, vendor, advisor, or staff member, concerning the
2122 preparation of, use of, or payment for, the specific expenditure
2123 or advertising campaign at issue; or

2124 2. Makes a payment in cooperation, consultation, or concert
2125 with, at the request or suggestion of, or pursuant to any
2126 general or particular understanding with the candidate, the
2127 candidate's campaign, a political committee supporting the
2128 candidate, or an agent of the candidate relating to the specific
2129 expenditure or advertising campaign at issue; or

2130 3. Makes a payment for the dissemination, distribution, or



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2131 republication, in whole or in part, of any broadcast or any
2132 written, graphic, or other form of campaign material prepared by
2133 the candidate, the candidate's campaign, or an agent of the
2134 candidate, including any pollster, media consultant, advertising
2135 agency, vendor, advisor, or staff member; or

2136 4. Makes a payment based on information about the
2137 candidate's plans, projects, or needs communicated to a member
2138 of the committee or person by the candidate or an agent of the
2139 candidate, provided the committee or person uses the information
2140 in any way, in whole or in part, either directly or indirectly,
2141 to design, prepare, or pay for the specific expenditure or
2142 advertising campaign at issue; or

2143 5. After the last day of the qualifying period prescribed
2144 for the candidate ~~for statewide or legislative office~~, consults
2145 about the candidate's plans, projects, or needs in connection
2146 with the candidate's pursuit of election to office and the
2147 information is used in any way to plan, create, design, or
2148 prepare an independent expenditure or advertising campaign,
2149 with:

2150 a. Any officer, director, employee, or agent of a national,
2151 state, or county executive committee of a political party that
2152 has made or intends to make expenditures in connection with or
2153 contributions to the candidate; or

2154 b. Any person whose professional services have been
2155 retained by a national, state, or county executive committee of
2156 a political party that has made or intends to make expenditures
2157 in connection with or contributions to the candidate; or

2158 6. After the last day of the qualifying period prescribed
2159 for the candidate ~~for statewide or legislative office~~, retains



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2160 the professional services of any person also providing those
2161 services to the candidate in connection with the candidate's
2162 pursuit of election to office; or

2163 7. Arranges, coordinates, or directs the expenditure, in
2164 any way, with the candidate or an agent of the candidate.

2165 (15) "Unopposed candidate" means a candidate for nomination
2166 or election to an office who, after the last day on which any
2167 person, including a write-in candidate, may qualify, is without
2168 opposition in the election at which the office is to be filled
2169 or who is without such opposition after such date as a result of
2170 any primary election or of withdrawal by other candidates
2171 seeking the same office. A candidate is not an unopposed
2172 candidate if there is a vacancy to be filled under s. 100.111(3)
2173 ~~s. 100.111(4)~~, if there is a legal proceeding pending regarding
2174 the right to a ballot position for the office sought by the
2175 candidate, or if the candidate is seeking retention as a justice
2176 or judge.

2177 (16) "Candidate" means any person to whom any one or more
2178 of the following apply:

2179 (c) Any person who receives contributions or makes
2180 expenditures, or consents for any other person to receive
2181 contributions or make expenditures, with a view to bring about
2182 his or her nomination or election to, or retention in, public
2183 office. However, this definition does not include any candidate
2184 for a political party executive committee. Expenditures related
2185 to potential candidate polls as provided in s. 106.17 are not
2186 contributions or expenditures for purposes of this subsection.

2187 Section 47. Subsection (3) of section 106.021, Florida
2188 Statutes, is amended to read:



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2189 106.021 Campaign treasurers; deputies; primary and
2190 secondary depositories.—

2191 (3) No contribution or expenditure, including contributions
2192 or expenditures of a candidate or of the candidate's family,
2193 shall be directly or indirectly made or received in furtherance
2194 of the candidacy of any person for nomination or election to
2195 political office in the state or on behalf of any political
2196 committee except through the duly appointed campaign treasurer
2197 of the candidate or political committee, subject to the
2198 following exceptions:

2199 (a) Independent expenditures;

2200 (b) Reimbursements to a candidate or any other individual
2201 for expenses incurred in connection with the campaign or
2202 activities of the political committee by a check drawn upon the
2203 campaign account and reported pursuant to s. 106.07(4). ~~After~~
2204 ~~July 1, 2004,~~ The full name ~~and address~~ of each person to whom
2205 the candidate or other individual made payment for which
2206 reimbursement was made by check drawn upon the campaign account
2207 shall be reported pursuant to s. 106.07(4), together with the
2208 purpose of such payment;

2209 (c) Expenditures made indirectly through a treasurer for
2210 goods or services, such as communications media placement or
2211 procurement services, campaign signs, insurance, or other
2212 expenditures that include multiple integral components as part
2213 of the expenditure and reported pursuant to s. 106.07(4)(a)13.;
2214 or

2215 (d) Expenditures made directly by any political committee
2216 or political party regulated by chapter 103 for obtaining time,
2217 space, or services in or by any communications medium for the



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2218 purpose of jointly endorsing three or more candidates, and any
2219 such expenditure shall not be considered a contribution or
2220 expenditure to or on behalf of any such candidates for the
2221 purposes of this chapter.

2222 Section 48. Section 106.022, Florida Statutes, is amended
2223 to read:

2224 106.022 Appointment of a registered agent; duties.—

2225 (1) Each political committee, committee of continuous
2226 existence, or electioneering communications organization shall
2227 have and continuously maintain in this state a registered office
2228 and a registered agent and must file with the filing officer
2229 ~~division~~ a statement of appointment for the registered office
2230 and registered agent. The statement of appointment must:

2231 (a) Provide the name of the registered agent and the street
2232 address and phone number for the registered office;

2233 (b) Identify the entity for whom the registered agent
2234 serves;

2235 (c) Designate the address the registered agent wishes to
2236 use to receive mail;

2237 (d) Include the entity's undertaking to inform the filing
2238 officer ~~division~~ of any change in such designated address;

2239 (e) Provide for the registered agent's acceptance of the
2240 appointment, which must confirm that the registered agent is
2241 familiar with and accepts the obligations of the position as set
2242 forth in this section; and

2243 (f) Contain the signature of the registered agent and the
2244 entity engaging the registered agent.

2245 (2) An entity may change its appointment of registered
2246 agent and registered office under this section by executing a



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2247 written statement of change and filing it with the filing
2248 officer. The statement must satisfy ~~that identifies the former~~
2249 ~~registered agent and registered address and also satisfies~~ all
2250 of the requirements of subsection (1).

2251 (3) A registered agent may resign his or her appointment as
2252 registered agent by executing a written statement of resignation
2253 and filing it with the filing officer ~~division~~. An entity
2254 without a registered agent may not make expenditures or accept
2255 contributions until it files a written statement of change as
2256 required in subsection (2).

2257 Section 49. Subsection (1) of section 106.023, Florida
2258 Statutes, is amended to read:

2259 106.023 Statement of candidate.-

2260 (1) Each candidate must file a statement with the
2261 qualifying officer within 10 days after filing the appointment
2262 of campaign treasurer and designation of campaign depository,
2263 stating that the candidate has read and understands the
2264 requirements of this chapter. Such statement shall be provided
2265 by the filing officer and shall be in substantially the
2266 following form:

2267
2268 STATEMENT OF CANDIDATE

2269
2270 I,, candidate for the office of, have been
2271 provided access to ~~received~~, read, and understand the
2272 requirements of Chapter 106, Florida Statutes.

2273
2274 ...(Signature of candidate)...

...(Date)...



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2276 Willful failure to file this form is a violation of ss.
2277 106.19(1)(c) and 106.25(3), F.S.

2278 Section 50. Paragraph (c) of subsection (1) of section
2279 106.025, Florida Statutes, is amended to read:

2280 106.025 Campaign fund raisers.—

2281 (1)

2282 (c) Any tickets or advertising for such a campaign fund
2283 raiser shall contain the following statement: "The purchase of a
2284 ticket for, or a contribution to, the campaign fund raiser is a
2285 contribution to the campaign of ...(name of the candidate for
2286 whose benefit the campaign fund raiser is held)...." However,
2287 this paragraph does not apply to any campaign message or
2288 political advertisement that satisfies the requirements of s.
2289 106.143(8). Such tickets or advertising shall also comply with
2290 other provisions of this chapter relating to political
2291 advertising.

2292 Section 51. Subsection (1) and paragraph (d) of subsection
2293 (3) of section 106.03, Florida Statutes, are amended to read:

2294 106.03 Registration of political committees and
2295 electioneering communications organizations.—

2296 (1)(a) Each political committee that anticipates receiving
2297 contributions or making expenditures during a calendar year in
2298 an aggregate amount exceeding \$500 or that is seeking the
2299 signatures of registered electors in support of an initiative
2300 shall file a statement of organization as provided in subsection
2301 (3) within 10 days after its organization or, if later, within
2302 10 days after the date on which it has information that causes
2303 the committee to anticipate that it will receive contributions
2304 or make expenditures in excess of \$500. If a political committee



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2305 is organized within 10 days of any election, it shall
2306 immediately file the statement of organization required by this
2307 section.

2308 (b)1. Each group that ~~electioneering communications~~
2309 ~~organization that receives contributions or~~ makes expenditures
2310 during a calendar year in an aggregate amount exceeding \$5,000
2311 shall file a statement of organization as provided in
2312 subparagraph 2. ~~by expedited delivery within 24 hours after its~~
2313 ~~organization or, if later,~~ within 24 hours after the date on
2314 which it ~~receives contributions or~~ makes expenditures for an
2315 electioneering communication in excess of \$5,000, if such
2316 expenditures are made within the time frames specified in s.
2317 106.011(18)(a)2. If the group makes expenditures for an
2318 electioneering communication in excess of \$5,000 before the time
2319 frames specified in s. 106.011(18)(a)2., it shall file the
2320 statement of organization within 24 hours of the 30th day before
2321 a primary or special primary election, or within 24 hours of the
2322 60th day before any other election, whichever is applicable.

2323 2.a. In a statewide, legislative, or multicounty election,
2324 an electioneering communications organization shall file a
2325 statement of organization with the Division of Elections.

2326 b. In a countywide election or any election held on less
2327 than a countywide basis, except as described in sub-subparagraph
2328 c., an electioneering communications organization shall file a
2329 statement of organization with the supervisor of elections of
2330 the county in which the election is being held.

2331 c. In a municipal election, an electioneering
2332 communications organization shall file a statement of
2333 organization with the officer before whom municipal candidates



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2334 qualify.

2335 d. Any electioneering communications organization that
2336 would be required to file a statement of organization in two or
2337 more locations ~~by reason of the organization's intention to~~
2338 ~~support or oppose candidates at state or multicounty and local~~
2339 ~~levels of government~~ need only file a statement of organization
2340 with the Division of Elections.

2341 (3)

2342 (d) Any political committee which would be required under
2343 this subsection to file a statement of organization in two or
2344 more locations ~~by reason of the committee's intention to support~~
2345 ~~or oppose candidates or issues at state or multicounty and local~~
2346 ~~levels of government~~ need file only with the Division of
2347 Elections.

2348 Section 52. Subsection (4) of section 106.04, Florida
2349 Statutes, is amended, present subsections (7) and (8) of that
2350 section are amended and renumbered as subsections (8) and (9),
2351 respectively, and a new subsection (7) is added to that section,
2352 to read:

2353 106.04 Committees of continuous existence.—

2354 (4) (a) Each committee of continuous existence shall file an
2355 annual report with the Division of Elections during the month of
2356 January. Such annual reports shall contain the same information
2357 and shall be accompanied by the same materials as original
2358 applications filed pursuant to subsection (2). However, the
2359 charter or bylaws need not be filed if the annual report is
2360 accompanied by a sworn statement by the chair that no changes
2361 have been made to such charter or bylaws since the last filing.

2362 (b)1. Each committee of continuous existence shall file



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2363 regular reports with the Division of Elections at the same times
2364 and subject to the same filing conditions as are established by
2365 s. 106.07(1) and (2) for candidates' reports. In addition, when
2366 a special election is called to fill a vacancy in office, a
2367 committee of continuous existence that makes a contribution or
2368 expenditure to influence the results of such special election or
2369 the preceding special primary election must file campaign
2370 finance reports with the filing officer on the dates set by the
2371 Department of State pursuant to s. 100.111.

2372 2. A committee of continuous existence that makes a
2373 contribution or an expenditure to influence the results of a
2374 county or municipal election that is not being held at the same
2375 time as a state or federal election must also file campaign
2376 finance reports with the county or municipal filing officer on
2377 the same dates as county or municipal candidates or committees
2378 for that election. The committee of continuous existence must
2379 also include the contribution or expenditure in the next report
2380 filed with the Division of Elections pursuant to this section
2381 following the county or municipal election.

2382 3.2. Any committee of continuous existence failing to so
2383 file a report with the Division of Elections or applicable
2384 filing officer pursuant to this paragraph on the designated due
2385 date shall be subject to a fine for late filing as provided by
2386 this section.

2387 (c) All committees of continuous existence shall file their
2388 reports with the Division of Elections. Reports shall be filed
2389 in accordance with s. 106.0705 and shall contain the following
2390 information:

2391 1. The full name, address, and occupation of each person



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2392 who has made one or more contributions, including contributions
2393 that represent the payment of membership dues, to the committee
2394 during the reporting period, together with the amounts and dates
2395 of such contributions. For corporations, the report must provide
2396 as clear a description as practicable of the principal type of
2397 business conducted by the corporation. However, if the
2398 contribution is \$100 or less, the occupation of the contributor
2399 or principal type of business need not be listed. However, for
2400 any contributions that represent the payment of dues by members
2401 in a fixed amount aggregating no more than \$250 per calendar
2402 year, pursuant to the schedule on file with the Division of
2403 Elections, only the aggregate amount of such contributions need
2404 be listed, together with the number of members paying such dues
2405 and the amount of the membership dues.

2406 2. The name and address of each political committee or
2407 committee of continuous existence from which the reporting
2408 committee received, or the name and address of each political
2409 committee, committee of continuous existence, or political party
2410 to which it made, any transfer of funds, together with the
2411 amounts and dates of all transfers.

2412 3. Any other receipt of funds not listed pursuant to
2413 subparagraph 1. or subparagraph 2., including the sources and
2414 amounts of all such funds.

2415 4. The name and address of, and office sought by, each
2416 candidate to whom the committee has made a contribution during
2417 the reporting period, together with the amount and date of each
2418 contribution.

2419 5. The full name and address of each person to whom
2420 expenditures have been made by or on behalf of the committee



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2421 within the reporting period; the amount, date, and purpose of
2422 each such expenditure; and the name and address, and office
2423 sought by, each candidate on whose behalf such expenditure was
2424 made.

2425 6. The full name and address of each person to whom an
2426 expenditure for personal services, salary, or reimbursement for
2427 authorized expenses has been made, including the full name and
2428 address of each entity to whom the person made payment for which
2429 reimbursement was made by check drawn upon the committee
2430 account, together with the amount and purpose of such payment.

2431 7. Transaction information from each credit card purchase
2432 ~~statement that will be included in the next report following~~
2433 ~~receipt thereof by the committee~~. Receipts for each credit card
2434 purchase shall be retained by the treasurer with the records for
2435 the committee account.

2436 8. The total sum of expenditures made by the committee
2437 during the reporting period.

2438 (d) The treasurer of each committee shall certify as to the
2439 correctness of each report and shall bear the responsibility for
2440 its accuracy and veracity. Any treasurer who willfully certifies
2441 to the correctness of a report while knowing that such report is
2442 incorrect, false, or incomplete commits a misdemeanor of the
2443 first degree, punishable as provided in s. 775.082 or s.
2444 775.083.

2445 (7) Any change in information previously submitted to the
2446 division shall be reported within 10 days following the change.

2447 (8) ~~(7)~~ If a committee of continuous existence ceases to
2448 meet the criteria prescribed by subsection (1) or fails to file
2449 a report or information required pursuant to this chapter, the



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2450 Division of Elections shall revoke its certification ~~until such~~
2451 ~~time as the criteria are again met~~. The Division of Elections
2452 shall adopt ~~promulgate~~ rules to prescribe the manner in which
2453 the such certification of a committee of continuous existence
2454 shall be revoked. Such rules shall, at a minimum, provide for:

2455 (a) Notice, which must ~~shall~~ contain the facts and conduct
2456 that warrant the intended action.

2457 (b) Adequate opportunity to respond.

2458 (c) Appeal of the decision to the Florida Elections
2459 Commission. Such appeals are ~~shall be~~ exempt from the
2460 confidentiality provisions of s. 106.25.

2461 ~~(9)-(8)~~ (a) Any committee of continuous existence failing to
2462 file a report on the designated due date is ~~shall be~~ subject to
2463 a fine. The fine shall be \$50 per day for the first 3 days late
2464 and, thereafter, \$500 per day for each late day, not to exceed
2465 25 percent of the total receipts or expenditures, whichever is
2466 greater, for the period covered by the late report. However, for
2467 the reports immediately preceding each primary and general
2468 election, including a special primary election and a special
2469 general election, the fine shall be \$500 per day for each late
2470 day, not to exceed 25 percent of the total receipts or
2471 expenditures, whichever is greater, for the period covered by
2472 the late report. The fine shall be assessed by the filing
2473 officer, and the moneys collected shall be deposited into:

2474 1. In The General Revenue Fund, in the case of fines
2475 collected by the Division of Elections.

2476 2. The general revenue fund of the political subdivision,
2477 in the case of fines collected by a county or municipal filing
2478 officer. No separate fine shall be assessed for failure to file



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2479 ~~a copy of any report required by this section.~~

2480 (b) Upon determining that a report is late, the filing
2481 officer shall immediately notify the treasurer of the committee
2482 or the committee's registered agent as to the failure to file a
2483 report by the designated due date and that a fine is being
2484 assessed for each late day. Upon receipt of the report, the
2485 filing officer shall determine the amount of fine which is due
2486 and shall notify the treasurer of the committee. Notice is
2487 deemed complete upon proof of delivery of written notice to the
2488 mailing or street address on record with the filing officer. The
2489 filing officer shall determine the amount of the fine due based
2490 upon the earliest of the following:

- 2491 1. When the report is actually received by such officer.
2492 2. When the report is postmarked.
2493 3. When the certificate of mailing is dated.
2494 4. When the receipt from an established courier company is
2495 dated.

2496
2497 Such fine shall be paid to the filing officer within 20 days
2498 after receipt of the notice of payment due, unless appeal is
2499 made to the Florida Elections Commission pursuant to paragraph
2500 (c). An officer or member of a committee is shall not ~~be~~
2501 personally liable for such fine.

2502 (c) Any treasurer of a committee may appeal or dispute the
2503 fine, based upon unusual circumstances surrounding the failure
2504 to file on the designated due date, and may request and is shall
2505 ~~be~~ entitled to a hearing before the Florida Elections
2506 Commission, which may shall have the authority to waive the fine
2507 in whole or in part. Any such request must shall be made within



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2508 20 days after receipt of the notice of payment due. ~~In such~~
2509 ~~case, the treasurer of~~ The committee shall file a copy of the
2510 appeal with, ~~within the 20-day period,~~ notify the filing officer
2511 ~~in writing of his or her intention to bring the matter before~~
2512 ~~the commission.~~

2513 (d) The filing officer shall notify the Florida Elections
2514 Commission of the repeated late filing by a committee of
2515 continuous existence, the failure of a committee of continuous
2516 existence to file a report after notice, or the failure to pay
2517 the fine imposed. As used in this paragraph, the term "repeated
2518 late filing" means at least three late filings occurring within
2519 any 2-year period. The commission shall treat notification of
2520 each repeated late filing as a separate violation of this
2521 section.

2522 Section 53. Section 106.07, Florida Statutes, is amended to
2523 read:

2524 106.07 Reports; certification and filing.—

2525 (1) Each campaign treasurer designated by a candidate or
2526 political committee pursuant to s. 106.021 shall file regular
2527 reports of all contributions received, and all expenditures
2528 made, by or on behalf of such candidate or political committee.
2529 Except for the third calendar quarter immediately preceding a
2530 general election, reports shall be filed on the 10th day
2531 following the end of each calendar quarter from the time the
2532 campaign treasurer is appointed, except that, if the 10th day
2533 following the end of a calendar quarter occurs on a Saturday,
2534 Sunday, or legal holiday, the report shall be filed on the next
2535 following day which is not a Saturday, Sunday, or legal holiday.
2536 Quarterly reports shall include all contributions received and



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2537 expenditures made during the calendar quarter which have not
2538 otherwise been reported pursuant to this section.

2539 (a) Except as provided in paragraph (b), ~~following the last~~
2540 ~~day of qualifying for office,~~ the reports shall also be filed on
2541 the 32nd, 18th, and 4th days immediately preceding the primary
2542 and on the 46th, 32nd, 18th, and 4th days immediately preceding
2543 the election, for a candidate who is opposed in seeking
2544 nomination or election to any office, for a political committee,
2545 or for a committee of continuous existence.

2546 (b) ~~Following the last day of qualifying for office,~~ Any
2547 statewide candidate who has requested to receive contributions
2548 pursuant to ~~from~~ the Florida Election Campaign Financing Act
2549 ~~Trust Fund~~ or any statewide candidate in a race with a candidate
2550 who has requested to receive contributions pursuant to ~~from~~ the
2551 act trust fund shall also file reports on the 4th, 11th, 18th,
2552 25th, and 32nd days prior to the primary election, and on the
2553 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to
2554 the general election.

2555 (c) Following the last day of qualifying for office, any
2556 unopposed candidate need only file a report within 90 days after
2557 the date such candidate became unopposed. Such report shall
2558 contain all previously unreported contributions and expenditures
2559 as required by this section and shall reflect disposition of
2560 funds as required by s. 106.141.

2561 (d)1. When a special election is called to fill a vacancy
2562 in office, all political committees ~~and committees of continuous~~
2563 ~~existence~~ making contributions or expenditures to influence the
2564 results of such special election or the preceding special
2565 primary election shall file campaign treasurers' reports with



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2566 the filing officer on the dates set by the Department of State
2567 pursuant to s. 100.111.

2568 2. When an election is called for an issue to appear on the
2569 ballot at a time when no candidates are scheduled to appear on
2570 the ballot, all political committees making contributions or
2571 expenditures in support of or in opposition to such issue shall
2572 file reports on the 18th and 4th days prior to such election.

2573 (e) The filing officer shall provide each candidate with a
2574 schedule designating the beginning and end of reporting periods
2575 as well as the corresponding designated due dates.

2576 (2)(a)1. All reports required of a candidate by this
2577 section shall be filed with the officer before whom the
2578 candidate is required by law to qualify. All candidates who file
2579 with the Department of State shall file their reports pursuant
2580 to s. 106.0705. Except as provided in s. 106.0705, reports shall
2581 be filed not later than 5 p.m. of the day designated; however,
2582 any report postmarked by the United States Postal Service no
2583 later than midnight of the day designated shall be deemed to
2584 have been filed in a timely manner. Any report received by the
2585 filing officer within 5 days after the designated due date that
2586 was delivered by the United States Postal Service shall be
2587 deemed timely filed unless it has a postmark that indicates that
2588 the report was mailed after the designated due date. A
2589 certificate of mailing obtained from and dated by the United
2590 States Postal Service at the time of mailing, or a receipt from
2591 an established courier company, which bears a date on or before
2592 the date on which the report is due, shall be proof of mailing
2593 in a timely manner. Reports shall contain information of all
2594 previously unreported contributions received and expenditures



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2595 made as of the preceding Friday, except that the report filed on
2596 the Friday immediately preceding the election shall contain
2597 information of all previously unreported contributions received
2598 and expenditures made as of the day preceding that designated
2599 due date. All such reports shall be open to public inspection.

2600 2. This subsection does not prohibit the governing body of
2601 a political subdivision, by ordinance or resolution, from
2602 imposing upon its own officers and candidates electronic filing
2603 requirements not in conflict with s. 106.0705. Expenditure of
2604 public funds for such purpose is deemed to be for a valid public
2605 purpose.

2606 (b)1. Any report that ~~which~~ is deemed to be incomplete by
2607 the officer with whom the candidate qualifies shall be accepted
2608 on a conditional basis. ~~and~~ The campaign treasurer shall be
2609 notified by certified registered mail or by another method using
2610 a common carrier that provides a proof of delivery of the notice
2611 as to why the report is incomplete and within 7 ~~be given 3~~ days
2612 after ~~from~~ receipt of such notice must ~~to~~ file an addendum to
2613 the report providing all information necessary to complete the
2614 report in compliance with this section. Failure to file a
2615 complete report after such notice constitutes a violation of
2616 this chapter.

2617 2. Notice is deemed complete upon proof of delivery of a
2618 written notice to the mailing or street address of the campaign
2619 treasurer or registered agent of record with the filing officer.
2620 ~~In lieu of the notice by registered mail as required in~~
2621 ~~subparagraph 1., the qualifying officer may notify the campaign~~
2622 ~~treasurer by telephone that the report is incomplete and request~~
2623 ~~the information necessary to complete the report. If, however,~~



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2624 ~~such information is not received by the qualifying officer~~
2625 ~~within 3 days after the telephone request therefor, notice shall~~
2626 ~~be sent by registered mail as provided in subparagraph 1.~~

2627 (3) (a) Reports required of a political committee shall be
2628 filed with the agency or officer before whom such committee
2629 registers pursuant to s. 106.03(3) and shall be subject to the
2630 same filing conditions as established for candidates' reports.
2631 Incomplete reports by political committees shall be treated in
2632 the manner provided for incomplete reports by candidates in
2633 subsection (2).

2634 (b) In addition to the reports required by paragraph (a), a
2635 political committee that is registered with the Department of
2636 State and that makes a contribution or expenditure to influence
2637 the results of a county or municipal election that is not being
2638 held at the same time as a state or federal election must file
2639 campaign finance reports with the county or municipal filing
2640 officer on the same dates as county or municipal candidates or
2641 committees for that election. The political committee must also
2642 include such contribution or expenditure in the next report
2643 filed with the Division of Elections pursuant to this section
2644 following the county or municipal election.

2645 (4) (a) Each report required by this section must ~~shall~~
2646 contain:

2647 1. The full name, address, and occupation, if any of each
2648 person who has made one or more contributions to or for such
2649 committee or candidate within the reporting period, together
2650 with the amount and date of such contributions. For
2651 corporations, the report must provide as clear a description as
2652 practicable of the principal type of business conducted by the



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2653 corporation. However, if the contribution is \$100 or less or is
2654 from a relative, as defined in s. 112.312, provided that the
2655 relationship is reported, the occupation of the contributor or
2656 the principal type of business need not be listed.

2657 2. The name and address of each political committee from
2658 which the reporting committee or the candidate received, or to
2659 which the reporting committee or candidate made, any transfer of
2660 funds, together with the amounts and dates of all transfers.

2661 3. Each loan for campaign purposes to or from any person or
2662 political committee within the reporting period, together with
2663 the full names, addresses, and occupations, and principal places
2664 of business, if any, of the lender and endorsers, if any, and
2665 the date and amount of such loans.

2666 4. A statement of each contribution, rebate, refund, or
2667 other receipt not otherwise listed under subparagraphs 1.
2668 through 3.

2669 5. The total sums of all loans, in-kind contributions, and
2670 other receipts by or for such committee or candidate during the
2671 reporting period. The reporting forms shall be designed to
2672 elicit separate totals for in-kind contributions, loans, and
2673 other receipts.

2674 6. The full name and address of each person to whom
2675 expenditures have been made by or on behalf of the committee or
2676 candidate within the reporting period; the amount, date, and
2677 purpose of each such expenditure; and the name and address of,
2678 and office sought by, each candidate on whose behalf such
2679 expenditure was made. However, expenditures made from the petty
2680 cash fund provided by s. 106.12 need not be reported
2681 individually.



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2682 7. The full name and address of each person to whom an
2683 expenditure for personal services, salary, or reimbursement for
2684 authorized expenses as provided in s. 106.021(3) has been made
2685 and which is not otherwise reported, including the amount, date,
2686 and purpose of such expenditure. However, expenditures made from
2687 the petty cash fund provided for in s. 106.12 need not be
2688 reported individually. Receipts for reimbursement for authorized
2689 expenditures shall be retained by the treasurer along with the
2690 records for the campaign account.

2691 8. The total amount withdrawn and the total amount spent
2692 for petty cash purposes pursuant to this chapter during the
2693 reporting period.

2694 9. The total sum of expenditures made by such committee or
2695 candidate during the reporting period.

2696 10. The amount and nature of debts and obligations owed by
2697 or to the committee or candidate, which relate to the conduct of
2698 any political campaign.

2699 11. Transaction information for each credit card purchase.
2700 ~~A copy of each credit card statement which shall be included in~~
2701 ~~the next report following receipt thereof by the candidate or~~
2702 ~~political committee.~~ Receipts for each credit card purchase
2703 shall be retained by the treasurer with the records for the
2704 campaign account.

2705 12. The amount and nature of any separate interest-bearing
2706 accounts or certificates of deposit and identification of the
2707 financial institution in which such accounts or certificates of
2708 deposit are located.

2709 13. The primary purposes of an expenditure made indirectly
2710 through a campaign treasurer pursuant to s. 106.021(3) for goods



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2711 and services such as communications media placement or
2712 procurement services, campaign signs, insurance, and other
2713 expenditures that include multiple components as part of the
2714 expenditure. The primary purpose of an expenditure shall be that
2715 purpose, including integral and directly related components,
2716 that comprises 80 percent of such expenditure.

2717 (b) The filing officer shall make available to any
2718 candidate or committee a reporting form which the candidate or
2719 committee may use to indicate contributions received by the
2720 candidate or committee but returned to the contributor before
2721 deposit.

2722 (5) The candidate and his or her campaign treasurer, in the
2723 case of a candidate, or the political committee chair and
2724 campaign treasurer of the committee, in the case of a political
2725 committee, shall certify as to the correctness of each report;
2726 and each person so certifying shall bear the responsibility for
2727 the accuracy and veracity of each report. Any campaign
2728 treasurer, candidate, or political committee chair who willfully
2729 certifies the correctness of any report while knowing that such
2730 report is incorrect, false, or incomplete commits a misdemeanor
2731 of the first degree, punishable as provided in s. 775.082 or s.
2732 775.083.

2733 ~~(6) The campaign depository shall return all checks drawn~~
2734 ~~on the account to the campaign treasurer who shall retain the~~
2735 ~~records pursuant to s. 106.06. The records maintained by the~~
2736 campaign depository with respect to any campaign account
2737 regulated by this chapter are such account shall be subject to
2738 inspection by an agent of the Division of Elections or the
2739 Florida Elections Commission at any time during normal banking



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2740 hours, and such depository shall furnish certified copies of any
2741 of such records to the Division of Elections or Florida
2742 Elections Commission upon request.

2743 (7) Notwithstanding any other provisions of this chapter,
2744 in any reporting period during which a candidate, political
2745 committee, or committee of continuous existence has not received
2746 funds, made any contributions, or expended any reportable funds,
2747 the filing of the required report for that period is waived.
2748 However, the next report filed must specify that the report
2749 covers the entire period between the last submitted report and
2750 the report being filed, and any candidate, political committee,
2751 or committee of continuous existence not reporting by virtue of
2752 this subsection on dates prescribed elsewhere in this chapter
2753 shall notify the filing officer in writing on the prescribed
2754 reporting date that no report is being filed on that date.

2755 (8) (a) Any candidate or political committee failing to file
2756 a report on the designated due date is ~~shall be~~ subject to a
2757 fine as provided in paragraph (b) for each late day, and, in the
2758 case of a candidate, such fine shall be paid only from personal
2759 funds of the candidate. The fine shall be assessed by the filing
2760 officer and the moneys collected shall be deposited:

2761 1. In the General Revenue Fund, in the case of a candidate
2762 for state office or a political committee that registers with
2763 the Division of Elections; or

2764 2. In the general revenue fund of the political
2765 subdivision, in the case of a candidate for an office of a
2766 political subdivision or a political committee that registers
2767 with an officer of a political subdivision.
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2769 ~~No separate fine shall be assessed for failure to file a copy of~~
2770 ~~any report required by this section.~~

2771 (b) Upon determining that a report is late, the filing
2772 officer shall immediately notify the candidate or chair of the
2773 political committee as to the failure to file a report by the
2774 designated due date and that a fine is being assessed for each
2775 late day. The fine shall be \$50 per day for the first 3 days
2776 late and, thereafter, \$500 per day for each late day, not to
2777 exceed 25 percent of the total receipts or expenditures,
2778 whichever is greater, for the period covered by the late report.
2779 However, for the reports immediately preceding each special
2780 primary election, special election, primary election, and
2781 general election, the fine shall be \$500 per day for each late
2782 day, not to exceed 25 percent of the total receipts or
2783 expenditures, whichever is greater, for the period covered by
2784 the late report. For reports required under s. 106.141(7), the
2785 fine is \$50 per day for each late day, not to exceed 25 percent
2786 of the total receipts or expenditures, whichever is greater, for
2787 the period covered by the late report. Upon receipt of the
2788 report, the filing officer shall determine the amount of the
2789 fine which is due and shall notify the candidate or chair or
2790 registered agent of the political committee. The filing officer
2791 shall determine the amount of the fine due based upon the
2792 earliest of the following:

- 2793 1. When the report is actually received by such officer.
2794 2. When the report is postmarked.
2795 3. When the certificate of mailing is dated.
2796 4. When the receipt from an established courier company is
2797 dated.



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2798 5. When the electronic receipt issued pursuant to s.
2799 106.0705 or other electronic filing system authorized in this
2800 section is dated.

2801
2802 Such fine shall be paid to the filing officer within 20 days
2803 after receipt of the notice of payment due, unless appeal is
2804 made to the Florida Elections Commission pursuant to paragraph
2805 (c). Notice is deemed complete upon proof of delivery of written
2806 notice to the mailing or street address on record with the
2807 filing officer. In the case of a candidate, such fine shall not
2808 be an allowable campaign expenditure and shall be paid only from
2809 personal funds of the candidate. An officer or member of a
2810 political committee shall not be personally liable for such
2811 fine.

2812 (c) Any candidate or chair of a political committee may
2813 appeal or dispute the fine, based upon, but not limited to,
2814 unusual circumstances surrounding the failure to file on the
2815 designated due date, and may request and shall be entitled to a
2816 hearing before the Florida Elections Commission, which shall
2817 have the authority to waive the fine in whole or in part. The
2818 Florida Elections Commission must consider the mitigating and
2819 aggravating circumstances contained in s. 106.265(1) when
2820 determining the amount of a fine, if any, to be waived. Any such
2821 request shall be made within 20 days after receipt of the notice
2822 of payment due. In such case, the candidate or chair of the
2823 political committee shall, within the 20-day period, notify the
2824 filing officer in writing of his or her intention to bring the
2825 matter before the commission.

2826 (d) The appropriate filing officer shall notify the Florida



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2827 Elections Commission of the repeated late filing by a candidate
2828 or political committee, the failure of a candidate or political
2829 committee to file a report after notice, or the failure to pay
2830 the fine imposed. The commission shall investigate only those
2831 alleged late filing violations specifically identified by the
2832 filing officer and as set forth in the notification. Any other
2833 alleged violations must be separately stated and reported by the
2834 division to the commission under s. 106.25(2). As used in this
2835 paragraph, the term "repeated late filing" means at least three
2836 late filings occurring within any 2-year period. The commission
2837 shall treat notification of each repeated late filing as a
2838 separate violation of this section.

2839 (9) The Department of State may prescribe by rule the
2840 requirements for filing campaign treasurers' reports as set
2841 forth in this chapter.

2842 Section 54. Paragraph (d) of subsection (7) and subsection
2843 (8) of section 106.0703, Florida Statutes, are amended to read:
2844 106.0703 Electioneering communications organizations;
2845 reporting requirements; certification and filing; penalties.-

2846 (7)

2847 (d) The appropriate filing officer shall notify the Florida
2848 Elections Commission of the repeated late filing by an
2849 electioneering communications organization, the failure of an
2850 electioneering communications organization to file a report
2851 after notice, or the failure to pay the fine imposed. The
2852 commission shall investigate only those alleged late filing
2853 violations specifically identified by the filing officer and as
2854 set forth in the notification. Any other alleged violations must
2855 be stated separately and reported by the division to the



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2856 commission under s. 106.25(2). As used in this paragraph, the
2857 term "repeated late filing" means at least three late filings
2858 occurring within any 2-year period. The commission shall treat
2859 notification of each repeated late filing as a separate
2860 violation of this section.

2861 (8) An electioneering communications organization shall,
2862 within 2 business days after receiving written notice of its
2863 initial password or secure sign-on from the Department of State
2864 allowing confidential access to the department's electronic
2865 campaign finance filing system, electronically file a single
2866 retroactive report of receipts and disbursements made the
2867 ~~periodic reports that would have been required pursuant to this~~
2868 ~~section for reportable activities that occurred~~ since the date
2869 of the last general election.

2870 Section 55. Paragraphs (a) and (c) of subsection (2) and
2871 subsections (3), (5), and (7) of section 106.0705, Florida
2872 Statutes, are amended to read:

2873 106.0705 Electronic filing of campaign treasurer's
2874 reports.-

2875 (2) (a) Each individual candidate who is required to file
2876 reports with the division pursuant to s. 106.07 or s. 106.141
2877 ~~with the division~~ must file such reports ~~with the division~~ by
2878 means of the division's electronic filing system.

2879 (c) Each person or organization that is required to file
2880 reports with the division under s. 106.071 must file such
2881 reports ~~with the division~~ by means of the division's electronic
2882 filing system.

2883 (3) Reports filed pursuant to this section shall be
2884 completed and filed through the electronic filing system not



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2885 later than midnight of the day designated. Reports not filed by
2886 midnight of the day designated are late filed and are subject to
2887 the penalties under s. 106.04(9) ~~s. 106.04(8)~~, s. 106.07(8), s.
2888 106.0703(7), or s. 106.29(3), as applicable.

2889 (5) The electronic filing system developed by the division
2890 must:

2891 (a) Be based on access by means of the Internet.

2892 (b) Be accessible by anyone with Internet access using
2893 standard web-browsing software.

2894 (c) Provide for direct entry of campaign finance
2895 information as well as upload of such information from campaign
2896 finance software certified by the division.

2897 (d) Provide a method that prevents unauthorized access to
2898 electronic filing system functions.

2899 (e) Provide a method for filing the retroactive report of
2900 receipts and disbursements required by s. 106.0703(8).

2901 ~~(7) Notwithstanding anything in law to the contrary, any~~
2902 ~~report required to have been filed under this section for the~~
2903 ~~period ended March 31, 2005, shall be deemed to have been timely~~
2904 ~~filed if the report is filed under this section on or before~~
2905 ~~June 1, 2005.~~

2906 Section 56. Subsections (3) and (6) of section 106.08,
2907 Florida Statutes, are amended to read:

2908 106.08 Contributions; limitations on.-

2909 (3) (a) Any contribution received by a candidate with
2910 opposition in an election or by the campaign treasurer or a
2911 deputy campaign treasurer of such a candidate on the day of that
2912 election or less than 5 days prior to the day of that election
2913 must be returned by him or her to the person or committee



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2914 contributing it and may not be used or expended by or on behalf
2915 of the candidate.

2916 (b) Except as otherwise provided in paragraph (c), any
2917 contribution received by a candidate or by the campaign
2918 treasurer or a deputy campaign treasurer of a candidate after
2919 the date at which the candidate withdraws his or her candidacy,
2920 or after the date the candidate is defeated, becomes unopposed,
2921 or is elected to office must be returned to the person or
2922 committee contributing it and may not be used or expended by or
2923 on behalf of the candidate.

2924 ~~(c) With respect to any campaign for an office in which an~~
2925 ~~independent or minor party candidate has filed as required in s.~~
2926 ~~99.0955 or s. 99.096, but whose qualification is pending a~~
2927 ~~determination by the Department of State or supervisor of~~
2928 ~~elections as to whether or not the required number of petition~~
2929 ~~signatures was obtained:~~

2930 ~~1. The department or supervisor shall, no later than 3 days~~
2931 ~~after that determination has been made, notify in writing all~~
2932 ~~other candidates for that office of that determination.~~

2933 ~~2. Any contribution received by a candidate or the campaign~~
2934 ~~treasurer or deputy campaign treasurer of a candidate after the~~
2935 ~~candidate has been notified in writing by the department or~~
2936 ~~supervisor that he or she has become unopposed as a result of an~~
2937 ~~independent or minor party candidate failing to obtain the~~
2938 ~~required number of petition signatures shall be returned to the~~
2939 ~~person, political committee, or committee of continuous~~
2940 ~~existence contributing it and shall not be used or expended by~~
2941 ~~or on behalf of the candidate.~~

2942 (6) (a) A political party may not accept any contribution



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2943 that has been specifically designated for the partial or
2944 exclusive use of a particular candidate. Any contribution so
2945 designated must be returned to the contributor and may not be
2946 used or expended by or on behalf of the candidate.

2947 (b)1. A political party may not accept any in-kind
2948 contribution that fails to provide a direct benefit to the
2949 political party. A "direct benefit" includes, but is not limited
2950 to, fundraising or furthering the objectives of the political
2951 party.

2952 2.a. An in-kind contribution to a state political party may
2953 be accepted only by the chairperson of the state political party
2954 or by the chairperson's designee or designees whose names are on
2955 file with the division in a form acceptable to the division
2956 prior to the date of the written notice required in sub-
2957 subparagraph b. An in-kind contribution to a county political
2958 party may be accepted only by the chairperson of the county
2959 political party or by the county chairperson's designee or
2960 designees whose names are on file with the supervisor of
2961 elections of the respective county prior to the date of the
2962 written notice required in sub-subparagraph b.

2963 b. A person making an in-kind contribution to a state
2964 political party or county political party must provide prior
2965 written notice of the contribution to a person described in sub-
2966 subparagraph a. The prior written notice must be signed and
2967 dated and may be provided by an electronic or facsimile message.
2968 However, prior written notice is not required for an in-kind
2969 contribution that consists of food and beverage in an aggregate
2970 amount not exceeding \$1,500 which is consumed at a single
2971 sitting or event if such in-kind contribution is accepted in



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2972 advance by a person specified in sub-subparagraph a.

2973 c. A person described in sub-subparagraph a. may accept an
2974 in-kind contribution requiring prior written notice only in a
2975 writing that is ~~signed and~~ dated before the in-kind contribution
2976 is made. Failure to obtain the required written acceptance of an
2977 in-kind contribution to a state or county political party
2978 constitutes a refusal of the contribution.

2979 d. A copy of each prior written acceptance required under
2980 sub-subparagraph c. must be filed ~~with the division~~ at the time
2981 the regular reports of contributions and expenditures required
2982 under s. 106.29 are filed by the state executive committee and
2983 county executive committee. A state executive committee and an
2984 affiliated party committee must file with the division. A county
2985 executive committee must file with the county's supervisor of
2986 elections.

2987 e. An in-kind contribution may not be given to a state or
2988 county political party unless the in-kind contribution is made
2989 as provided in this subparagraph.

2990 Section 57. Section 106.09, Florida Statutes, is amended to
2991 read:

2992 106.09 Cash contributions and contribution by cashier's
2993 checks.—

2994 (1) (a) A person may not make an aggregate ~~or accept~~ a cash
2995 contribution or contribution by means of a cashier's check to
2996 the same candidate or committee in excess of \$50 per election.

2997 (b) A person may not accept an aggregate cash contribution
2998 or contribution by means of a cashier's check from the same
2999 contributor in excess of \$50 per election.

3000 (2) (a) Any person who makes or accepts a contribution in



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3001 ~~excess of \$50 in violation of subsection (1) this section~~
3002 commits a misdemeanor of the first degree, punishable as
3003 provided in s. 775.082 or s. 775.083.

3004 (b) Any person who knowingly and willfully makes or accepts
3005 a contribution in excess of \$5,000 in violation of subsection
3006 (1) this section commits a felony of the third degree,
3007 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3008 Section 58. Paragraph (b) of subsection (1) and paragraph
3009 (a) of subsection (2) of section 106.11, Florida Statutes, are
3010 amended, and subsection (6) is added to that section, to read:

3011 106.11 Expenses of and expenditures by candidates and
3012 political committees.—Each candidate and each political
3013 committee which designates a primary campaign depository
3014 pursuant to s. 106.021(1) shall make expenditures from funds on
3015 deposit in such primary campaign depository only in the
3016 following manner, with the exception of expenditures made from
3017 petty cash funds provided by s. 106.12:

3018 (1)

3019 (b) The checks for such account shall contain, as a
3020 minimum, the following information:

3021 1. The statement "~~Campaign Account of~~ ... (name of candidate
3022 or political committee)... Campaign Account."

3023 2. The account number and the name of the bank.

3024 3. The exact amount of the expenditure.

3025 4. The signature of the campaign treasurer or deputy
3026 treasurer.

3027 5. The exact purpose for which the expenditure is
3028 authorized.

3029 6. The name of the payee.



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3030 (2) (a) For purposes of this section, debit cards are
3031 considered bank checks, if:
3032 1. Debit cards are obtained from the same bank that has
3033 been designated as the candidate's or political committee's
3034 primary campaign depository.
3035 2. Debit cards are issued in the name of the treasurer,
3036 deputy treasurer, or authorized user and state "~~Campaign Account~~
3037 ~~of ... (name of candidate or political committee) ... Campaign~~
3038 Account."
3039 3. No more than three debit cards are requested and issued.
3040 ~~4. Before a debit card is used, a list of all persons~~
3041 ~~authorized to use the card is filed with the division.~~
3042 ~~5. All debit cards issued to a candidate's campaign or a~~
3043 ~~political committee expire no later than midnight of the last~~
3044 ~~day of the month of the general election.~~
3045 ~~4.6.~~ The person using the debit card does not receive cash
3046 as part of, or independent of, any transaction for goods or
3047 services.
3048 ~~5.7.~~ All receipts for debit card transactions contain:
3049 a. The last four digits of the debit card number.
3050 b. The exact amount of the expenditure.
3051 c. The name of the payee.
3052 d. The signature of the campaign treasurer, deputy
3053 treasurer, or authorized user.
3054 e. The exact purpose for which the expenditure is
3055 authorized.
3056
3057 Any information required by this subparagraph but not included
3058 on the debit card transaction receipt may be handwritten on, or



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3059 attached to, the receipt by the authorized user before
3060 submission to the treasurer.

3061 (6) A candidate who makes a loan to his or her campaign and
3062 reports the loan as required by s. 106.07 may be reimbursed for
3063 the loan at any time the campaign account has sufficient funds
3064 to repay the loan and satisfy its other obligations.

3065 Section 59. Subsection (4) of section 106.141, Florida
3066 Statutes, is amended to read:

3067 106.141 Disposition of surplus funds by candidates.—

3068 (4) (a) Except as provided in paragraph (b), any candidate
3069 required to dispose of funds pursuant to this section shall, at
3070 the option of the candidate, dispose of such funds by any of the
3071 following means, or any combination thereof:

3072 1. Return pro rata to each contributor the funds that have
3073 not been spent or obligated.

3074 2. Donate the funds that have not been spent or obligated
3075 to a charitable organization or organizations that meet the
3076 qualifications of s. 501(c)(3) of the Internal Revenue Code.

3077 3. Give ~~not more than \$10,000 of~~ the funds that have not
3078 been spent or obligated to the political party of which such
3079 candidate is a member, ~~except that a candidate for the Florida~~
3080 ~~Senate may give not more than \$30,000 of such funds to the~~
3081 ~~political party of which the candidate is a member.~~

3082 4. Give the funds that have not been spent or obligated:

3083 a. In the case of a candidate for state office, to the
3084 state, to be deposited in either the Election Campaign Financing
3085 Trust Fund or the General Revenue Fund, as designated by the
3086 candidate; or

3087 b. In the case of a candidate for an office of a political



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3088 subdivision, to such political subdivision, to be deposited in
3089 the general fund thereof.

3090 (b) Any candidate required to dispose of funds pursuant to
3091 this section who has received contributions pursuant to ~~from~~ the
3092 Florida Election Campaign Financing Act Trust Fund shall, after
3093 all monetary commitments pursuant to s. 106.11(5)(b) and (c)
3094 have been met, return all surplus campaign funds to the General
3095 Revenue Election Campaign Financing Trust Fund.

3096 Section 60. Subsections (1), (2), and (4) of section
3097 106.143, Florida Statutes, are amended, present subsections (2)
3098 through (9) of that section are renumbered as subsections (3)
3099 through (10), respectively, and a new subsection (2) is added to
3100 that section, to read:

3101 106.143 Political advertisements circulated prior to
3102 election; requirements.—

3103 (1)(a) Any political advertisement that is paid for by a
3104 candidate, except a write-in candidate, and that is published,
3105 displayed, or circulated before, or on the day of, any election
3106 must prominently state:

3107 1. "Political advertisement paid for and approved by
3108 ... (name of candidate) ..., ... (party affiliation) ..., for
3109 ... (office sought) ..."; or

3110 2. "Paid by ... (name of candidate) ..., ... (party
3111 affiliation) ..., for ... (office sought) ..."

3112 (b) Any political advertisement that is paid for by a
3113 write-in candidate and that is published, displayed, or
3114 circulated before, or on the day of, any election must
3115 prominently state:

3116 1. "Political advertisement paid for and approved by



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3117 ...(name of candidate)..., write-in candidate, for ...(office
3118 sought)..."; or
3119 2. "Paid by ...(name of candidate)..., write-in candidate,
3120 for ...(office sought)...."
3121 (c) ~~(b)~~ Any other political advertisement published,
3122 displayed, or circulated before, or on the day of, any election
3123 must prominently:
3124 1. Be marked "paid political advertisement" or with the
3125 abbreviation "pd. pol. adv."
3126 2. State the name and address of the persons paying for
3127 ~~sponsoring~~ the advertisement.
3128 3. ~~a. (I)~~ State whether the advertisement and the cost of
3129 production is paid for or provided in kind by or at the expense
3130 of the entity publishing, displaying, broadcasting, or
3131 circulating the political advertisement. ~~;~~ or
3132 ~~(II) State who provided or paid for the advertisement and~~
3133 ~~cost of production, if different from the source of sponsorship.~~
3134 ~~b. This subparagraph does not apply if the source of the~~
3135 ~~sponsorship is patently clear from the content or format of the~~
3136 ~~political advertisement.~~
3137 (d) ~~(c)~~ Any political advertisement made pursuant to s.
3138 106.021(3) (d) must be marked "paid political advertisement" or
3139 with the abbreviation "pd. pol. adv." and must prominently state
3140 the name and address of the political party paying for the
3141 advertisement, and the names, party affiliations, and offices
3142 sought by the persons in the advertisement, "Paid for and
3143 sponsored by ...(name of person paying for political
3144 advertisement).... Approved by ...(names of persons, party
3145 affiliation, and offices sought in the political



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3146 advertisement)....”

3147 (2) Political advertisements made as in-kind contributions
3148 from a political party must prominently state: “Paid political
3149 advertisement paid for by in-kind by ... (name of political
3150 party).... Approved by ... (name of person, party affiliation,
3151 and office sought in the political advertisement)....”

3152 (3)-(2) Any political advertisement of a candidate running
3153 for partisan office shall express the name of the political
3154 party of which the candidate is seeking nomination or is the
3155 nominee. If the candidate for partisan office is running as a
3156 candidate with no party affiliation, any political advertisement
3157 of the candidate must state that the candidate has no party
3158 affiliation. Any political advertisement of a candidate running
3159 for nonpartisan office may not state the candidate’s political
3160 party affiliation. A candidate for nonpartisan office is
3161 prohibited from campaigning based on party affiliation.

3162 (5)-(4)(a) Any political advertisement not paid for by a
3163 candidate, including those paid for by a political party, other
3164 than an independent expenditure, offered by or on behalf of a
3165 candidate must be approved in advance by the candidate. Such
3166 political advertisement must expressly state that the content of
3167 the advertisement was approved by the candidate and must state
3168 who paid for the advertisement. The candidate shall provide a
3169 written statement of authorization to the newspaper, radio
3170 station, television station, or other medium for each such
3171 advertisement submitted for publication, display, broadcast, or
3172 other distribution.

3173 (b) Any person who makes an independent expenditure for a
3174 political advertisement shall provide a written statement that



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3175 no candidate has approved the advertisement to the newspaper,
3176 radio station, television station, or other medium for each such
3177 advertisement submitted for publication, display, broadcast, or
3178 other distribution. The advertisement must also contain a
3179 statement that no candidate has approved the advertisement.

3180 ~~(c) This subsection does not apply to campaign messages~~
3181 ~~used by a candidate and his or her supporters if those messages~~
3182 ~~are designed to be worn by a person.~~

3183 Section 61. Section 106.17, Florida Statutes, is amended to
3184 read:

3185 106.17 Polls and surveys relating to candidacies.—Any
3186 candidate, political committee, committee of continuous
3187 existence, electioneering communication organization, or state
3188 or county executive committee of a political party may authorize
3189 or conduct a political poll, survey, index, or measurement of
3190 any kind relating to candidacy for public office so long as the
3191 candidate, political committee, committee of continuous
3192 existence, electioneering communication organization, or
3193 political party maintains complete jurisdiction over the poll in
3194 all its aspects. State and county executive committees of a
3195 political party or an affiliated party committee may authorize
3196 and conduct political polls for the purpose of determining the
3197 viability of potential candidates. Such poll results may be
3198 shared with potential candidates and expenditures incurred by
3199 state and county executive committees for potential candidate
3200 polls are not contributions to the potential candidates.

3201 Section 62. Subsection (3) of section 106.18, Florida
3202 Statutes, is amended to read:

3203 106.18 When a candidate's name to be omitted from ballot.—



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3204 (3) No certificate of election shall be granted to any
3205 candidate until all preelection reports required by s. 106.07
3206 have been filed in accordance with the provisions of such
3207 section. ~~However, no candidate shall be prevented from receiving~~
3208 ~~a certificate of election for failure to file any copy of a~~
3209 ~~report required by this chapter.~~

3210 Section 63. Subsection (4) is added to section 106.19,
3211 Florida Statutes, to read:

3212 106.19 Violations by candidates, persons connected with
3213 campaigns, and political committees.—

3214 (4) Except as otherwise expressly stated, the failure by a
3215 candidate to comply with the requirements of this chapter has no
3216 effect upon whether the candidate has qualified for the office
3217 the candidate is seeking.

3218 Section 64. Subsections (2) and (3), paragraph (i) of
3219 subsection (4), and subsection (5) of section 106.25, Florida
3220 Statutes, are amended to read:

3221 106.25 Reports of alleged violations to Florida Elections
3222 Commission; disposition of findings.—

3223 (2) The commission shall investigate all violations of this
3224 chapter and chapter 104, but only after having received either a
3225 sworn complaint or information reported to it under this
3226 subsection by the Division of Elections. Such sworn complaint
3227 must be based upon personal information or information other
3228 than hearsay. Any person, other than the division, having
3229 information of any violation of this chapter or chapter 104
3230 shall file a sworn complaint with the commission. The commission
3231 shall investigate only those alleged violations specifically
3232 contained within the sworn complaint. If any complainant fails



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3233 to allege all violations that arise from the facts or
3234 allegations alleged in a complaint, the commission shall be
3235 barred from investigating a subsequent complaint from such
3236 complainant that is based upon such facts or allegations that
3237 were raised or could have been raised in the first complaint. If
3238 the complaint includes allegations of violations relating to
3239 expense items reimbursed by a candidate, committee, or
3240 organization to the campaign account before a sworn complaint is
3241 filed, the commission shall be barred from investigating such
3242 allegations. Such sworn complaint shall state whether a
3243 complaint of the same violation has been made to any state
3244 attorney. Within 5 days after receipt of a sworn complaint, the
3245 commission shall transmit a copy of the complaint to the alleged
3246 violator. The respondent shall have 14 days after receipt of the
3247 complaint to file an initial response, and the executive
3248 director may not determine the legal sufficiency of the
3249 complaint during that time period. If the executive director
3250 finds that the complaint is legally sufficient, the respondent
3251 shall be notified of such finding by letter, which sets forth
3252 the statutory provisions alleged to have been violated and the
3253 alleged factual basis that supports the finding. All sworn
3254 complaints alleging violations of the Florida Election Code over
3255 which the commission has jurisdiction shall be filed with the
3256 commission within 2 years after the alleged violations. The
3257 period of limitations is tolled on the day a sworn complaint is
3258 filed with the commission. The complainant may withdraw the
3259 sworn complaint at any time prior to a probable cause hearing if
3260 good cause is shown. Withdrawal shall be requested in writing,
3261 signed by the complainant, and witnessed by a notary public,



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3262 stating the facts and circumstances constituting good cause. The
3263 executive director shall prepare a written recommendation
3264 regarding disposition of the request which shall be given to the
3265 commission together with the request. "Good cause" shall be
3266 determined based upon the legal sufficiency or insufficiency of
3267 the complaint to allege a violation and the reasons given by the
3268 complainant for wishing to withdraw the complaint. If withdrawal
3269 is permitted, the commission must close the investigation and
3270 the case. No further action may be taken. The complaint will
3271 become a public record at the time of withdrawal.

3272 (3) For the purposes of commission jurisdiction, a
3273 violation shall mean the willful performance of an act
3274 prohibited by this chapter or chapter 104 or the willful failure
3275 to perform an act required by this chapter or chapter 104. The
3276 commission may not by rule determine what constitutes
3277 willfulness or further define the term "willful" for purposes of
3278 this chapter or chapter 104. Willfulness is a determination of
3279 fact; however, at the request of the respondent at any time
3280 after probable cause is found, willfulness may be considered and
3281 determined in an informal hearing before the commission.

3282 (4) The commission shall undertake a preliminary
3283 investigation to determine if the facts alleged in a sworn
3284 complaint or a matter initiated by the division constitute
3285 probable cause to believe that a violation has occurred.

3286 (i)1. Upon a commission finding of probable cause, the
3287 counsel for the commission shall attempt to reach a consent
3288 agreement with the respondent. At any time, the commission may
3289 enter into a consent order with a respondent without requiring
3290 the respondent to admit to a violation of law within the



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3291 jurisdiction of the commission.

3292 2. A consent agreement is not binding upon either party
3293 unless and until it is signed by the respondent and by counsel
3294 for the commission upon approval by the commission.

3295 3. Nothing herein shall be construed to prevent the
3296 commission from entering into a consent agreement with a
3297 respondent prior to a commission finding of probable cause if a
3298 respondent indicates in writing a desire to enter into
3299 negotiations directed towards reaching such a consent agreement.
3300 Any consent agreement reached under this subparagraph is subject
3301 to the provisions of subparagraph 2. and shall have the same
3302 force and effect as a consent agreement reached after the
3303 commission finding of probable cause.

3304
3305 In a case where probable cause is found, the commission shall
3306 make a preliminary determination to consider the matter or to
3307 refer the matter to the state attorney for the judicial circuit
3308 in which the alleged violation occurred. Notwithstanding any
3309 other provisions of this section, the commission may, at its
3310 discretion, dismiss any complaint at any stage of disposition if
3311 it determines that the public interest would not be served by
3312 proceeding further, in which case the commission shall issue a
3313 public report stating with particularity its reasons for the
3314 dismissal.

3315 (5) ~~Unless~~ A person alleged by the Elections Commission to
3316 have committed a violation of this chapter or chapter 104 may
3317 elect, as a matter of right elects, within 30 days after the
3318 date of the filing of the commission's allegations, to have a
3319 formal administrative ~~or informal~~ hearing conducted ~~before the~~



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3320 ~~commission, or elects to resolve the complaint by consent order,~~
3321 ~~such person shall be entitled to a formal administrative hearing~~
3322 ~~conducted~~ by an administrative law judge in the Division of
3323 Administrative Hearings. The administrative law judge in such
3324 proceedings shall enter a final order, which may include the
3325 imposition of civil penalties, subject to appeal as provided in
3326 s. 120.68. If the person does not elect to have a hearing by an
3327 administrative law judge and does not elect to resolve the
3328 complaint by a consent order, the person is entitled to a formal
3329 or informal hearing conducted before the commission.

3330 Section 65. Subsection (1) of section 106.26, Florida
3331 Statutes, is amended to read:

3332 106.26 Powers of commission; rights and responsibilities of
3333 parties; findings by commission.-

3334 (1) The commission shall, pursuant to rules adopted and
3335 published in accordance with chapter 120, consider all sworn
3336 complaints filed with it and all matters reported to it by the
3337 Division of Elections. In order to carry out the
3338 responsibilities prescribed by this chapter, the commission is
3339 empowered to subpoena and bring before it, or its duly
3340 authorized representatives, any person in the state, or any
3341 person doing business in the state, or any person who has filed
3342 or is required to have filed any application, document, papers,
3343 or other information with an office or agency of this state or a
3344 political subdivision thereof and to require the production of
3345 any papers, books, or other records relevant to any
3346 investigation, including the records and accounts of any bank or
3347 trust company doing business in this state. Duly authorized
3348 representatives of the commission are empowered to administer



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3349 all oaths and affirmations in the manner prescribed by law to
3350 witnesses who shall appear before them concerning any relevant
3351 matter. Should any witness fail to respond to the lawful
3352 subpoena of the commission or, having responded, fail to answer
3353 all lawful inquiries or to turn over evidence that has been
3354 subpoenaed, the commission may file a complaint in the ~~before~~
3355 ~~any~~ circuit court where the witness resides ~~of the state~~ setting
3356 up such failure on the part of the witness. On the filing of
3357 such complaint, the court shall take jurisdiction of the witness
3358 and the subject matter of said complaint and shall direct the
3359 witness to respond to all lawful questions and to produce all
3360 documentary evidence in the witness's possession which is
3361 lawfully demanded. The failure of any witness to comply with
3362 such order of the court shall constitute a direct and criminal
3363 contempt of court, and the court shall punish said witness
3364 accordingly. However, the refusal by a witness to answer
3365 inquiries or turn over evidence on the basis that such testimony
3366 or material will tend to incriminate such witness shall not be
3367 deemed refusal to comply with the provisions of this chapter.
3368 The sheriffs in the several counties shall make such service and
3369 execute all process or orders when required by the commission.
3370 Sheriffs shall be paid for these services by the commission as
3371 provided for in s. 30.231. Any person who is served with a
3372 subpoena to attend a hearing of the commission also shall be
3373 served with a general statement informing him or her of the
3374 subject matter of the commission's investigation or inquiry and
3375 a notice that he or she may be accompanied at the hearing by
3376 counsel of his or her own choosing.

3377 Section 66. Subsections (1) through (4) of section 106.265,



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3378 Florida Statutes, are amended and renumbered, and present
3379 subsection (5) of that section is renumbered as subsection (6),
3380 to read:

3381 106.265 Civil penalties.—

3382 (1) The commission or, in cases referred to the Division of
3383 Administrative Hearings pursuant to s. 106.25(5), the
3384 administrative law judge is authorized upon the finding of a
3385 violation of this chapter or chapter 104 to impose civil
3386 penalties in the form of fines not to exceed \$1,000 per count,
3387 or, if applicable, to impose a civil penalty as provided in s.
3388 104.271 or s. 106.19.

3389 (2) In determining the amount of such civil penalties, the
3390 commission or administrative law judge shall consider, among
3391 other mitigating and aggravating circumstances:

3392 (a) The gravity of the act or omission;

3393 (b) Any previous history of similar acts or omissions;

3394 (c) The appropriateness of such penalty to the financial
3395 resources of the person, political committee, committee of
3396 continuous existence, electioneering communications
3397 organization, or political party; and

3398 (d) Whether the person, political committee, committee of
3399 continuous existence, electioneering communications
3400 organization, or political party has shown good faith in
3401 attempting to comply with the provisions of this chapter or
3402 chapter 104.

3403 (3) ~~(2)~~ If any person, political committee, committee of
3404 continuous existence, electioneering communications
3405 organization, or political party fails or refuses to pay to the
3406 commission any civil penalties assessed pursuant to the



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3407 provisions of this section, the commission shall be responsible
3408 for collecting the civil penalties resulting from such action.

3409 ~~(4)(3)~~ Any civil penalty collected pursuant to the
3410 provisions of this section shall be deposited into the General
3411 Revenue Fund ~~Election Campaign Financing Trust Fund.~~

3412 ~~(5)(4)~~ ~~Notwithstanding any other provisions of this~~
3413 ~~chapter,~~ Any fine assessed pursuant to the provisions of this
3414 chapter shall, ~~which fine is designated to be deposited or which~~
3415 ~~would otherwise~~ be deposited into the General Revenue Fund of
3416 the state, ~~shall be deposited into the Election Campaign~~
3417 ~~Financing Trust Fund.~~

3418 Section 67. Subsection (1) and paragraphs (b) and (d) of
3419 subsection (3) of section 106.29, Florida Statutes, are amended
3420 to read:

3421 106.29 Reports by political parties; restrictions on
3422 contributions and expenditures; penalties.-

3423 (1) The state executive committee and each county executive
3424 committee of each political party regulated by chapter 103 shall
3425 file regular reports of all contributions received and all
3426 expenditures made by such committee. In addition, when a special
3427 election is called to fill a vacancy in office, each state
3428 executive committee, each affiliated party committee, and each
3429 county executive committee making contributions or expenditures
3430 to influence the results of the special election or the
3431 preceding special primary election must file campaign
3432 treasurers' reports on the dates set by the Department of State
3433 pursuant to s. 100.111. Such reports shall contain the same
3434 information as do reports required of candidates by s. 106.07
3435 and shall be filed on the 10th day following the end of each



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3436 calendar quarter, except that, during the period from the last
3437 day for candidate qualifying until the general election, such
3438 reports shall be filed on the Friday immediately preceding each
3439 special primary election, special election, ~~both the primary~~
3440 election, and ~~the~~ general election. In addition to the reports
3441 filed under this section, the state executive committee and each
3442 county executive committee shall file a copy of each prior
3443 written acceptance of an in-kind contribution given by the
3444 committee during the preceding calendar quarter as required
3445 under s. 106.08(6). Each state executive committee shall file
3446 ~~the original and one copy of~~ its reports with the Division of
3447 Elections. Each county executive committee shall file its
3448 reports with the supervisor of elections in the county in which
3449 such committee exists. Any state or county executive committee
3450 failing to file a report on the designated due date shall be
3451 subject to a fine as provided in subsection (3). ~~No separate~~
3452 ~~fine shall be assessed for failure to file a copy of any report~~
3453 ~~required by this section.~~

3454 (3)

3455 (b) Upon determining that a report is late, the filing
3456 officer shall immediately notify the chair of the executive
3457 committee as to the failure to file a report by the designated
3458 due date and that a fine is being assessed for each late day.
3459 The fine shall be \$1,000 for a state executive committee, and
3460 \$50 for a county executive committee, per day for each late day,
3461 not to exceed 25 percent of the total receipts or expenditures,
3462 whichever is greater, for the period covered by the late report.
3463 However, if an executive committee fails to file a report on the
3464 Friday immediately preceding the special election or general



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3465 election, the fine shall be \$10,000 per day for each day a state
3466 executive committee is late and \$500 per day for each day a
3467 county executive committee is late. Upon receipt of the report,
3468 the filing officer shall determine the amount of the fine which
3469 is due and shall notify the chair. Notice is deemed complete
3470 upon proof of delivery of written notice to the mailing or
3471 street address on record with the filing officer. The filing
3472 officer shall determine the amount of the fine due based upon
3473 the earliest of the following:

- 3474 1. When the report is actually received by such officer.
- 3475 2. When the report is postmarked.
- 3476 3. When the certificate of mailing is dated.
- 3477 4. When the receipt from an established courier company is
3478 dated.
- 3479 5. When the electronic receipt issued pursuant to s.
3480 106.0705 is dated.

3481
3482 Such fine shall be paid to the filing officer within 20 days
3483 after receipt of the notice of payment due, unless appeal is
3484 made to the Florida Elections Commission pursuant to paragraph
3485 (c). An officer or member of an executive committee shall not be
3486 personally liable for such fine.

3487 (d) The appropriate filing officer shall notify the Florida
3488 Elections Commission of the repeated late filing by an executive
3489 committee, the failure of an executive committee to file a
3490 report after notice, or the failure to pay the fine imposed. As
3491 used in this paragraph, the term "repeated late filing" means at
3492 least three late filings occurring within any 2-year period. The
3493 commission shall treat notification of each repeated late filing



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3494 as a separate violation of this section.

3495 Section 68. Subsection (5) of section 106.35, Florida
3496 Statutes, is amended to read:

3497 106.35 Distribution of funds.—

3498 (5) The division shall adopt rules providing for the weekly
3499 reports and certification and distribution of funds pursuant
3500 thereto required by this section. Such rules shall, at a
3501 minimum, provide ~~for:~~

3502 ~~(a) Specifications for printed campaign treasurer's reports~~
3503 ~~outlining the format for such reports, including size of paper,~~
3504 ~~typeface, color of print, and placement of required information~~
3505 ~~on the form.~~

3506 ~~(b)1. specifications for electronically transmitted~~
3507 ~~campaign treasurer's reports outlining communication parameters~~
3508 ~~and protocol, data record formats, and provisions for ensuring~~
3509 ~~security of data and transmission.~~

3510 ~~2. All electronically transmitted campaign treasurer's~~
3511 ~~reports must also be filed in printed format. Printed format~~
3512 ~~shall not include campaign treasurer's reports submitted by~~
3513 ~~electronic facsimile transmission.~~

3514 Section 69. Subsection (1) of section 876.05, Florida
3515 Statutes, is amended to read:

3516 876.05 Public employees; oath.—

3517 (1) All persons who now or hereafter are employed by or who
3518 now or hereafter are on the payroll of the state, or any of its
3519 departments and agencies, subdivisions, counties, cities, school
3520 boards and districts of the free public school system of the
3521 state or counties, or institutions of higher learning, ~~and all~~
3522 ~~candidates for public office,~~ except candidates for federal



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3523 office, are required to take an oath before any person duly
3524 authorized to take acknowledgments of instruments for public
3525 record in the state in the following form:

3526
3527 I,, a citizen of the State of Florida and of the
3528 United States of America, and being employed by or an officer of
3529 and a recipient of public funds as such employee or
3530 officer, do hereby solemnly swear or affirm that I will support
3531 the Constitution of the United States and of the State of
3532 Florida.

3533 Section 70. Section 876.07, Florida Statutes, is repealed.

3534 Section 71. If any provision of this act or its application
3535 to any person or circumstance is held invalid, the invalidity
3536 does not affect other provisions or applications of the act
3537 which can be given effect without the invalid provision or
3538 application, and to this end the provisions of this act are
3539 severable.

3540 Section 72. Except as otherwise expressly provided in this
3541 act, this act shall take effect upon becoming a law.

3542
3543 ===== T I T L E A M E N D M E N T =====

3544 And the title is amended as follows:

3545 Delete everything before the enacting clause
3546 and insert:

3547 A bill to be entitled
3548 An act relating to elections; amending s. 97.012,
3549 F.S.; expanding the list of responsibilities of the
3550 Secretary of State when acting in his or her capacity
3551 as chief election officer; amending s. 97.021, F.S.;



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3552 redefining the term "minor political party"; amending
3553 s. 97.025, F.S.; replacing a requirement for the
3554 Department of State to print copies of a pamphlet
3555 containing the Election Code with a requirement that
3556 the pamphlet be made available; amending s. 97.0575,
3557 F.S.; requiring that third-party voter registration
3558 organizations register with the Division of Elections;
3559 requiring such organizations provide the division with
3560 certain information; requiring that the division or a
3561 supervisor of elections make voter registration forms
3562 available to third-party voter registration
3563 organizations; requiring that such forms contain
3564 certain information; requiring that the division and
3565 supervisors of elections maintain a database of
3566 certain information; requiring that such information
3567 be provided in electronic format; requiring that such
3568 information be updated and made public daily at a
3569 certain time; providing that a third-party voter
3570 registration organization that collects voter
3571 registration applications serves as a fiduciary to the
3572 applicant; specifying duties of such an organization;
3573 specifying an affirmative defense to certain
3574 violations of state law; providing penalties for
3575 violations of certain provisions of state law;
3576 providing circumstances under which a third-party
3577 voter registration organization is subject to
3578 specified civil penalties; providing for the referral
3579 of violations to the Attorney General; authorizing the
3580 Attorney General to initiate a civil action; providing



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3581 that an action for relief may include a permanent or
3582 temporary injunction, a restraining order, or any
3583 other appropriate order; requiring that the division
3584 adopt rules for specified purposes; amending s.
3585 97.071, F.S.; requiring that voter information cards
3586 contain the address of the polling place of the
3587 registered voter; requiring a supervisor of elections
3588 to issue a new voter information card to a voter upon
3589 a change in a voter's address of legal residence or a
3590 change in a voter's polling place address; providing
3591 instructions for implementation by the supervisors of
3592 elections; amending s. 97.073, F.S.; revising
3593 procedures that a supervisor of elections must follow
3594 to dispose of a voter registration application;
3595 amending s. 97.1031, F.S.; revising the methods by
3596 which a person must update his or her voter
3597 registration due to a change of address; revising
3598 procedures for an elector to change his or her party
3599 affiliation; requiring an elector to notify the
3600 supervisor of elections when the elector changes his
3601 or her name; amending s. 98.075, F.S.; revising
3602 procedures for the removal of deceased persons and
3603 other potentially ineligible persons from the
3604 statewide voter registration system; amending s.
3605 98.093, F.S.; revising requirements for the Department
3606 of Corrections to provide the Department of State with
3607 information relating to convicted felons; requiring
3608 the Florida Parole Commission to regularly furnish
3609 data to the Department of State relating to persons



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3610 who have been granted clemency; amending s. 98.0981,
3611 F.S.; providing timeframes and formats for voting
3612 history information to be sent by the supervisors of
3613 elections to the department; providing timeframes and
3614 formats for voting history information to be sent by
3615 the department to the President of the Senate, the
3616 Speaker of the House of Representatives, and the
3617 respective minority leaders; providing for the
3618 imposition of fines on a supervisor of elections for
3619 failure to comply in a timely manner; providing for
3620 deposit of fines in the General Revenue Fund;
3621 requiring submission of precinct-level information in
3622 a certain format by a time certain; providing for
3623 imposition of a fine on a supervisor of elections for
3624 failure to comply and for depositing of the fine into
3625 the General Revenue Fund; amending s. 99.012, F.S.;
3626 providing that a person may not be qualified as a
3627 candidate for an election or appear on the ballot
3628 unless the person complies with certain requirements;
3629 amending s. 99.021, F.S.; revising the candidate oath
3630 requirement for a person seeking to qualify for
3631 nomination or election or as a candidate of a
3632 political party; removing requirement for qualifying
3633 officer to give printed copy of candidate oath;
3634 removing requirement for taking public employee oath;
3635 correcting references for other oaths; amending s.
3636 99.061, F.S.; revising timeframe for candidate to pay
3637 a qualifying fee under certain circumstances;
3638 requiring checks to be payable as prescribed by filing



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3639 officer; requiring signatures on certain oaths to be
3640 verified; removing requirement for a public employee
3641 oath; requiring the filing of a verified notarized
3642 financial disclosure statement; clarifying the time
3643 for qualifying papers to be received; providing that
3644 qualifying officer performs ministerial duty only;
3645 exempting a decision by qualifying officer from the
3646 Administrative Procedure Act; amending s. 99.063,
3647 F.S.; requiring a candidate's oath to be verified;
3648 deleting a requirement for a candidate to file a
3649 loyalty oath with the Department of State by a certain
3650 date; amending s. 99.092, F.S.; providing for the
3651 transfer of the election assessment to the Elections
3652 Commission Trust Fund; amending s. 99.093, F.S.;

3653 providing for the election assessments paid by a
3654 person seeking to qualify for a municipal office to be
3655 forwarded by the qualifying officer to the Florida
3656 Elections Commission; amending s. 99.095, F.S.;

3657 allowing a candidate to obtain the required number of
3658 signatures from any registered voter regardless of
3659 district boundaries in a year of apportionment;

3660 amending s. 99.097, F.S.; providing for the Department
3661 of State to adopt rules to verify petitions through
3662 random sampling; creating exceptions for certain
3663 petitions from the authorization to use random
3664 sampling to verify petitions; revising criteria that a
3665 supervisor of elections must use to determine whether
3666 a petition may be counted as valid; providing that an
3667 exemption from paying fees to verify petitions does



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3668 not apply if a person has been paid to solicit
3669 signatures; providing that contributions received
3670 after the filing of an undue burden oath must first be
3671 used to pay fees for verifying petitions; amending s.
3672 100.061, F.S.; decreasing the time period between a
3673 primary election and a general election; amending s.
3674 100.111, F.S.; deleting provisions relating to
3675 vacancies in a state or county office because an
3676 incumbent qualified as a candidate for federal office;
3677 providing for a filing officer, rather than the
3678 Department of State, to notify a political party that
3679 it may nominate a person for office if certain events
3680 cause the party to have a vacancy in nomination;
3681 revising provisions relating to the filling of a
3682 vacancy in a nomination; deleting a defined term;
3683 providing that a vacancy in nomination is not created
3684 as the result of certain court orders; amending s.
3685 100.371, F.S.; deleting provisions relating to a right
3686 to revoke a signature on an initiative petition;
3687 reducing the time period for which a signed and dated
3688 initiative petition form is valid; requiring an
3689 initiative sponsor to submit an initiative form to the
3690 supervisor of elections for the county of residence of
3691 the person signing the form for verification; revising
3692 criteria for a supervisor of elections to verify a
3693 signature on an initiative petition form; amending s.
3694 101.043, F.S.; replacing references to the word
3695 "voter" with "elector"; providing that the address on
3696 a elector's identification is not to be used to



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3697 confirm or challenge an elector's legal residence;
3698 amending s. 101.045, F.S.; prohibiting a person from
3699 voting in a precinct or district outside his or her
3700 legal residence; providing an exception; authorizing a
3701 person whose eligibility to vote cannot be determined
3702 to use a provisional ballot; amending s. 101.131,
3703 F.S.; revising procedures for the designation of poll
3704 watchers; requiring that the Division of Elections
3705 prescribe a form for the designation of poll watchers;
3706 providing conditions under which poll watchers are
3707 authorized to enter polling areas and watch polls;
3708 requiring that a supervisor of elections provide
3709 identification to poll watchers by a specified period
3710 before early voting begins; requiring that poll
3711 watchers display such identification while in a
3712 polling place; amending s. 101.151, F.S.; authorizing
3713 the use of ballot-on-demand technology to produce
3714 election-day ballots; deleting a requirement that the
3715 use of such technology be authorized in writing by the
3716 Secretary of State; revising provisions relating to
3717 the order of candidates appearing on a ballot;
3718 amending s. 101.161, F.S.; specifying a time period to
3719 initiate an action to challenge an amendment to the
3720 State Constitution proposed by the Legislature;
3721 requiring the court, including an appellate court, to
3722 accord the case priority over other cases; requiring
3723 the Attorney General to revise a ballot title or
3724 ballot summary for an amendment proposed by the
3725 Legislature under certain circumstances; requiring the



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3726 Department of State to furnish a designating number
3727 and the revised ballot title and substance to the
3728 supervisors of elections; providing that a defect in a
3729 ballot title or ballot summary in an amendment
3730 proposed by the Legislature is not grounds to remove
3731 the amendment from the ballot; amending s. 101.5605,
3732 F.S.; requiring an electromechanical voting system to
3733 satisfy the standards for certification adopted by
3734 rule of the Department of State; amending s. 101.5606,
3735 F.S.; deleting requirements for electromechanical
3736 voting systems to have the capability to produce
3737 precinct totals in marked or punched form; amending s.
3738 101.5612, F.S.; revising the sample size of
3739 electromechanical voting systems that include the
3740 electronic or electromechanical tabulation devices to
3741 be tested; amending s. 101.5614, F.S.; deleting
3742 provisions relating to the use of ballot cards and
3743 write-in ballots or envelopes; amending s. 101.591,
3744 F.S.; removing the audit requirement by the canvassing
3745 board if a manual recount is undertaken; amending s.
3746 101.62, F.S.; extending the time for requesting an
3747 absentee ballot to the end of the calendar year of the
3748 next regularly scheduled general election; specifying
3749 types of elections for which a supervisor of elections
3750 must send an absentee ballot to uniformed services
3751 voters and overseas voters; specifying a time period
3752 during which a supervisor of elections must begin
3753 mailing absentee ballots; removing requirements that
3754 an elector provide certain information when requesting



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3755 an absentee ballot from the county supervisor of
3756 elections; amending s. 101.65, F.S.; revising the form
3757 of the instructions to absent electors; stating that
3758 an absentee ballot is considered illegal if the
3759 signature on the voter's certificate does not match
3760 the signature on record; providing instructions for
3761 updating a signature on a voter registration
3762 application; amending s. 101.657, F.S.; reducing the
3763 early voting period; authorizing a supervisor of
3764 election to provide early voting for elections not
3765 held in conjunction with a state or federal election;
3766 amending s. 101.68, F.S.; extending the time for
3767 canvassing and processing absentee ballots to 15 days
3768 before the election; amending s. 101.6923, F.S.;
3769 revising the form of the special absentee ballot
3770 instructions for certain first-time voters; stating
3771 that an absentee ballot is considered illegal if the
3772 signature on the voter's certificate does not match
3773 the signature on record; providing instructions for
3774 updating a signature on a voter registration
3775 application; amending s. 101.75, F.S.; deleting a
3776 requirement for the dates of the qualifying period for
3777 certain municipal elections to run for no less than 14
3778 days; amending s. 102.168, F.S.; revising provisions
3779 specifying indispensable parties in a contest of an
3780 election; providing that in an election contest
3781 involving the review of a signature on an absentee
3782 ballot by a canvassing board, a circuit court may not
3783 review or consider evidence other than the signature



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3784 on the voter's certificate and the elector's
3785 signatures in the registration records; providing for
3786 the reversal of the determination by the canvassing
3787 board if the court determines that the board abused
3788 its discretion; amending s. 103.021, F.S.; revising a
3789 definition; revising requirements for a minor
3790 political party to have candidates for President and
3791 Vice-President placed on the general election ballot;
3792 creating s. 103.095, F.S.; providing a procedure for
3793 the registration of a minor political party; requiring
3794 the Division of Elections to adopt rules to prescribe
3795 the manner in which political parties may have their
3796 filings cancelled; amending s. 103.101, F.S.; deleting
3797 provisions relating to a Presidential Candidate
3798 Selection Committee; specifying a deadline by which
3799 the Secretary of State must prepare and publish a list
3800 of presidential candidates selected by political
3801 parties; amending s. 103.141, F.S.; revising
3802 procedures for the removal of an officer, county
3803 committeeman, county committeewoman, precinct
3804 committeeman, precinct committeewoman, or member of a
3805 county executive committee; repealing s. 103.161,
3806 F.S., which relates to the removal or suspension of
3807 officers or members of a state or county executive
3808 committee; amending s. 104.29, F.S.; revising
3809 provisions authorizing persons to view whether ballots
3810 are being correctly reconciled; amending s. 106.011,
3811 F.S.; revising the definitions of the terms
3812 "contribution," "independent expenditure," "unopposed



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3813 candidate," and "candidate"; conforming a cross-
3814 reference to changes made by the act; amending s.
3815 106.021, F.S.; deleting requirements to report the
3816 address of certain persons receiving a reimbursement
3817 by a check drawn on a campaign account; amending s.
3818 106.022, F.S.; requiring a political committee,
3819 committee of continuous existence, or electioneering
3820 communications organization to file a statement of
3821 appointment with the filing officer rather than with
3822 the Division of Elections; authorizing an entity to
3823 change its appointment of registered agent or
3824 registered office by filing a written statement with
3825 the filing officer; requiring a registered agent who
3826 resigns to execute a written statement of resignation
3827 and file it with the filing officer; amending s.
3828 106.023, F.S.; revising the form of the statement of
3829 candidate to require a candidate to acknowledge that
3830 he or she has been provided access to and understands
3831 the requirements of ch. 106, F.S.; amending s.
3832 106.025, F.S.; creating an exception from requirements
3833 for tickets or advertising for a campaign fund raiser
3834 to contain a specified disclosure statement; amending
3835 s. 106.03, F.S.; revising requirements for groups
3836 making expenditures for electioneering communications
3837 to file a statement of organization; amending s.
3838 106.04, F.S.; transferring a requirement that certain
3839 committees of continuous existence file campaign
3840 finance reports in special elections; requiring a
3841 committee of continuous existence that makes a



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3842 contribution or expenditure to influence the results
3843 of certain county or municipal elections to file
3844 specified reports; subjecting a committee of
3845 continuous existence that fails to file a report or to
3846 timely file a report with the Division of Elections or
3847 a county or municipal filing officer to a fine;
3848 requiring a committee of continuous existence to
3849 include transaction information from credit card
3850 purchases in a report filed with the Division of
3851 Elections; requiring a committee of continuous
3852 existence to report changes in information previously
3853 reported to the Division of Elections within 10 days
3854 after the change; requiring the Division of Elections
3855 to revoke the certification of a committee of
3856 continuous existence that fails to file or report
3857 certain information; requiring the division to adopt
3858 rules to prescribe the manner in which the
3859 certification is revoked; increasing the amount of a
3860 fine to be levied on a committee of continuous
3861 existence that fails to timely file certain reports;
3862 providing for the deposit of the proceeds of the
3863 fines; including the registered agent of a committee
3864 of continuous existence as a person whom the filing
3865 officer may notify that a report has not been filed;
3866 providing criteria for deeming delivery complete of a
3867 notice of fine; requiring a committee of continuous
3868 existence that appeals a fine to file a copy of the
3869 appeal with the filing officer; defining the term
3870 "repeated late filing"; requiring the Elections



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3871 Commission to treat the late filings addressed in a
3872 single notice of repeated late filings as a single
3873 violation; amending s. 106.07, F.S.; creating an
3874 exception for reports due in the third calendar
3875 quarter immediately preceding a general election from
3876 a requirement that the campaign treasurer report
3877 contributions received and expenditures made on the
3878 10th day following the end of each calendar quarter;
3879 revising reporting requirements for a statewide
3880 candidate who receives funding under the Florida
3881 Election Campaign Financing Act and candidates in a
3882 race with a candidate who has requested funding under
3883 that act; deleting a requirement for a committee of
3884 continuous existence to file a campaign treasurer's
3885 report relating to contributions or expenditures to
3886 influence the results of a special election; revising
3887 the methods by which a campaign treasurer may be
3888 notified of the determination that a report is
3889 incomplete to include certified mail and other methods
3890 using a common carrier that provides proof of delivery
3891 of the notice; extending the time the campaign
3892 treasurer has to file an addendum to the report after
3893 receipt of notice of why the report is incomplete;
3894 providing criteria for deeming delivery complete of a
3895 notice of incomplete report; deleting a provision
3896 allowing for notification by telephone of an
3897 incomplete report; requiring political committees that
3898 make a contribution or expenditure to influence the
3899 results of certain county or municipal elections to



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3900 file campaign finance reports with the county or
3901 municipal filing officer and to include its
3902 contributions and expenditures in a report to the
3903 Division of Elections; revising the information that
3904 must be included in a report to include transaction
3905 information for credit card purchases; deleting a
3906 requirement for a campaign depository to return checks
3907 drawn on the account to the campaign treasurer;
3908 deleting a provision providing that the failure to
3909 file a copy of a report is not subject to a separate
3910 fine; specifying the amount of a fine for the failure
3911 to timely file reports after a special primary
3912 election or special election; specifying that the
3913 registered agent of a political committee is a person
3914 whom a filing officer may notify of the amount of the
3915 fine for filing a late report; providing criteria for
3916 deeming delivery complete of a notice of late report
3917 and resulting fine; defining the term "repeated late
3918 filing"; requiring the Elections Commission to treat
3919 the late filings addressed in a single notice of
3920 repeated late filings as a single violation; amending
3921 s. 106.0703, F.S.; defining the term "repeated late
3922 filing"; requiring the Elections Commission to treat
3923 the late filings addressed in a single notice of
3924 repeated late filings as a single violation; amending
3925 s. 106.0705, F.S.; requiring certain individuals to
3926 electronically file certain reports with the Division
3927 of Elections; conforming a cross-reference to changes
3928 made by the act; deleting an obsolete provision;



3929 amending s. 106.08, F.S.; deleting a requirement for
3930 the Department of State to notify candidates as to
3931 whether an independent or minor party candidate has
3932 obtained the required number of petition signatures;
3933 deleting a requirement for certain unopposed
3934 candidates to return contributions; specifying the
3935 entities with which a political party's state
3936 executive committee and county executive committees
3937 and affiliated party committees must file a written
3938 acceptance of an in-kind contribution; amending s.
3939 106.09, F.S.; specifying that the limitations on
3940 contributions by cash or cashier's check apply to the
3941 aggregate amount of contributions to a candidate or
3942 committee per election; amending s. 106.11, F.S.;
3943 revising the statement that must be contained on
3944 checks from a campaign account; deleting requirements
3945 relating to the use of debit cards; authorizing a
3946 campaign for a candidate to reimburse the candidate's
3947 loan to the campaign when the campaign account has
3948 sufficient funds; amending s. 106.141, F.S.; deleting
3949 a limit on the amount of funds that a candidate may
3950 give to his or her political party; requiring
3951 candidates receiving public financing to return all
3952 surplus funds to the General Revenue Fund after paying
3953 certain monetary obligations and expenses; amending s.
3954 106.143, F.S.; specifying disclosure statements that
3955 must be included in political advertisements paid for
3956 by a write-in candidate; revising the disclosure
3957 statements that must be included in certain political



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3958 avertisements; prohibiting the inclusion of a person's
3959 political affiliation in advertisements for a
3960 nonpartisan office; clarifying the type of political
3961 advertisements that must be approved in advance by a
3962 candidate; deleting an exemption from the requirement
3963 to obtain a candidate's approval for messages designed
3964 to be worn; amending s. 106.17, F.S.; providing that
3965 the cost of certain polls are not contributions to a
3966 candidate; amending s. 106.18, F.S.; deleting a
3967 provision providing that a candidate will not be
3968 prevented from receiving a certificate of election for
3969 failing to file a report; amending s. 106.19, F.S.;
3970 providing that a candidate's failure to comply with
3971 ch. 106, F.S., has no effect on whether the candidate
3972 has qualified for office; amending s. 106.25, F.S.;
3973 authorizing a person who is the subject of a complaint
3974 filed with the Florida Elections Commission to file a
3975 response before executive director of the commission
3976 determines whether the complaint is legally
3977 sufficient; prohibiting the commission from
3978 determining by rule what constitutes willfulness or
3979 define the term "willful"; authorizing the commission
3980 to enter into consent orders without requiring the
3981 respondent to admit to a violation of law; authorizing
3982 an administrative law judge to impose civil penalties
3983 for violations of ch. 104 or ch. 106, F.S.; amending
3984 s. 106.26, F.S.; requiring the commission to enforce
3985 certain witness subpoenas in the circuit court where
3986 the witness resides; amending s. 106.265, F.S.;



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3987 authorizing an administrative law judge to assess
3988 civil penalties upon a finding of a violation of the
3989 election code or campaign financing laws; providing
3990 for civil penalties to be assessed against an
3991 electioneering communications organization; removing
3992 reference to the expired Election Campaign Financing
3993 Trust Fund; directing that moneys from penalties and
3994 fines be deposited into the General Revenue Fund;
3995 amending s. 106.29, F.S.; requiring state and county
3996 executive committees and affiliated party committees
3997 that make contributions or expenditures to influence
3998 the results of a special election or special primary
3999 election to file campaign treasurer's reports;
4000 amending campaign finance reporting dates, to conform;
4001 deleting a requirement that each state executive
4002 committee file the original and one copy of its
4003 reports with the Division of Elections; deleting a
4004 provision prohibiting the assessment of a separate
4005 fine for failing to file a copy of a report, to
4006 conform; revising the due date for filing a report;
4007 providing criteria for deeming delivery complete of a
4008 notice of fine; defining the term "repeated late
4009 filing"; requiring the Elections Commission to treat
4010 the late filings addressed in a single notice of
4011 repeated late filings as a single violation; amending
4012 s. 106.35, F.S.; deleting a requirement that the
4013 Division of Election adopt rules relating to the
4014 format and filing of certain printed campaign
4015 treasurer's reports; amending s. 876.05, F.S.;



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4016 deleting a requirement for all candidates for public
4017 office to record an oath to support the Constitution
4018 of the United States and of the State of Florida;
4019 repealing s. 876.07, F.S., relating to a requirement
4020 that a person make an oath to support the Constitution
4021 of the United States and of the State of Florida to be
4022 qualified as a candidate for office; providing for
4023 severability of the act; providing effective dates.

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/SB 2086

INTRODUCER: Rules Subcommittee on Ethics and Elections

SUBJECT: Elections

DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox/Seay</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2.	<u>Fox/Seay</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting
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:

This committee substitute is an omnibus elections package that requires supervisors of elections to provide the polling place address on voter information cards, establishes procedures for the Attorney General to cure defective ballot language in a joint resolution, and also makes numerous, primarily technical changes to Florida’s campaign finance laws. Some of the more significant changes in the committee substitute include:

- Requiring supervisors of elections to include polling place addresses on voter information cards issued on or after August 1, 2012;
- 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;
- 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;
- 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; and
- Providing that the failure of a candidate to comply with the campaign finance laws has no effect upon whether the candidate has qualified for the office the candidate is seeking.

This bill substantially amends ss. 97.071, 99.095, 101.161, 101.591, 101.62, 101.68, 106.011, 106.022, 106.023, 106.04, 106.07, 106.0703, 106.0705, 106.08, 106.09, 106.11, 106.141, 106.143, 106.18, 106.19, 106.29, and 106.35 of the Florida Statutes.

II. Present Situation:

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;
- 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.¹

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.² The uniform statewide voter registration application may also be used to request a replacement card.³ New cards are automatically issued when a voter's name, address, or party affiliation changes.⁴

¹ Section 97.071(1), F.S.

² Section 97.071(2), F.S.

³ Section 97.052(1), F.S.

⁴ Section 97.071(3), F.S.; *see also* s. 97.1031, F.S.

A survey in 2010⁵ 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, Orange⁶, Taylor and Volusia.

Qualifying for Office by Petition

A prospective candidate may choose to qualify for an elected office by petition, in lieu of a qualifying fee or party assessment.⁷ 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.⁸

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.⁹ Counties must also reapportion, establishing new district lines for offices like county commissioner.¹⁰ 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.¹¹ 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.

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.¹² This has been referred to by the courts as the “accuracy requirement.”¹³ All constitutional amendments are subject to this requirement, including amendments proposed by the Legislature.¹⁴ In recent years, numerous constitutional amendments proposed by the Legislature have been removed from the

⁵ Unofficial Survey, *Voter Card with Polling Place Address*, conducted by Florida State Association of Supervisors of Elections (February 2010).

⁶ 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.*

⁷ Section 99.095(1), F.S.

⁸ Section 99.095(2)(a), F.S.

⁹ 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).

¹⁰ Art. VIII, s. 1(e), FLA. CONST.

¹¹ Ch. 2005-277, s. 14, LAWS OF FLA.

¹² *Roberts v. Doyle*, 43 So.3d 654 (Fla. 2010).

¹³ *Armstrong v. Harris*, 773 So.2d 7, 11-12 (Fla. 2000); *see also* §101.161(1), F.S.

¹⁴ *Id.* at 13.

ballot by Florida courts; the Florida Supreme Court removed three amendments adopted through legislative resolution from the 2010 general election ballot.¹⁵

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.

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.¹⁶ The section provides procedures that must be used to conduct the manual audit and the timeframe in which the manual audit must be completed.¹⁷ After completion of the audit, the county canvassing board or local board must provide a report to the Department of State detailing the results.¹⁸

Absentee Ballots

An elector 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.¹⁹ 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.²⁰

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.²¹ 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 and does not plan to return prior to election day; the elector is temporarily unable to occupy his/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.²²

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.²³ If the county is using electronic tabulating equipment, the processing of absentee ballots through the electronic

¹⁵ *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).

¹⁶ Section 101.591, F.S.

¹⁷ See s. 101.591(2)-(5), F.S.

¹⁸ Section 101.591(5), F.S.

¹⁹ Section 101.62(1)(a), F.S.

²⁰ 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).

²¹ Section 101.62(4)(b)1., F.S.

²² *Id.* Absent uniformed services voters and overseas voters are excluded from this requirement. Section 101.62(4)(b)2., F.S.

²³ Section 101.68(2)(a), F.S.

tabulating equipment may also begin at 7 a.m. on the sixth day before the election.²⁴ However, it is a felony to release any results until the polls close on election day.²⁵

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.²⁶ 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, projects, or needs, and then uses that information to plan, create, design, or prepare an independent expenditure or advertising campaign.²⁷

Appointment of Registered Agents

Each political committee, committee of continuous existence, or electioneering communications organization is required to file a statement of appointment for both the registered office and registered agent with the Division of Elections (Division).²⁸ 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.²⁹

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.³⁰ The candidate must file such statement within 10 days of the appointment of the candidate's campaign treasurer and designation of the campaign depository.³¹

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.³² 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 is met.³³ The Legislature has granted the Division rulemaking authority to establish the procedure of revoking the CCE's certification.³⁴ If a CCE does not file its annual report on its designated due date, the Division must levy a fine.³⁵ Once a report is found to be late, a Division filing officer must provide notice to the committee's treasurer.³⁶ The committee's treasurer may

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 106.011(5)(a), F.S.

²⁷ Section 106.011(5), F.S.; section 106.011(6), F.S.

²⁸ Section 106.022(1), F.S.

²⁹ 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).

³⁰ Section 106.023(1), F.S.

³¹ Section 106.023(1), F.S.

³² Section 106.04(4)(a), F.S.

³³ Section 106.04(7), F.S.

³⁴ *Id.*

³⁵ Section 106.04(8)(a), F.S.

³⁶ Section 106.04(8)(b), F.S.

appeal or dispute a late filing fine by requesting a hearing before the Florida Elections Commission.³⁷ 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.³⁸

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.³⁹ 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.⁴⁰ 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.⁴¹

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.⁴² The reports are normally due on the 10th day following the end of each calendar quarter.⁴³ 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.⁴⁴ 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.⁴⁵

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.

³⁷ Section 106.04(8)(c), F.S.

³⁸ Section 106.04(8)(d), F.S.

³⁹ Section 106.04(4)(b), F.S.

⁴⁰ Section 106.04(8)(a), F.S.

⁴¹ 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).

⁴² Section 106.07(1), F.S.

⁴³ 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.*

⁴⁴ 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.

⁴⁵ Section 106.07(1)(d)1, F.S.

Each report submitted to the Division must include each credit card statement after it is received by the campaign treasurer.⁴⁶ 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.⁴⁷ The maintained records are subject to inspection by the Division or the Florida Elections Commission (Commission) anytime during normal business hours.⁴⁸

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.⁴⁹ Reports due immediately preceding each primary and general election are subject to a higher late fine.⁵⁰ The appropriate filing officer must notify the Commission of repeated late filing of reports.⁵¹

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.⁵² 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.⁵³ 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.⁵⁴

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 \$50.⁵⁵

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.⁵⁶ Any debit cards that are issued for a candidate's

⁴⁶ Section 106.07(4)(a)11, F.S.

⁴⁷ Section 106.07(6), F.S.

⁴⁸ *Id.*

⁴⁹ 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.*

⁵⁰ *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.*

⁵¹ Section 106.07(8)(d), F.S.

⁵² Pursuant to Section 99.0955, F.S.

⁵³ Section 106.08(3)(c), F.S.

⁵⁴ Section 106.08(3)(c)2, F.S.

⁵⁵ Section 106.09(1), F.S.

⁵⁶ Section 106.11(2)(a)4, F.S.

campaign or a political committee must expire by midnight of the last day of the month of the general election.⁵⁷

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.⁵⁸ Current law does not address statements that must be featured on the advertisements of write-in candidates.

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.⁵⁹ 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.⁶⁰ 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.⁶¹ The “approved by” disclaimer is not required for campaign messages used by a candidate or his or her supporters if the message is displayed on clothing.⁶²

III. Effect of Proposed Changes:

Section 1. 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 2. 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 3. 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 4. 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

⁵⁷ Section 106.11(2)(a)5, F.S.

⁵⁸ Section 106.143(1)(a), F.S.

⁵⁹ Section 106.143(2), F.S.

⁶⁰ *Id.*

⁶¹ Section 106.143(4)(a), F.S.

⁶² Section 106.143(4)(c), F.S.

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 5. 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 6. 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 next 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; 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 7. 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 8. 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; ties the time frame to the candidate’s specific qualifying period instead of the qualifying period for legislative and statewide candidates.

Section 9. Amends s. 106.022, F.S., providing that a PC’s, CCE’s, or electioneering communications organization’s filing of the appointment of a registered agent and registered office will be with the same filing officer that the entity registered with originally.

Section 10. 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 11. 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 12. 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 13. 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.

Section 14. 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.

Section 15. 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 16. 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 17. 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 18. 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.

Section 19. Amends s. 106.143, F.S., mandating that a write-in candidate use a specified disclaimer for political advertisements; 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,”⁶³ 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.⁶⁴

Section 20. 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.

Section 21. 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 22. 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.; provides for the filing of such reports on the Friday before a special primary or special election, and subjects 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 23. 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 24. Provides for an effective date of July 1, 2011.

⁶³ Ch. 2010-167, s. 18, LAWS OF FLA.

⁶⁴ *Id.*

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 minor positive fiscal impact as a result of: no longer requiring supervisors of elections to complete a voting system audit if a manual recount has occurred; higher penalties for late-filed reports by CCEs; potential fines levied on the new election violation of “repeated late filing”; 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 committee substitute will 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.⁶⁵ 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.

VI. Technical Deficiencies:

None.

⁶⁵ The cost estimate is based on 2009 data provided by the Florida State Association of Supervisors of Elections.

VII. Related Issues:

None.

VIII. Additional Information:

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

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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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Between lines 118 and 119
insert:

Section 2. Section 112.3142, Florida Statutes, is created
to read:

112.3142 Qualified blind trusts.-

(1) The Legislature finds that if a public officer creates
a trust and does not control the interests held by the trust,
his or her official actions will not be influenced or appear to
be influenced by private considerations.

(2) If a public officer holds an economic interest in a
qualified blind trust as described in this section, he or she



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14 does not have a conflict of interest prohibited under s.
15 112.313(3) or (7) or a voting conflict of interest under s.
16 112.3143 with regard to matters pertaining to that economic
17 interest.

18 (3) Except as otherwise provided in this section, the
19 public officer may not attempt to influence or exercise any
20 control over decisions regarding the management of assets in a
21 qualified blind trust. The public officer and each person having
22 a beneficial interest in the qualified blind trust may not make
23 any effort to obtain information with respect to the holdings of
24 the trust, including obtaining a copy of any trust tax return
25 filed or any information relating thereto, except as otherwise
26 provided in this section.

27 (4) Except for communications that consist solely of
28 requests for distributions of cash or other unspecified assets
29 of the trust, there shall be no direct or indirect communication
30 with respect to the trust between the public officer or any
31 person having a beneficial interest in the qualified blind trust
32 and the trustee, unless such communication is in writing and
33 unless it relates only to:

34 (a) A request for a distribution from the trust which does
35 not specify whether the distribution is to be made in cash or in
36 kind;

37 (b) The general financial interests and needs of the public
38 officer or a person having a beneficial interest, including, but
39 not limited to, an interest in maximizing income or long-term
40 capital gain;

41 (c) The notification of the trustee of a law or regulation
42 subsequently applicable to the public officer which prohibits



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43 the officer from holding an asset and which notification directs
44 that the asset not be held by the trust; or

45 (d) Directions to the trustee to sell all of an asset
46 initially placed in the trust by the public officer which, in
47 the determination of the public officer, creates a conflict of
48 interest or the appearance thereof due to the subsequent
49 assumption of duties by the public officer.

50 (5) The public officer shall report as an asset on his or
51 her financial disclosure forms the beneficial interest in the
52 qualified blind trust and its value, if the value is required to
53 be disclosed. The public officer shall report the blind trust as
54 a primary source of income on his or her financial disclosure
55 forms and its amount, if the amount of income is required to be
56 disclosed. The public officer is not required to report as a
57 secondary source of income any source of income to the blind
58 trust.

59 (6) In order to constitute a qualified blind trust, the
60 trust must be established by the public officer and meet the
61 following requirements:

62 (a) The person appointed as a trustee must not be:

63 1. The public officer's spouse, child, parent, grandparent,
64 grandchild, brother, sister, parent-in-law, brother-in-law,
65 sister-in-law, aunt, uncle, or first cousin, or the spouse of
66 any such person;

67 2. A person who is an elected or appointed public officer
68 or a public employee; or

69 3. A person who has been appointed to serve in an agency by
70 the public officer or by a public officer or public employee
71 supervised by the public officer.



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72 (b) The trust agreement that establishes the trust must:

73 1. Contain a statement that its purpose is to remove from
74 the grantor control and knowledge of investment of trust assets
75 so that conflicts between the grantor's responsibilities as a
76 public officer and his or her private interests will be
77 eliminated.

78 2. Give the trustee complete discretion to manage the
79 trust, including, but not limited to, the power to dispose of
80 and acquire trust assets without consulting or notifying the
81 covered public officer or any person having a beneficial
82 interest in the trust.

83 3. Prohibit communication between the trustee and the
84 public officer and any person having a beneficial interest in
85 the trust concerning the holdings or sources of income of the
86 trust, except amounts of cash value or net income or loss, if
87 such report does not identify any asset or holding, except as
88 provided in this section.

89 4. Provide that the trust tax return is prepared by the
90 trustee or his or her designee and that any information relating
91 thereto is not disclosed to the public officer or to any other
92 beneficiary, except as provided in this section.

93 5. Permit the trustee to notify the public officer of the
94 date of disposition and value at disposition of any original
95 investment or interests in real property to the extent required
96 by federal tax law so that the information can be reported on
97 the public officer's applicable tax returns.

98 6. Prohibit the trustee from disclosing to the public
99 officer and any person having a beneficial interest in the trust
100 any information concerning replacement assets to the trust,



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101 except for the minimum tax information that lists only the
102 totals of taxable items from the trust and does not describe the
103 source of individual items of income.

104 (c) Within 5 business days after the agreement is executed,
105 the public officer shall file a notice with the commission
106 setting forth:

- 107 1. The date the agreement was executed;
108 2. The name and address of the trustee; and
109 3. Acknowledgement by the trustee that he or she has agreed
110 to serve as trustee.

111
112 ===== T I T L E A M E N D M E N T =====

113 And the title is amended as follows:

114 Between lines 4 and 5

115 insert:

116 creating s. 112.3142, F.S.; providing for qualified
117 blind trusts; providing legislative findings;
118 providing conditions when a public officer has no
119 conflict of interest; prohibiting a public officer
120 from influencing or exercising control over the
121 management of the blind trust; providing exceptions;
122 providing conditions for certain communications
123 between the public officer or other persons having a
124 beneficial interest and the trustee; providing that
125 the public officer report certain information relating
126 to the blind trust; providing requirements for the
127 public officer in creating a qualified blind trust;
128 prohibiting the trustee from disclosing certain
129 information to the public officer or other persons



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130 having a beneficial interest in the trust; requiring
131 the public officer to provide notice and specified
132 information to the Commission on Ethics;



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete lines 167 - 176

and insert:

(b) A vote on legislation does not inure to a member's special private gain or loss if:

1. The vote being taken is preliminary or procedural in nature;

2. The chance that any gain or loss received from the legislation is remote or speculative; or

3. The legislation affects a large number of people or entities but does not affect the member, the member's relative, business associate, employer, board upon which the member sits,



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14 principal, or corporate parent or subsidiary organization of a
15 principal by whom the member is retained differently than the
16 rest of those affected by the legislation.

17 (c) A member of the Legislature is not prohibited from
18 voting on, and is not required to make any disclosure
19 concerning, any legislation that would inure to the special
20 private gain or loss of the member's employer, principal, or a
21 board upon which the member sits, if the entity is an agency as
22 defined in s. 112.312(2).

23 (d) A member of the Legislature serving as an independent
24 contractor attorney or "of counsel" attorney in a law firm is
25 not prohibited from voting on, and is not required to make any
26 disclosure concerning, any legislation that would inure to the
27 special private gain or loss of any of the firm's clients, if
28 the member is not involved in the representation of the client,
29 is not involved in the firm's management, and the member's
30 compensation as an attorney is not derived from money received
31 from that client.

32 (3) This section does not prevent a member of the
33 Legislature from voting on a General Appropriations Act or
34 implementing legislation on the floor of the Senate or House of
35 Representatives.

36 (4) A member of the Legislature may request an advisory
37 opinion from the general counsel of the house of which he or she
38 is a member as to the application of this section to a specific
39 situation. The general counsel shall issue the opinion within 10
40 days after receiving the request. The member of the Legislature
41 may reasonably rely on such opinion.

42



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43 ===== T I T L E A M E N D M E N T =====

44 And the title is amended as follows:

45 Delete lines 37 - 41

46 and insert:

47 such entity is an agency; providing that a member's
48 vote does not inure to the member's special private
49 gain or loss under certain circumstances; providing
50 that the act does not require disclosure if a member's
51 vote will inure to the special private gain or loss of
52 a member's employer, principal, or board upon which
53 the member sits, if such entity is an agency;
54 providing that a member of the Legislature who is
55 serving as an independent contractor attorney or "of
56 counsel" attorney in a law firm is not prohibited from
57 voting on and is not required to make a disclosure
58 concerning legislation that would inure to the special
59 private gain or loss of any of the firm's clients;
60 authorizing a member to request an advisory opinion
61 from the general counsel of the house of which he or
62 she is a member; providing that the

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/SB 2088

INTRODUCER: Rules Subcommittee on Ethics and Elections, Rules Committee, and Senator Gaetz

SUBJECT: Ethics

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	Carlton	Phelps	RC	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends the voting conflicts law by prohibiting a member of the Legislature from voting on certain legislation. It also requires a member to publicly state to the body or the committee to which the member belongs, prior to consideration of the legislation, all of the interests which give rise to the voting conflict. The bill would also require disclosure of the specific nature of those interests in a memorandum filed with either the Secretary of the Senate or Clerk of the House of Representatives within 15 days after the vote. The memorandum would be published in the journal of the house of which the legislator is a member.

The bill amends the financial disclosure laws applicable to elected constitutional officers by requiring the Florida Commission on Ethics (“Commission”) to review timely-filed financial disclosures of elected constitutional officers, along with any supporting documents provided, to determine if the filing is sufficient. The bill requires the Commission to notify filers whether their disclosures are sufficient by July 31, and provides 30 days for the official to correct the filing without penalty. Also, if information is omitted from the form which is required to be disclosed, and that information was contained in the supporting documentation filed with the Commission but was not caught by the Commission, the officer shall not be liable for fines or penalties.

Finally, the bill incorporates recommendations made by the Nineteenth Statewide Grand Jury on Public Corruption (“Grand Jury”). Specifically, the bill amends the definition of the term “gift” so that campaign contributions made pursuant to federal elections laws are not a gift. Also, the bill requires two additional types of public servant to file an annual statement of financial interests pursuant to s. 112.3145, F.S. In addition, the bill implements the Grand Jury recommendations concerning use of the term “corruptly” in the criminal bribery and misuse of public position provisions.

This bill substantially amends the following sections of the Florida Statutes: s. 112.312, F.S., s. 112.3143, F.S., s. 112.3144, F.S., s. 112.3145, F.S., s. 838.015, F.S., s. 838.016, F.S., and s. 838.022, F.S. The bill also creates s. 112.31435, F.S. Finally, the bill repeals s. 838.014(4), F.S.

II. Present Situation:

Voting Conflicts:

Under Section 112.3143(2), Florida Statutes, no state public officer is prohibited from voting in an official capacity on any matter. However, any state public officer voting in an official capacity upon any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer shall, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

Conversely, county, municipal, and other local officers are prohibited from voting on any measure which would inure to his/her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained, other than an agency; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the officer. In the event of a conflict, the county, municipal, and other local officers are required to publicly state to the assembly the nature of the officer's interests in the matter from which he or she is abstaining prior to the vote being taken. Additionally, the county, municipal, and other local officers are required to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.

Financial Disclosure:

Currently, all elected constitutional officers and candidates for such offices are required by Art. II, s. 8 of the State Constitution, to file a full and public disclosure of their financial interests annually. The annual full and public disclosure is also required of all statewide elected officers and any other officers, candidates, and employees as determined by law. Currently, the financial disclosure requirements are contained in s. 112.3144, F.S., and s. 112.3145, F.S. Section

112.3144, F.S., is the implementing language for the full and public disclosure of financial interests required of the constitutionally specified officers and candidates.

The Commission serves as the depository for the financial disclosure filings of state officers or employees. Those who serve at a local level file their financial disclosure with the local supervisor of elections. The Commission and supervisors of elections are statutorily required to assist each other in identifying those subject to the financial disclosure requirement, providing notice to those individuals, and tracking receipt of financial disclosures. In the event that an individual fails to timely file his or her financial disclosure, the Commission imposes an automatic fine of \$25 per day for failure to timely file financial disclosure. The automatic fine is capped at \$1,500. Neither the Commission nor the supervisor of elections is required to examine the financial disclosure filings.

If a filer is uncertain about whether he or she is required to disclose information, the filer may contact the Commission for guidance. Usually, the Commission's staff can answer simple questions by telephone or letter. In some circumstances, staff may not be able to provide such informal guidance. The Commission's staff will usually provide the filer the "safe harbor" advice to disclose the information or will advise the filer to seek a formal opinion from the Commission at its next available meeting. Upon receipt of the guidance, the onus is on the filer to include the information on their original form or, if necessary, file an amendment form. A member of the public can file a complaint with the Commission alleging that the person failed to disclose information which they were legally obligated to disclose. That complaint follows the same procedure as any complaint alleging a violation of one of the standards of conduct in the Code of Ethics. In the event that the Commission finds the filer in violation, he or she is subject to the penalties in s. 112.317, F.S.

Nineteenth Statewide Grand Jury Recommendations:

On November 30, 2009, Governor Crist convened the Grand Jury to review the ethics laws for possible improvement and to investigate any potential criminal activity within the Grand Jury's jurisdiction. On December 17, 2010, the Grand Jury issued a 124-page report interim report. The report contains various findings of fact, explanation of current ethics laws, and suggestions for improvement of those laws.

One recommendation was to clarify what constitutes a "gift." Currently, the definition of gifts for purposes of the Code of Ethics is located in s. 112.312(12), F.S. That section also identifies certain things which are specifically excluded from the definition of "gift." Currently, campaign contributions regulated by state law are specifically excluded from the definition of "gift." The exemption, which must be narrowly construed, does not include campaign contributions given which are reported pursuant to federal law. The Grand Jury recommended fixing this omission.

Another recommendation concerned who is required to file an annual statement of financial interests pursuant to s. 112.3145, F.S. Generally, only those specifically enumerated in that statute are required to file an annual statement of financial interests.¹ This filing requirement is

¹ Section 112.3145(1)(a)2.g., permits a unit of local government to require financial disclosure of individuals if permitted to do so by the enabling legislation or via ordinance or resolution.

less onerous than that required in Article II, s. 8 of the Florida Constitution. Currently, neither members of a community redevelopment agency board nor finance directors of county, municipal, or other political subdivisions are required to file annual financial disclosure. The Grand Jury recommended requiring annual financial disclosure of those individuals.

The final Grand Jury recommendation addressed in the bill concerns crimes such as bribery and criminal misuse of public position. Currently, s. 838.014(4), F.S., defines the term “corruptly.”² “Corruptly” is then incorporated as the requisite mental state for the public corruption offenses in Chapter 838 of the Florida Statutes. The Grand Jury heard testimony that the use of that mental state prevents State Attorneys from being able to try or convict public officers for those offenses. Thus, the Grand Jury concluded that “corruptly” should be stricken from the criminal provisions.

III. Effect of Proposed Changes:

Voting Conflicts:

As previously mentioned, current law provides that no statewide elected officer is prohibited from voting in an official capacity on any matter. The bill creates an exception to the general rule in Section 112.3143(2), F. S., that state public officers may vote in an official capacity on any matter. The bill creates s. 112.31435, F.S., which prohibits a member of the Legislature from voting upon any legislation that would inure to his or her special private gain or loss. The bill also prohibits a member of the Legislature from voting on a matter which he or she knows would inure to the special private gain or loss of his or her relative, business associate, employer, board upon which the member sits, or a principal by whom the member is retained or the parent corporation or subsidiary of a corporate principal by whom the member is retained.

The bill also requires a member to disclose, prior to a vote being taken, all of the interests in the legislation that give rise to the voting conflict. Additionally, the member must disclose the specific nature of those interests as a public record in a memorandum filed with the Secretary of the Senate or the Clerk of the House of Representatives within 15 days after the date on which a vote on the legislation occurs. The memorandum shall be spread upon the pages of the journal of the house of which the legislator is a member.

The bill specifically provides that a member of the Legislature is not prohibited from voting on a General Appropriations Act or implementing legislation on the floor of the Senate or the House of Representatives. The bill also specifically provides that a member is not prohibited from voting on matters that would benefit his or her employer or a board upon which the member sits when the member’s employer or board is a public agency.

Financial Disclosure:

The bill amends s. 112.3144, F.S., concerning the filing of annual full and public disclosure of the interests by elected constitutional officers. Specifically, the bill requires the Commission to review any full and public disclosure of financial interests filed by an elected constitutional

² It is important to note that the definition of “corruptly” in s. 838.014(4), F.S., is different in s. 112.312(9), F.S., which applies to the Code of Ethics.

officer no later than 5:00 p.m. on July 1.³ The Commission is required to compare the form and any other supplemental or supporting documentation provided by the filer to determine whether the filing is sufficient. The Commission must then notify the filer whether his or her disclosure is sufficient. If the filing is sufficient, the Commission accepts the filing and shall consider the disclosure to be filed as of the date received.

If the Commission determines, based upon the full and public disclosure form and supporting or supplemental documents, that the filer omitted information required to be filed, the Commission must notify the filer by certified mail. The notice must be sent within thirty days of July 1 and must state with particularity the reason(s) for the deficiency. The officer must then file a new full and public disclosure of financial interests no later than September 1 of that year. A complaint cannot be filed alleging a violation of s. 112.3144, F.S., based on errors identified by the Commission, unless the filer fails to make the corrections necessary to comply with the disclosure requirement by September 1. If the officer fails to file the corrected form by September 1, he or she remains subject to the automatic fines for failure to timely file his or her disclosure. However, the officer would retain the right to appeal any automatic fine based on the existence of unusual circumstances.

When the filing is determined to be sufficient, the officer is not liable for any fines or penalties related to the filing. However, the exemption from liability for fines or penalties is not intended to apply where the filer omits information necessary for the Commission to make its sufficiency determination. This encourages the officer to disclose any information which would facilitate the Commission's review and prevents withholding information in an effort to receive the exemption.

Nineteenth Statewide Grand Jury Recommendations:

Consistent with the recommendations of the Grand Jury, the bill amends the definition of "gift" in s. 112.312(12), F.S. The bill exempts campaign contributions reported pursuant to federal elections law from the definition of a "gift."

The bill also incorporates two other recommendations of the Grand Jury by amending s. 112.3145, F.S. The first change requires members of a community redevelopment agency board to file annual financial disclosure. The second change requires a finance director of a county, municipality, or other political subdivision to file annual financial disclosure.

Consistent with the Grand Jury's recommendation concerning the criminal bribery and misuse of public position statutes, the bill removes "corruptly" from Chapter 838 of the Florida Statutes. Specifically, the definition of "corruptly" in s. 838.014(4), F.S., is repealed. Then, the phrase "corruptly" is replaced with "knowingly" in s. 838.015, s. 838.016, and s. 838.022 of the Florida Statutes. Thus, the mental state required for those offenses would become "knowingly."

³ If a filing is not received before 5:00 p.m. on July 1, the bill does not require the Commission to conduct a review of the officer's full and public disclosure of financial interests.

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:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Commission on Ethics may incur additional costs related to sufficiency reviews for certain financial disclosure filings, but such amount is indeterminate at this time. Any potential increase in work caused by the sufficiency review could be offset by using seasonal OPS staff for the thirty day period in which the Commission conducts the review.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Rules Subcommittee on Ethics and Elections on April 4, 2011:

The Committee Substitute differs from the original bill in that it: clarifies that a member must disclose when the member knows that the legislation would inure to the special private gain of a business associate, employer, or board upon which the member sits, to

conform; clarifies that a member may vote on legislation that inures to a member's *public* employer, principal, or board without any disclosure.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Negron) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1), paragraph (c) of subsection (5),
and subsection (12) of section 790.06, Florida Statutes, are
amended to read:

790.06 License to carry concealed weapon or firearm.-

(1) The Department of Agriculture and Consumer Services is
authorized to issue licenses to carry concealed weapons or
concealed firearms to persons qualified as provided in this
section. Each such license must bear a color photograph of the



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14 licensee. For the purposes of this section, concealed weapons or
15 concealed firearms are defined as a handgun, electronic weapon
16 or device, tear gas gun, knife, or billie, but the term does not
17 include a machine gun as defined in s. 790.001(9). Such licenses
18 shall be valid throughout the state for a period of 7 years from
19 the date of issuance. Any person in compliance with the terms of
20 such license may carry a concealed weapon or concealed firearm
21 notwithstanding ~~the provisions of~~ s. 790.01 or may openly carry
22 a handgun, as defined in s. 790.0655, notwithstanding s.
23 790.053. The licensee must carry the license, together with
24 valid identification, at all times in which the licensee is in
25 actual possession of a concealed weapon or firearm and must
26 display both the license and proper identification upon demand
27 by a law enforcement officer. A violation ~~Violations of the~~
28 ~~provisions~~ of this subsection shall constitute a noncriminal
29 violation with a penalty of \$25, payable to the clerk of the
30 court.

31 (5) The applicant shall submit to the Department of
32 Agriculture and Consumer Services:

33 (c) A full set of fingerprints of the applicant
34 administered by a law enforcement agency or the Division of
35 Licensing of the Department of Agriculture and Consumer
36 Services.

37 (12) (a) A ~~No~~ license issued under ~~pursuant to~~ this section
38 does not shall authorize any person to openly carry a handgun or
39 carry a concealed weapon or firearm into:

- 40 1. Any place of nuisance as defined in s. 823.05;
- 41 2. Any police, sheriff, or highway patrol station;
- 42 3. Any detention facility, prison, or jail;



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- 43 4. Any courthouse;
- 44 5. Any courtroom, except that nothing in this section would
45 preclude a judge from carrying a concealed weapon or determining
46 who will carry a concealed weapon in his or her courtroom;
- 47 6. Any polling place;
- 48 7. Any meeting of the governing body of a county, public
49 school district, municipality, or special district;
- 50 8. Any meeting of the Legislature or a committee thereof;
- 51 9. Any school, college, or professional athletic event not
52 related to firearms;
- 53 10. Any elementary or secondary school facility or
54 administration building;
- 55 11. Any career center;
- 56 12. Any portion of an establishment licensed to dispense
57 alcoholic beverages for consumption on the premises, which
58 portion of the establishment is primarily devoted to such
59 purpose; ~~any elementary or secondary school facility; any career~~
60 ~~center;~~
- 61 13. Any college or university facility unless the licensee
62 is a registered student, employee, or faculty member of such
63 college or university and the weapon is a stun gun or nonlethal
64 electric weapon or device designed solely for defensive purposes
65 and the weapon does not fire a dart or projectile;
- 66 14. The inside of the passenger terminal and sterile area
67 of any airport, provided that no person shall be prohibited from
68 carrying any legal firearm into the terminal, which firearm is
69 encased for shipment for purposes of checking such firearm as
70 baggage to be lawfully transported on any aircraft; or
- 71 15. Any place where the carrying of firearms is prohibited



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72 by federal law.

73 (b) A person licensed under this section shall not be
74 prohibited from carrying or storing a firearm in a vehicle for
75 lawful purposes.

76 (c) This subsection does not modify the terms or conditions
77 of s. 790.251(7).

78 (d) Any person who knowingly and willfully violates any
79 provision of this subsection commits a misdemeanor of the second
80 degree, punishable as provided in s. 775.082 or s. 775.083.

81 Section 2. Section 790.28, Florida Statutes, is repealed.

82 Section 3. Subsection (1) of section 790.065, Florida
83 Statutes, is amended to read:

84 790.065 Sale and delivery of firearms.-

85 (1) (a) A licensed importer, licensed manufacturer, or
86 licensed dealer may not sell or deliver from her or his
87 inventory at her or his licensed premises any firearm to another
88 person, other than a licensed importer, licensed manufacturer,
89 licensed dealer, or licensed collector, until she or he has:

90 1.-(a) Obtained a completed form from the potential buyer or
91 transferee, which form shall have been promulgated by the
92 Department of Law Enforcement and provided by the licensed
93 importer, licensed manufacturer, or licensed dealer, which shall
94 include the name, date of birth, gender, race, and social
95 security number or other identification number of such potential
96 buyer or transferee and has inspected proper identification
97 including an identification containing a photograph of the
98 potential buyer or transferee.

99 2.-(b) Collected a fee from the potential buyer for
100 processing the criminal history check of the potential buyer.



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101 The fee shall be established by the Department of Law
102 Enforcement and may not exceed \$8 per transaction. The
103 Department of Law Enforcement may reduce, or suspend collection
104 of, the fee to reflect payment received from the Federal
105 Government applied to the cost of maintaining the criminal
106 history check system established by this section as a means of
107 facilitating or supplementing the National Instant Criminal
108 Background Check System. The Department of Law Enforcement
109 shall, by rule, establish procedures for the fees to be
110 transmitted by the licensee to the Department of Law
111 Enforcement. All such fees shall be deposited into the
112 Department of Law Enforcement Operating Trust Fund, but shall be
113 segregated from all other funds deposited into such trust fund
114 and must be accounted for separately. Such segregated funds must
115 not be used for any purpose other than the operation of the
116 criminal history checks required by this section. The Department
117 of Law Enforcement, each year prior to February 1, shall make a
118 full accounting of all receipts and expenditures of such funds
119 to the President of the Senate, the Speaker of the House of
120 Representatives, the majority and minority leaders of each house
121 of the Legislature, and the chairs of the appropriations
122 committees of each house of the Legislature. In the event that
123 the cumulative amount of funds collected exceeds the cumulative
124 amount of expenditures by more than \$2.5 million, excess funds
125 may be used for the purpose of purchasing soft body armor for
126 law enforcement officers.

127 3.(e) Requested, by means of a toll-free telephone call,
128 the Department of Law Enforcement to conduct a check of the
129 information as reported and reflected in the Florida Crime



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130 Information Center and National Crime Information Center systems
131 as of the date of the request.

132 4.~~(d)~~ Received a unique approval number for that inquiry
133 from the Department of Law Enforcement, and recorded the date
134 and such number on the consent form.

135 (b) However, if the person purchasing, or receiving
136 delivery of, the firearm is a holder of a valid concealed
137 weapons or firearms license pursuant to the provisions of s.
138 790.06 or holds an active certification from the Criminal
139 Justice Standards and Training Commission as a "law enforcement
140 officer," a "correctional officer," or a "correctional probation
141 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or
142 (9), ~~the provisions of~~ this subsection does ~~de~~ not apply.

143 (c) This subsection does not apply to the purchase, trade,
144 or transfer of a rifle or shotgun by a resident of this state
145 when the resident makes such purchase, trade, or transfer from a
146 licensed importer, licensed manufacturer, or licensed dealer in
147 another state.

148 Section 4. This act shall take effect upon becoming a law.
149
150

151 ===== T I T L E A M E N D M E N T =====

152 And the title is amended as follows:

153 Delete everything before the enacting clause
154 and insert:

155 A bill to be entitled
156 An act relating to firearms; amending s. 790.06, F.S.;
157 providing that a person in compliance with the terms
158 of a concealed carry license may openly carry a



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159 handgun notwithstanding specified provisions; allowing
160 the Division of Licensing of the Department of
161 Agriculture and Consumer Services to take fingerprints
162 from concealed carry license applicants; providing
163 that a person may not openly carry a weapon or firearm
164 or carry a concealed weapon or firearm into specified
165 locations; providing that concealed carry licensees
166 shall not be prohibited from carrying or storing a
167 firearm in a vehicle for lawful purposes; providing
168 that a provision limiting the scope of a license to
169 carry a concealed weapon or firearm does not modify
170 certain exceptions to prohibited acts with respect to
171 a person's right to keep and bear arms in motor
172 vehicles for certain purposes; repealing s. 790.28,
173 F.S., relating to the purchase of rifles and shotguns
174 in contiguous states; amending s. 790.065, F.S.;
175 providing that specified provisions do not apply to
176 certain firearms transactions by a resident of this
177 state; providing an effective date.

II. Present Situation:

Under current Florida law, it is lawful for a person to carry a *concealed* weapon without a concealed weapon license for purposes of lawful self-defense, so long as the weapon is limited to self-defense chemical spray, a nonlethal stun gun, a dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.¹

However, without licensure, a person carrying a different type of concealed weapon,² electric weapon, or device other than one designed solely for defensive purposes is liable for a first degree misdemeanor.³ A person who carries a concealed firearm without proper licensure is liable for a third degree felony offense.⁴

It is lawful for a person to *openly* carry a self-defense chemical spray, nonlethal stun gun or dart-firing stun gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes.⁵

Certain persons under particular circumstances are exempt from the limitations on the open carry of weapons in s. 790.053, F.S., and the concealed firearm carry licensure requirements in s. 790.06, F.S., when the weapons and firearms are lawfully owned, possessed, and used. These persons and circumstances include:

- Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization;
- Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chs. 250 and 251, F.S., and under federal laws, when on duty or when training or preparing themselves for military duty;
- Persons carrying out or training for emergency management duties under ch. 252, F.S.;
- Sheriffs, marshals, prison or jail wardens, police officers, Florida highway patrol officers, game wardens, revenue officers, forest officials, special officers appointed under the provisions of ch. 354, F.S., and other peace and law enforcement officers and their deputies and assistants and full-time paid peace officers of other states and of the Federal Government who are carrying out official duties while in this state;
- Officers or employees of the state or United States duly authorized to carry a concealed weapon;
- Guards or messengers of common carriers, express companies, armored car carriers, mail carriers, banks, and other financial institutions, while actually employed in and about the

¹ s. 790.01(4), F.S.

² A concealed weapon, under s. 790.001(3)(a), F.S., means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person. The weapons listed in this definition require licensure to carry them in a concealed manner.

³ s. 790.01(1), F.S.

⁴ s. 790.01(2), F.S.

⁵ s. 790.053(2), F.S.

shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state;

- Regularly enrolled members of any organization duly authorized to purchase or receive weapons from the United States or from this state, or regularly enrolled members of clubs organized for target, skeet, or trap shooting, while at or going to or from shooting practice; or regularly enrolled members of clubs organized for modern or antique firearms collecting, while such members are at or going to or from their collectors' gun shows, conventions, or exhibits;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person while engaged in the lawful course of such business;
- A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place;
- A person firing weapons in a safe and secure indoor range for testing and target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;
- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; and
- Investigators employed by the public defenders and capital collateral regional counsel of the state, while actually carrying out official duties.⁶

Concealed Weapons Licensure

The Department of Agriculture and Consumer Services (DACS) is authorized to issue concealed weapon licenses to those applicants who qualify.⁷ Concealed weapons or concealed firearms are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie but not a machine gun for purposes of the licensure law.⁸

According to the FY 2009-2010 statistics, the DACS received 167,240 new licensure applications and 91,963 requests for licensure renewal during that time period.⁹

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;

⁶ s. 790.25(3), F.S.

⁷ s. 790.06(1), F.S.

⁸ *Id.*

⁹ Fla. Dep't of Agriculture and Consumer Services, Concealed Weapon or Firearm License Reports, Applications and Dispositions by County July 1, 2009 – June 30, 2010,

http://licgweb.doacs.state.fl.us/stats/07012009_06302010_cw_annual.pdf (last visited Apr. 4, 2011).

- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee no greater than \$85.¹⁰

Additionally, the applicant must attest that he or she is in compliance with the criteria contained in subsections (2) and (3) of s. 790.06, F.S.

Subsection (2) of s. 790.06, F.S., requires the DACS to issue the license to carry a concealed weapon, if all other requirements are met, and the applicant:

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm pursuant to s. 790.23, F.S., by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state relating to controlled substances within a three-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been committed under ch. 397, F.S., or under the provisions of former ch. 396, F.S., or has been convicted under s. 790.151, F.S., or has been deemed a habitual offender under s. 856.011(3), F.S., or has had two or more convictions under s. 316.193, F.S., or similar laws of any other state, within the three-year period immediately preceding the date on which the application is submitted;
- Has not been adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state, unless five years have elapsed since the applicant's restoration to capacity by court order;

¹⁰ s. 790.06(1)-(5), F.S.

- Has not been committed to a mental institution under ch. 394, F.S., or similar laws of any other state, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least five years prior to the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been sealed or expunged;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.¹¹

The Department of Agriculture and Consumer Services must deny the application if the applicant has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence constituting a misdemeanor, unless three years have elapsed since probation or any other conditions set by the court have been fulfilled or the record has been sealed or expunged.¹²

The Department of Agriculture and Consumer Services shall revoke a license if the licensee has been found guilty of, had adjudication of guilt withheld for, or had imposition of sentence suspended for one or more crimes of violence within the preceding three years.¹³

The Department of Agriculture and Consumer Services shall, upon notification by a law enforcement agency, a court, or the Florida Department of Law Enforcement and subsequent written verification, suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license under this section, until final disposition of the case.¹⁴ The DACS shall suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.¹⁵

In addition, the DACS is required to suspend or revoke a concealed weapons license if the licensee:

- Is found to be ineligible under the criteria set forth in subsection (2);
- Develops or sustains a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is convicted of a felony that would make the licensee ineligible to possess a firearm pursuant to s. 790.23, F.S.;

¹¹ s. 790.06(2), F.S.

¹² s. 790.06(3), F.S.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

- Is found guilty of a crime under the provisions of ch. 893, F.S., or similar laws of any other state, relating to controlled substances;
- Is committed as a substance abuser under ch. 397, F.S., or is deemed a habitual offender under s. 856.011(3), F.S., or similar laws of any other state;
- Is convicted of a second violation of s. 316.193, F.S., (driving under the influence), or a similar law of another state, within three years of a previous conviction of such section, or similar law of another state, even though the first violation may have occurred prior to the date on which the application was submitted;
- Is adjudicated an incapacitated person under s. 744.331, F.S., or similar laws of any other state; or
- Is committed to a mental institution under ch. 394, F.S., or similar laws of any other state.¹⁶

Licenses must carry their license and valid identification any time they are in actual possession of a concealed weapon or firearm and display both documents upon demand by a law enforcement officer.¹⁷ A person's failure to have proper documentation and display it upon demand makes the person liable for a second degree misdemeanor.¹⁸

A concealed weapon or firearms license does not authorize a person to carry a weapon or firearm in a concealed manner into:

- any place of nuisance as defined in s. 823.05, F.S.;
- any police, sheriff, or highway patrol station;
- any detention facility, prison, or jail;
- any courthouse;
- any courtroom, except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom;
- any polling place;
- any meeting of the governing body of a county, public school district, municipality, or special district;
- any meeting of the Legislature or a committee thereof;
- any school, college, or professional athletic event not related to firearms;
- any school administration building;
- any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- any elementary or secondary school facility;
- any career center;
- any college or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;

¹⁶ s. 790.06(10), F.S.

¹⁷ s. 790.06(1), F.S.

¹⁸ *Id.*

- inside the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- any place where the carrying of firearms is prohibited by federal law.

Any person who willfully violates any of the above-listed provisions commits a misdemeanor of the second degree.¹⁹

Firearms in Vehicles

It is lawful for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. The same is true for a legal long gun (gun with a longer barrel), without the need for encasement, when it is carried in the private conveyance for a lawful purpose.²⁰

“Securely encased” means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container that requires a lid or cover to be opened for access.²¹ The term “readily accessible for immediate use” means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person.²²

Section 790.251, F.S., became law in 2008. It addressed the lawful possession of firearms in vehicles within the parking lots of businesses, and was commonly known as the “Guns at Work” law. The law was challenged quickly after its passage.²³ The court recognized the state’s authority to protect an *employee* from employment discrimination where the employee had a concealed carry license and kept a firearm in a vehicle at work.²⁴

However, because of the statutory definitions of employer and employee, the court found a problem in the application of the law to *customers*.²⁵ The court’s reading of the statutory definitions led to this conclusion: a business that happened to employ a person with a concealed weapon license (who kept a firearm secured in his or her vehicle in the parking lot at work) would have been prohibited from expelling a customer who had a firearm in his or her car; a business without such an employee would have been free to expel such a customer.²⁶ The court held the s. 790.251, F.S., unconstitutional to the extent the law “compels some businesses but not others-with no rational basis for the distinction-to allow a *customer* to secure a gun in a

¹⁹ s. 790.06(12), F.S.

²⁰ s. 790.25(5), F.S.

²¹ s. 790.001(17), F.S.

²² s. 790.001(16), F.S.

²³ *Florida Retail Federation v. Attorney General*, 576 F.Supp.2d 1281 (N.D.Fla. 2008).

²⁴ *Id.* at 1284.

²⁵ *Id.*

²⁶ *Id.* at 1284-85.

vehicle.”²⁷ The court found that there was no rational basis for treating two similarly situated businesses differently just because one happened to employ someone with a concealed weapons license; therefore, the state was enjoined from enforcing the part of the law that applied to customers.²⁸

Florida Residents Purchasing Shotguns and Rifles in Other States

In 1968, the federal Gun Control Act (GCA) was enacted.²⁹ Among its many provisions was a section that made it unlawful for a licensed importer, manufacturer, dealer, or collector³⁰ to sell or deliver any firearm³¹ to any person who the licensee knew or had reasonable cause to believe did not reside in the state in which the licensee’s place of business was located.³² The GCA specified that this prohibition did not apply to the sale or delivery of a rifle³³ or shotgun³⁴ to a resident of a state contiguous to the state in which the licensee’s place of business was located if:

- The purchaser’s state of residence permitted such sale or delivery by law;
- The sale fully complied with the legal conditions of sale in both such contiguous states; and
- The purchaser and the licensee had, prior to the sale of the rifle or shotgun, complied with federal requirements applicable to intrastate firearm transactions that took place at a location other than at the licensee’s premises.³⁵

Subsequent to the enactment of the GCA, several states, including Florida, enacted statutes that mirrored the GCA’s provisions that allowed a licensee to sell a rifle or a shotgun to a resident of a state contiguous to the state in which the licensee’s place of business was located.³⁶ Florida’s statute, s. 790.28, F.S., entitled “Purchase of rifles and shotguns in contiguous states,” was enacted in 1979, and currently provides the following:

²⁷ *Id.*

²⁸ *Id.*

²⁹ Pub. L. No. 90-618 (codified at 18 U.S.C. §§ 921-928).

³⁰ The term “importer” means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution. The term “manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution. The term “dealer” means any person engaged in the business of selling firearms at wholesale or retail; any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or any person who is a pawnbroker. The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define. To be “licensed,” an entity listed above must be licensed under the provisions of 18 U.S.C. Ch. 44. *See* 18.U.S.C. § 921.

³¹ 18 U.S.C. § 921 defines the term “firearm” as any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device. Such term does not include an antique firearm.

³² 18 U.S.C. § 922(b)(3) (1968).

³³ 18 U.S.C. § 921 defines the term “rifle” as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

³⁴ 18 U.S.C. § 921 defines the term “shotgun” as a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

³⁵ 18 U.S.C. § 922(b)(3) (1968).

³⁶ *See, e.g.*, O.C.G.A. § 10-1-100 (2011), specifying that residents of the state of Georgia may purchase rifles and shotguns in any state of the United States, provided such residents conform to applicable provisions of statutes and regulations of the United States, of the state of Georgia, and of the state in which the purchase is made.

A resident of this state may purchase a rifle or shotgun in any state contiguous to this state if he or she conforms to applicable laws and regulations of the United States, of the state where the purchase is made, and of this state.

In 1986, the federal Firearm Owners' Protection Act (FOPA) was enacted.³⁷ The Firearm Owners' Protection Act amended the GCA's "contiguous state" requirement to allow licensees to sell or deliver a rifle or shotgun to a resident of any state (not just contiguous states) if:

- The transferee meets in person with the transferor to accomplish the transfer; and
- The sale, delivery, and receipt fully comply with the legal conditions of sale in both such states.³⁸

Subsequent to the enactment of FOPA, many states revised or repealed their statutes that imposed a "contiguous state" requirement on the interstate purchase of rifles and shotguns. Florida has not revised or repealed its statute.

It should be noted that federal-licensed firearms dealers, importers, and manufacturers are required by the federal government to collect and submit identifying information from prospective firearm purchasers to the National Instant Criminal Background Check System before transferring the firearm.³⁹

III. Effect of Proposed Changes:

The bill provides that a person who holds a valid concealed weapon or firearm license, issued by the Department of Agriculture and Consumer Affairs (DACs) under s. 790.06, F.S., may carry a weapon or firearm openly.

Also, the bill inserts a provision in s. 790.06(12), F.S., that specifically protects a licensed person from being prohibited from carrying or storing a firearm in a vehicle for lawful purposes.

A person who carries a weapon or firearm into one of the prohibited locations set forth in subsection (12) of s. 790.06, F.S., or a person who prohibits a licensee from carrying or storing a firearm in a vehicle for lawful purposes, commits a second degree misdemeanor if they do so knowingly and willfully under the provisions of the bill.

The bill also authorizes the DACs to take fingerprints from a license-applicant for inclusion with the application packet for a concealed weapon or firearm license. This provides the applicant with an additional place to have his or her prints taken if necessary.

Section 790.28, F.S., is repealed by the bill. It is the provision that limits Florida residents to the purchase of rifles and shotguns in contiguous states. Section 790.065, F.S., is amended to clarify

³⁷ Pub. L. No. 99-308.

³⁸ 18 U.S.C. § 922(b)(3) (1986). See David T. Hardy, *The Firearms Owners' Protection Act: A Historical and Legal Perspective*, 17 CUMB. L. REV. 585, 633-34 (1986/1987).

³⁹ 18 U.S.C. § 922(t)(1).

that a licensed dealer's shotgun or rifle sale to a Florida resident in another state is subject only to the federal law and the law of the state wherein the transfer is made.

The bill 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Criminal Justice on March 14, 2011:

Deleted revisions to the definitions of places a person may not carry a firearm, concealed or openly, thereby restoring current law.

B. Amendments:

None.

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

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/SB 1754

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Health Insurance

DATE: April 13, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	Brown	Stovall	HR	Favorable
3.	Brown	Phelps	RC	Pre-meeting
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:

The bill provides that a person may not be compelled to purchase health insurance, except as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- An activity between private persons.

The bill also provides that this would not prohibit the collection of debts lawfully incurred for health insurance.

This bill creates section 624.24, Florida Statutes.

II. Present Situation:

The Federal Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, (PPACA), P.L. 111-148, as amended by the Reconciliation Act, P.L. 111-152. The PPACA is a broad-based, national approach designed to reform various aspects of the health care system including access and affordability of coverage.

The PPACA establishes new requirements on individuals, employers, and health plans; restructures the private health insurance market; and creates exchanges for individuals and employers to obtain coverage. An exchange is not an insurer; however, it would provide eligible individuals and businesses with access to insurers' plans.

The PPACA expands the Medicaid program in 2014 to include nonelderly, nonpregnant individuals with income below 133 percent of the federal poverty level who were previously ineligible for Medicaid. Also in 2014, some individuals who do not qualify for Medicaid, but who meet other requirements, will be provided with premium tax credits and cost-sharing subsidies to help pay for the premiums and out-of-pocket costs of health plans offered through an exchange.

The PPACA requires most U.S. citizens and legal residents to obtain health insurance by January 1, 2014,¹ or potentially pay a penalty for noncompliance. A taxpayer is exempt from the penalty if the individual has a household income below a certain threshold, is a member of an Indian tribe, or has a religious objection to purchasing health insurance. An individual who fails to maintain coverage is required to pay an annual tax penalty of the greater of \$95 for each household member (up to \$285), or 1 percent of household income in 2014, \$325 or 2 percent of household income in 2015, and \$695 or 2.5 percent of income in subsequent years. The penalty for an entire family is capped at \$2,250. The applicable penalty for dependents under the age of 18 is one-half the amount for adults.

If an individual that is subject to the penalty fails to pay the penalty, the Internal Revenue Service can attempt to collect funds by reducing the amount of an individual's tax refund in the future. However, individuals that fail to pay the penalty will not be subject to any criminal prosecution for such failure.

Congressional Authority and Constitutionality

Commerce Clause (U.S. Const. Art. I, Sec. 8, Clause 3)

Congress has the power to regulate interstate commerce, including local matters and issues that "substantially affect" interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market destabilization caused by the large uninsured population as reason enough to authorize Congressional action under the

¹ Section 1501(b) as amended by section 101006 (b) of P.L. 111-148 and by s. 1002 of P.L. 111-152.

Commerce Clause.² Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez*³ which held that Congress is prohibited from “...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce.”⁴

The Tenth Amendment and the Anti-Commandeering Doctrine (U.S. Const. Amend. 10)

The Tenth Amendment reserves to the states all power that is not reserved expressly for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, “...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance.”⁵ Further, opponents argue that the state health insurance exchange mandate may violate the anti-commandeering doctrine, which prohibits the federal government from requiring state officials to carry out onerous federal regulations.⁶ Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.⁷

State Legislative Actions

State Legislation Implementing PPACA

As of September 27, 2010, at least 25 states have enacted or adopted legislation or taken official action to form a committee, task force, or board concerning health reform implementation.⁸ Additionally, at least 14 governors have issued executive orders to begin the process of health reform implementation.⁹

State Legislation Opposing PPACA

In response to the federal health care reform, state legislators in at least 40 states have filed legislation to limit, alter, or oppose certain state or federal action, including single-payer provisions and mandates that would compel the purchase of health care insurance.¹⁰ In 30 of the states, the legislation includes a proposed constitutional amendment by ballot.¹¹

² Jack Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482 (February 11, 2010).

³ 514 U.S. 549 (1995).

⁴ Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an ‘Individual Mandate’ in Health Care Reform*, The Federalist Society for Law and Public Policy, at 4 (July 10, 2009).

⁵ *Id.*

⁶ Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, The Annals of the American Academy of Policy and Social Science, 574, at 158 (March 2001).

⁷ Hall, *supra* note 25, at 8-9.

⁸ National Conference of State Legislators, *State Actions to Implement Federal Health Reform*, Jan. 5, 2011, available at <http://www.ncsl.org/?TabId=20231> (last visited April 7, 2011).

⁹ *Id.*

¹⁰ National Conference of State Legislatures, *State Legislation and Actions Challenging Certain Health Reforms, 2010*, Dec. 18, 2010, available at <http://www.ncsl.org/?tabid=18906> (last visited Jan. 3, 2011).

¹¹ *Id.*

Florida Insurance Coverage Requirements

Florida law does not require state residents to maintain health insurance coverage. However, Florida law does require drivers to carry Personal Injury Protection (PIP) insurance,¹² which includes specified medical benefits, as a condition of registering a motor vehicle.¹³ Florida law also requires employers to secure the payment of workers' compensation. Employers secure workers' compensation coverage by purchasing insurance or meeting the requirements to self-insure.¹⁴ Workers' compensation insurance provides certain medical and indemnity benefits.¹⁵

III. Effect of Proposed Changes:

The bill creates s. 624.24, F.S., and provides that a person may not be compelled to purchase health insurance, except as a condition of:

- Public employment;
- Voluntary participation in a state or local benefit;
- Operating a dangerous instrumentality;
- Undertaking an occupation having a risk of occupational injury or illness;
- An order of child support; or
- An activity between private persons.

The bill also provides that the act does not prohibit the collection of debts lawfully incurred for health insurance.

The bill 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.

¹² Section 627.736, F.S.

¹³ Section 320.02(5)(a), F.S.

¹⁴ Section 440.38, F.S.

¹⁵ Sections 440.13, 440.15, and 440.16, F.S.

D. Other Constitutional Issues:

Florida and 25 other states brought an action in the United States District Court for the Northern District of Florida challenging the constitutionality of PPACA. On January 31, 2011, Judge Roger Vinson found the Act unconstitutional.¹⁶ The court rejected the argument by the United States that the individual mandate is a tax and made it clear that he agreed with the plaintiff's argument that the power the individual mandate seeks to harness "is simply without precedent." On March 3, 2011, Judge Vinson granted a stay of his order on the condition that the federal government seek an immediate appeal and seek an expedited review. The federal government filed the appeal and motion for expedited review to the United State Court of Appeal for the Eleventh Circuit on March 8, 2011.¹⁷ Florida and the other plaintiffs have filed a motion requesting a more condensed briefing and oral argument schedule than requested by the federal government. The Eleventh Circuit responded on March 11, 2011 setting the briefing schedule beginning on April 4, 2011 and ending May 25, 2011.¹⁸

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ State of Florida, et al. v. United States Department of Health and Human Services, et al., --- F.Supp.2d ----, 2011 WL 285683 (N.D.Fla.).

¹⁷ Case No. 11-11021-HH.

¹⁸ State of Florida, et al. v. United States Department of Health and Human Services, Nos. 11-11021-HH & 11-11067-HH, Order on Appellants' Mtn. to Expedite Appeal (11th Cir. March 11, 2011).

VIII. Additional Information:

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

CS by Banking and Insurance on April 5, 2011:
Designates section of Florida statutes that is being created.

- B. **Amendments:**

None.

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

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/SB 830

INTRODUCER: Community Affairs Committee and Senators Thrasher and Gaetz

SUBJECT: Labor and Employment

DATE: April 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Betta	Meyer, C.	BC	Favorable
3.	Betta	Phelps	RC	Pre-meeting
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:

This bill:

- Prohibits employee organizations from deducting dues, uniform assessments, fines, penalties, or special assessments from public employee wages.
- Prohibits a labor organization from deducting moneys from employees that go toward political contributions or expenditures without written authorization from the employee.
- Requires a pro rata refund for moneys paid by a public or private employee to a union for political contributions and expenditures when an employee revokes their authorization.
- Gives direction on how the labor organizations should account for their political expenditures and contributions.
- Prohibits labor organizations from requiring an authorization to spend funds for political contributions and expenditures as a condition of membership.
- Provides that the bill applies to all collective bargaining agreements entered into after the effective date.

This bill substantially amends the following sections of the Florida Statutes: 110.114, 112.171, 447.303, and 447.507.

The bill creates section 447.18, Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a “right to work” state. Article I, section 6 of the Florida Constitution reads:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.¹ Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.²

Certain restrictions may be placed on a union’s ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.³ In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions’ judicially created duty of fair representation and nonunion members’ First Amendment rights.⁴ The U.S. Supreme Court has held that a local government’s restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.⁵ In a more recent case, the U.S. Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.⁶ The Court held that the state was under no obligation to aid unions in their political activities, and the state’s decision not to do so was not abridgement of unions’ free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state’s support.⁷

¹ See *Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff’d* 723 F.2d 918 (11th Cir. 1983).

² *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).

³ *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass’n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff’d on other grounds*, 375 U.S. 96 (1963); *AFSCME Local 3032 v. Delaney*, 458 So. 2d 372 (Fla. 1st DCA 1984).

⁴ *Commc’ns Workers of Am. v. Beck*, 487 U.S. 735 (1988).

⁵ *Charlotte v. Local 660, Int’l Assoc. of Firefighters*, 426 U.S. 283 (1976).

⁶ *Ysursa v. Pocatello Education Assoc*, 129 S.Ct. 1093 (2009).

⁷ *Id.*

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935⁸ and the Federal Labor Management Relations Act of 1947⁹ constitute a comprehensive set of regulations guaranteeing to employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. When conduct falls within the scope of the NLRA, the preemption doctrine applies and the state statutes are usually inoperative, unless the National Labor Relations Board has declined jurisdiction or has ceded jurisdiction to a state labor-relations board, or unless the conduct involves an area that the states are permitted to regulate despite the existence of the NLRA.¹⁰ However, when the subject matter of a labor relations dispute or regulatory issue touches overriding state or local interests, and in the absence of compelling congressional direction, state laws are not preempted by the NLRA.¹¹ Other federal labor-relations statutes that can preempt state action include the Labor-Management Reporting and Disclosure Act¹² and the Railway Labor Act.

Florida Statutes

Under the Florida Statutes, employees have the right to form, join, or assist labor unions or labor organizations or to refrain from such activity.¹³ The rights given by these provisions belong to the individual employee and not to the union.¹⁴ The regulation of labor unions is the responsibility of the Department of Business and Professional Regulation.¹⁵

Part II of ch. 447, F.S., governs labor organizations for public employees, and the Public Employees Relations Commission regulates collective bargaining in Florida. Part II of chapter 447, F.S., has two basic purposes:

- To encourage cooperation between government and its employees.
- To protect the public from the interruption of government services resulting from strikes by government employees.

⁸ 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

⁹ 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

¹⁰ Am. Jur. 2d, Labor and Labor Relations § 516.

¹¹ 34 Fla. Jur 2d Labor and Labor Relations § 8.

¹² 29 U.S.C. §§ 401 to 531.

¹³ Section 447.03, F.S.

¹⁴ *Miami Laundry Co. v. Laundry, Linen, Dry Cleaning Drivers, Salesmen & Helpers, Local Union No. 935*, 41 So. 2d 305 (Fla. 1949).

¹⁵ Section 447.02(3), F.S.

Under current law, any employee organization which has been certified as a bargaining agent¹⁶ has the right to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.¹⁷ However, such authorization is revocable at the employee's request upon 30 days' written notice to the employer and employee organization. The deductions shall commence upon the bargaining agent's written request to the employer. Reasonable costs to the employer of said deductions shall be a proper subject of collective bargaining. Such right to deduction, unless revoked by a court due to a violation on the prohibition on strikes, shall be in force for so long as the employee organization remains the certified bargaining agent for the employees in the unit. The public employer is expressly prohibited from any involvement in the collection of fines, penalties, or special assessments.¹⁸

“Employee organization” or “organization” means any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, which represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.¹⁹ An employee organization is a type of labor organization.²⁰

Counties, municipalities, and special districts as well as state departments, agencies, bureaus, commissions, and officers are authorized and permitted in their sole discretion to make deductions from the salary or wage of any employee or employees in such amount as is authorized and requested by such employee or employees and for such purpose as is authorized and requested by such persons and pay such sums so deducted as directed by such persons.²¹

Political Contributions

For purposes of campaign financing, a “contribution” is defined as:

- A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.
- A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combinations of these groups.

¹⁶ Section 447.203, F.S. (“Bargaining agent” means the employee organization which has been certified by the Public Employees Relations Commission as representing the employees in the bargaining unit or its representative.) For more information about this process and Florida Labor Law in general, *see* PUBLIC EMPLOYEES RELATIONS COMMISSION, A PRACTICAL HANDBOOK ON FLORIDA’S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW (2004) *available at* <http://perc.myflorida.com/pubs/pubs.aspx> (last visited March 03, 2011).

¹⁷ Section 447.303, F.S.

¹⁸ Section 447.303, F.S.

¹⁹ Section 447.203(11), F.S.

²⁰ Section 447.02, F.S.

²¹ Section 110.114 and 112.171, F.S.

- The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.
- The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.²²

An “expenditure” means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. There is an exception for internal newsletters.²³

III. Effect of Proposed Changes:

Section 1 amends s. 110.114, F.S., to prohibit state employee wage deductions for the dues, uniform assessments, penalties, or special assessments of an employee organization. It further prohibits deductions for purposes of political activity, including contributions to a candidate, political party, political committee, committee of continuous existence,²⁴ electioneering communications organization, or organization exempt from taxation under 501(c)(4)²⁵ or s. 527²⁶ of the Internal Revenue Code. The bill deletes the explicit authorization allowing “employee organizations” that are the exclusive bargaining agent for a unit of state employees to deduct membership dues.

Section 2 amends s. 112.171, F.S., to provide the same prohibitions in section 1 for county, municipal, and special district employees.

Section 3 creates s. 447.18, F.S., to prohibit labor organizations from using dues, assessments, fines, or penalties paid by an employee to make political contributions or expenditures, as defined in s. 106.011, F.S., unless the labor organization has the express written authorization of the employee. The written authorization for political expenditures must be executed by the employee separately for each fiscal year and must be accompanied with a detailed account, provided by the labor organization, of all political contributions and expenditures made by the labor organization in the preceding 24 months. The bill requires the labor organizations to estimate their expected political contributions and expenditures for the fiscal year and reduce the amount collected during the fiscal year from each employee that has not executed a written authorization. If the actual contributions and expenditures of the labor organization exceed its estimated contributions and expenditures, the labor organization is required to provide a refund at the end of the fiscal year to each employee that has not executed a written authorization.

²² Section 106.011, F.S.

²³ Section 106.011, F.S.

²⁴ Section 106.011, F.S. defines “committee of continuous existence” to mean any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04, F.S.

²⁵ 26 U.S.C. § 501(c)(4) (Relating to Civic Leagues, Social Welfare Organizations, and Local Associations of Employees).

²⁶ 26 U.S.C. § 527 (Relating to tax exempt political organizations).

The employee may revoke the authorization at any time. If an employee revokes the authorization, the pro rata refund of the employee for such fiscal year shall be in the same proportion as the proportion of the fiscal year for which the authorization was not in effect. A labor organization may not require an employee to provide the authorization for political contributions and expenditures as a condition of membership in the labor organization.

Section 4 amends s. 447.303, F.S., to prohibit public employers from deducting or collecting money from their employees for an employee organization.

The bill deletes language that:

- Authorizes a bargaining agent to have its dues and uniform assessments deducted and collected by the employer from the salaries of those employees who authorize the deduction of said dues and uniform assessments.
- Allows the employee to revoke authorization for employer deduction with 30 days written notice.
- Specifies that reasonable costs to the employer of deductions are a proper subject of collective bargaining.
- Specifies procedures regarding the deduction and revocation process.
- Prohibits the public employer from any involvement in the collection of fines, penalties, or special assessments.

Section 5 amends s. 447.507, F.S., deleting references to deductions or check-offs by employee organizations with respect to penalties for violation of the strike prohibition.

Section 6 states that, if any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Section 7 provides an effective date of July 1, 2011, and states that the bill shall apply to collective bargaining agreements entered into after the effective date.

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:

Employee organizations may have more difficulty collecting dues, fees, assessments, and penalties from public employees and, thereby, collect less in dues. The amount of dues that will not be collected is indeterminate. Labor organizations are likely to have more difficulty collecting funds from employees for political purposes.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Community Affairs on March 14, 2011:**

The CS prohibits labor organizations from spending employee funds on political expenditures or contributions without the employee's written authorization. The CS further proscribes how the political contributions and expenditures will be predicted and accounted for and provides for a refund in certain circumstances. The CS makes the bill apply prospectively to collective bargaining agreements entered into after the effective date of the CS.

B. Amendments:

None.

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 1522

INTRODUCER: Banking and Insurance Committee, Health Regulation Committee, and Senator Gaetz

SUBJECT: Wellness or Health Improvement Programs

DATE: April 13, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Fav/CS
2.	Matiyow	Burgess	BI	Fav/CS
3.	Matiyow	Phelps	RC	Pre-meeting
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:

The bill specifies that an insurer or health maintenance organization (HMO) issuing a group or individual health benefit plan may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. The bill authorizes insurers and HMOs to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program. The bill requires that the reward or incentive must be disclosed in the insurance policy or certificate and that the bill does not prohibit insurers or HMOs from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law.

This bill substantially amends the following section of the Florida Statutes: 626.9541 and 641.3903.

II. Present Situation:

Chapter 626 governs the practices of insurance agents and the operations of insurance companies.¹

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Section 626.9541, F.S., defines unfair methods of competition and unfair or deceptive acts or practices. The section specifies 32 different acts that qualify under the definition.² Among the prohibited acts relating to rates that may be charged to policyholders are: “unfair discrimination,” which is defined as knowingly making an unfair discrimination between individuals of the same actuarially supportable class in the amount of premium charged for a policy, or in the benefits payable under the contract, or in the terms and conditions of the contract;³ and “unlawful rebates,” which prohibits paying, directly or indirectly, any valuable consideration or inducement not specified in the contract.⁴

Chapter 641 governs the practices of health maintenance organizations (HMO).⁵

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Section 641.3903, F.S., defines unfair methods of competition and unfair or deceptive acts or practices by an HMO. Similar to the limitations of insurers in ch. 626, this section specifies the different acts an HMO is prohibited from engaging in.

The Patient Protection and Affordable Care Act

In 2010, President Obama signed into law The Patient Protection and Affordable Care Act (PPACA or the Act). The Act was part of sweeping overhauls pertaining to the nation’s healthcare system. Pursuant to the Act,⁶ insurers are allowed to offer wellness and prevention programs in an effort to address:

- Smoking cessation
- Weight management
- Stress management
- Physical fitness
- Nutrition
- Heart disease prevention
- Healthy lifestyle support
- Diabetes prevention

PPACA requires the Secretary of Health and Human Services to promulgate regulations pertaining to the criteria for the reimbursement structure of such programs.⁷ Further, insurers

¹ See ss. 626.011 through 626.99296, F.S.

² See s. 626.9541(1)(a) through (ff), F.S.

³ See s. 626.9541(1)(g), F.S.

⁴ See s. 626.9541(1)(h), F.S.

⁵ See ss. 641.17 through 641.3923, F.S.

⁶ PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(b)

⁷ PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(d)

offering such wellness programs must report their cost savings to Congress within 180 days after the regulations are promulgated.⁸

III. Effect of Proposed Changes:

The bill creates additional wellness incentive programs that can be offered by insurers⁹ and HMOs.¹⁰ The new wellness incentive and reward programs are separate from current wellness programs that may only allow premium rebates as an incentive for participation.¹¹

Section 1 amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices by health insurers to specify that rewards or incentives offered by insurers relating to participation in wellness or health improvement programs are authorized despite the statute's prohibition against certain other practices that constitute unfair or deceptive acts, some of which are related to reduced charges for insurance.¹² The bill provides that any advertisement of such program is not subject to limitations set forth in s. 626.9541(1)(m), F.S.¹³

The bill creates subsection (4) of s. 626.9541, F.S., and specifies that an insurer issuing group or individual health benefit plans may offer a voluntary wellness or health improvement program and may encourage participation in the program by way of authorizing rewards or incentives. Such rewards or incentives could include, but are not limited to, merchandise, gift cards, debit cards, premium discounts, contributions to a member's health savings account, or modifications to copayment, deductible, or coinsurance amounts.

The bill authorizes insurers to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program in order for that nonparticipant to receive the reward or incentive. The bill requires an insurer to disclose in the policy or certificate any reward or incentive offered by the program and that s. 626.9541(4), F.S., does not prohibit insurers from offering other incentives or rewards for adherence to wellness or health improvement programs otherwise authorized by state or federal law.

Section 2 amends s. 641.3903, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices by HMOs, by creating subsection (15), which provides an exception to the prohibitions against unfair methods of competition and unfair or deceptive acts by allowing HMOs to offer rewards or incentives for participation in wellness or health improvement programs.

⁸ PPACA & HCERA, Pub. L. No. 111-148 & 111-152, SEC. 2717(e)

⁹ Section 626.9541, F.S.

¹⁰ Section 641.3903, F.S.

¹¹ Sections 627.6402, F.S., 627.65626, F.S. and 641.31, F.S.

¹² See s. 626.9541(1)(o), F.S.

¹³ Section 626.9541(1)(m), F.S., provides that certain prohibitions created by s. 626.9541(1), F.S., do not prohibit a licensed insurer or its agent from giving to insureds, prospective insureds, and others, for the purpose of advertising, any article of merchandise having a value of \$25 or less.

The bill provides authorization for HMOs to offer a voluntary wellness or health improvement program and to encourage participation in the program by way of authorizing rewards or incentives identical to those authorized for individual and group insurance policies.

The bill authorizes HMOs to require a plan member to provide verification that the member's medical condition inhibits participation in the wellness or health improvement program. The bill provides that a reward or incentive offered under s. 641.3903(15), F.S., is not a violation of s. 641.3903, F.S., if the program is disclosed in the contract or certificate and that s. 641.3903(15), F.S., does not prohibit an HMO from offering other incentives or rewards for adherence to a wellness or health improvement program otherwise authorized by state or federal law.

Section 3 provides an effective date for the bill of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that wellness or health improvement programs are implemented under the bill, and to the extent that insurers and HMOs provide gift cards, debit cards or premium discounts not already provided under existing law, contributions to health savings accounts, or modifications to copayments, deductibles, or coinsurance amounts, participants in such wellness or health improvement programs could have an indeterminate amount of increased monetary resources at their disposal. And, to the extent that insurers and HMOs pay for such rewards, they could experience an indeterminate amount of financial costs; however, those costs could be offset by a

reduction in the insurer's or HMO's medical expenses due to having a healthier pool of covered individuals.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

Regulations promulgated by the Secretary of Health and Human Services, as required by PPACA, could impact how wellness programs are administered.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Banking and Insurance on April 12, 2011:

The CS/CS removed premium rebates as one of the rewards offered for participation in the new wellness programs. The CS/CS removed sections 2, 3 and 4 of the bill leaving the statutes dealing with current rebate incentives for participation in certain wellness programs unchanged.¹⁴

The CS/CS added 641.3903(15)(c) *Disclosure requirement*. - A reward or incentive offered under this subsection shall be disclosed in the policy or certificate.

The CS/CS added 641.3903(15)(d) *Other incentives*. - This subsection does not prohibit health maintenance organizations from offering other incentives or rewards for adherence to a wellness or health improvement program if otherwise authorized by state or federal law.

CS by Health Regulation on March 22, 2011:

Instead of authorizing new rewards and incentives for wellness or health improvement programs independent of existing law authorizing insurance premium rebates for similar programs, the CS reconciles the new rewards and incentives, which may include rebates in addition to other rewards and incentives, with those of existing law. The CS authorizes the new rewards and incentives for health maintenance contracts, which were omitted in the CS as filed. The CS also replaces existing law relating to HMO rebates for healthy lifestyles in favor of the CS's provisions relating to rewards and incentives for wellness or health improvement programs.

¹⁴ Sections 627.6402, F.S., 627.65626, F.S. and 641.31, F.S.

B. Amendments:

None.

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



467266

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

Delete lines 200 - 206
and insert:

Section 2. The Sheriff of Broward County is authorized and directed to appropriate from funds of the Broward County Sheriff's Office not otherwise appropriated and to draw a warrant payable to Eric Brody in the sum of \$23,679,298.30. In lieu of payment, the Sheriff of Broward County may



860096

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

In title, delete lines 136 - 148.

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930932

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

In title, delete lines 154 - 155
and insert:

WHEREAS, the jury found Eric Brody's damages to be
\$30,609,298, including a determination that his past and future



367120

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

In title, delete line 157
and insert:

WHEREAS, final judgment was entered for \$30,609,298,
and



191080

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

In title, delete lines 158 - 159
and insert:
the court entered a cost judgment for \$270,372.30, and



305904

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

In title, delete lines 174 - 176
and insert:

WHEREAS, upon the passage of a claim bill for any amount in
excess of the insurance policy limit of \$3 million, Eric Brody
believes that the Broward County Sheriff's Office may have a
cause of action pursuant to



585020

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gardiner) recommended the following:

Senate Amendment

In title, delete line 185
and insert:
\$30,679,298.30 is sought through the submission of a claim bill



693104

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Thrasher and Gaetz) recommended the following:

Senate Amendment

Delete lines 222 - 235
and insert:

Section 4. The amount paid by the Broward County Sheriff's Office pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all claims arising out of the facts described in this act which resulted in the injuries to Eric Brody. The total amount of attorney's fees, lobbying fees, costs, and other similar expenses may not exceed 25 percent of the total amount awarded under sections 2 and 3 of this act, which shall include



693104

13 any fees earned and amounts recovered in the prosecution of any
14 assigned claim as permitted under section 2 of this act.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/1/11	SM	Unfavorable
4/12/11	RC	Pre-meeting

February 1, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 42 (2011)** – Senator Lizbeth Benacquisto
Relief of Eric Brody

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$30,760,670.30 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE BROWARD COUNTY SHERIFF'S OFFICE TO COMPENSATE CLAIMANT ERIC BRODY FOR THE PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A DEPUTY SHERIFF'S CRUISER.

FINDINGS OF FACT:

On the evening of March 3, 1998, in Sunrise, Florida, 18-year-old Eric Brody was on his way home from his part-time job. He was making a left turn from Oakland Park Boulevard into his neighborhood when his AMC Concord was struck near the passenger door by a Sheriff's Office cruiser driven by Deputy Sheriff Christopher Thieman.

Deputy Thieman was on his way to a mandatory roll call at the Sheriff's district station in Weston. One estimate of his speed was 70 MPH. Even the lowest credible estimate of his speed was in excess of the 45 MPH speed limit. It is estimated that the cruiser, after braking, struck Eric's vehicle at about 53 MPH. The impact caused Eric to be violently thrown toward the passenger door, where he struck his head. He suffered broken ribs and a skull fracture. Eric was airlifted to Broward General Hospital where he underwent an

emergency craniotomy to reduce brain swelling. However, he suffered a severe brain injury that left him with permanent disabilities.

Eric was in the hospital intensive care unit for four weeks and then was transferred to a rehabilitation center. He was later transferred to a nursing home. He remained in an induced coma for about six months. After the coma, Eric had to learn to walk and talk again. Eric is now 31 years old and lives with his parents. He has difficulty walking and usually uses a wheelchair or a walker. His balance is diminished and he will often fall. Eric has some paralysis on the left side of his body and has no control of his left hand. He must be helped to do some simple personal tasks. He tires easily. The extent of his cognitive disabilities is not clear. His processing speed and short-term memory are impaired and his mother believes his judgment has been affected.

At the time of the collision, Eric had been accepted at two universities and was interested in pursuing a career in radio broadcasting. However, his speech was substantially affected by his injuries and it is now difficult for anyone other than his mother to understand him.

One of the main issues in the trial was whether Eric was comparatively negligent. The Broward County Sheriff's Office (BCSO) contends that Eric was not wearing his seatbelt and that, if he had been wearing his seatbelt, his injuries would have been substantially reduced. Eric has no memory of the accident because of his head injury, but testified at trial that he always wore his seatbelt. The paramedics who arrived at the scene of the crash testified that Eric's seatbelt was not fastened. However, the seatbelt was spooled out and there was evidence presented that the seatbelt could have become disconnected in the crash.

The jury saw a crash re-enactment that was conducted with similar vehicles, using a belted test dummy. The results of the reenactment supported the proposition that the collision would have caused a belted driver to strike his or her head on the passenger door. The seatbelt shoulder harness has little or no effect in stopping the movement of the upper body in a side impact like the one involved in this case. The head injury that Eric sustained is consistent with injuries sustained

by belted drivers in side impact collisions. Therefore, Eric's injury is not inconsistent with the claim that he was wearing his seatbelt at the time of the collision. I conclude from the evidence presented that Eric was more likely than not wearing his seat belt.

Deputy Thieman's account of the incident was conspicuously lacking in detail. Deputy Thieman did not recall how fast he was going before the collision. He could not recall how close he was to Eric's vehicle when he first saw it. He could not recall whether Eric's turn signal was on.

A curious aspect of the incident was that Deputy Thieman had been traveling in the left lane of Oakland Park Boulevard, which has three westbound lanes, but collided with Eric's vehicle in the far right lane. If Deputy Thieman had stayed in the left lane, the collision would not have occurred. Why Deputy Thieman swerved to the right was not adequately explained. It would seem that the natural response in seeing a vehicle moving to the right would be to try to escape to the left. At trial, Deputy Thieman testified that he did not turn to the left because that was in the direction of oncoming traffic. However, there was no oncoming traffic at the time. It is concluded that the manner in which Deputy Thieman maneuvered his vehicle was unreasonable under the circumstances and that it was a contributing cause of the collision.

Deputy Thieman's was fired by the Broward County Sheriff's Office in 2006 for misconduct not related to the collision with Eric Brody.

Eric received \$10,000 from Personal Injury Protection coverage on his automobile insurance. He receives Social Security disabilities payments of approximately \$560 each month. He also received some vocational rehabilitation assistance which paid for a wheelchair ramp and some other modifications at his home.

Eric has a normal life expectancy. One life care plan developed for Eric estimated the cost of his care will be \$10,151,619. There was other evidence that his future care would cost \$5 to \$7 million.

LITIGATION HISTORY:

In 2002, a negligence lawsuit was filed in the circuit court for Broward County by Charles and Sharon Brody, as Eric's parents and guardians, against the BCSO. In December 2005, after a lengthy trial, the jury found that Deputy Thieman was negligent and that his negligence was the sole cause of Eric's damages. The jury awarded damages of \$30,609,298. The court entered a cost judgment of \$270,372.30. The sum of these two figures is \$30,879,670.30. Post-trial motions for new trial and remittitur were denied. The verdict was upheld on appeal.

The BCSO paid the \$200,000 sovereign immunity limit under s. 768.28, Florida Statutes. The payment was placed in a trust account and none of it has been disbursed. Attorney's fees and costs have not been deducted. Eric Brody has received nothing to date.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine, based on the evidence presented to the Special Master, whether the BCSO is liable in negligence for the damages suffered by Eric Brody and, if so, whether the amount of the claim is reasonable.

Deputy Thieman had a duty to operate his vehicle in conformance with the posted speed limit and with reasonable care for the safety of other drivers. His speeding and failure to operate his vehicle with reasonable care caused the collision and the injuries that Eric Brody sustained. The BCSO is liable as Deputy Thieman's employer.

Although Eric Brody was required to yield before turning left, the evidence does not show that a failure to yield was a contributing cause of the collision. Eric reasonably judged that he could safely make the left turn. He was well past the lane in which Deputy Thieman was traveling. The collision appears to have been caused solely by Deputy Thieman's unreasonable actions in speeding and swerving to the right. I believe the jury acted reasonably in assigning no fault to Eric.

At the claim bill hearing, Claimant's counsel urged the Special Master to determine that the liability insurer for the BCSO acted in bad faith by failing to timely tender its \$3 million coverage in this matter and, therefore, the insurer is

liable for the entire judgment against the BCSO. However, because the insurer was not a party to the Senate claim bill proceeding, and because the bad faith claim is not a proper subject for determination in a claim bill hearing under the rules of the Senate, I did not take evidence nor make a determination regarding the bad faith claim.

The BCSO objected to the provision of the 2010 claim bill that provided for the BCSO's assignment of its bad faith claim against its insurer to Eric Brody as prohibited by the Florida Constitution and beyond the statutory authority of the Senate. It may be unconstitutional for a local claim bill to require the assignment of a legal claim, because Article III, Section 11(a)(7) of the Florida Constitution prohibits special laws or general laws of local application pertaining to "conditions precedent to bringing any civil or criminal proceedings." However, Senate Bill 42 does not require the assignment of the BCSO's legal claim. The bill requires the BCSO to pay the \$30 million claim, but states that, in lieu of payment, the BCSO "may" assign its legal claim against the insurer to Eric Brody and, if it assigns its claim, the BCSO is not required to pay the \$30 million. In this form, I do not believe that Senate Bill 42 violates the constitutional restriction on special laws or exceeds the Senate's authority.

ATTORNEYS FEES:

In compliance with s. 768.28(8), Florida Statutes, the Claimant's attorneys will limit their fees to 25 percent of any amount awarded by the Legislature.

SPECIAL ISSUES:

Senate Bill 42 incorrectly states that the jury awarded damages of \$30,690,000. The correct amount is \$30,609,298. The total excess judgment claim is incorrectly stated as \$30,760,372.30. The correct amount is \$30,679,670.30.

The positions of the parties regarding this claim bill are uncertain. It is not clear why Broward County opposes the opportunity to avoid a \$30 million claim bill by assigning its legal claim against its insurer to the Claimant. It is also unclear why the Claimant would refuse the Legislature's award and the settlement offers made by the County, which would allow Eric Brody to begin to receive the care he needs, and choose instead to accept the risk and further delay associated with commencing a bad faith claim against

the County's insurer.

The Senate should also consider the unusual size of this claim bill. Sovereign immunity from liability in tort effectively prevents the State and local governments from being bankrupted by damage awards. Claim bills in excess of \$10 million are unusual. Claims bills in excess of \$20 million are rare. This claim bill for over \$30 million is the largest ever claim bill to my knowledge. In the past, the largest claim bills have usually called for installment payments or other mechanisms to make the fiscal impact manageable. The BCSO contends that it cannot pay this claim without drastic reductions in governmental services. It asserts that the claim is equivalent to 300 law enforcement officers or five fire/rescue stations. Eric Brody deserves to be compensated for his injuries caused by the negligence of Deputy Thieman, but it would be unreasonable to waive sovereign immunity if the result is to cause severe reductions in government services to the citizens of Broward County.

The fiscal burden that would be associated with the Legislature's regular passage of \$10, \$20, and \$30 million claim bills, especially for claims that will be paid by local governments beyond their insurance coverage, indicates that a balance must be struck between the principle of sovereign immunity and the principle of fair compensation.

The payment of a claim bill is a matter of legislative grace and the Senate is free to deviate from a jury award. When very large claim bills are filed, it is reasonable for the Senate to consider, among other factors, whether the amount of a claim deviates substantially above or below the median jury verdict for similar injuries. At the request of the Special Master, the parties submitted jury verdict data for cases involving permanent brain injuries. The information was inadequate to allow a median award to be stated with confidence, but it is under \$20 million. As stated above, the life care plans for Eric Brody ranged from \$5 to \$10 million.

If the Senate wishes to pay the claim, I believe the option to assign the claim should be preserved in the bill, but the award should be reduced to \$15 million and Broward County should be allowed to pay the award in several installments.

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February 1, 2011

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RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 42 (2011) be reported UNFAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Lizbeth Benacquisto
R. Philip Twogood, Secretary of the Senate
Counsel of Record