

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 7066

INTRODUCER: Rules Committee and Ethics and Elections Committee

SUBJECT: Election Administration

DATE: April 23, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>EE Submitted as Committee Bill</b>
2.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 7066 is an omnibus election administration measure that makes extensive substantive changes to the Florida Election Code:

- **Voting Systems/disability voting**<sup>1</sup>: Incorporates CS/CS/SB 268: mandating that voters with disabilities cast a ballot on voting systems that produce a voter verifiable paper output (VVPO) for canvassing and recount purposes; and, authorizing the general use of such VVPO touchscreen systems by all voters, not just those with disabilities.
- **Voting Systems/sorting and counting ballots**: Prohibits voting systems that cannot simultaneously count and sort ballot overvotes and undervotes in multiple races (Palm Beach County's system).
- **Primary Election Day**<sup>2</sup>: Moves the primary election back from 10 to 11 weeks before the general election, to allow more time for overseas general election ballots.
- **Vote-by-Mail (VBM) Ballots/deadlines & cure**<sup>3</sup>: Extends the cure deadline for defective VBM ballot signatures from 5 p.m. on the day *before* the election to 5 p.m. on the 2<sup>nd</sup> day *after* the election; modifies the ballot-envelope voter's certificate to request additional contact information; creates additional phone and electronic notice requirements, to conform.
- **Provisional Ballots/deadlines & cure**: Creates a provisional ballot signature cure process that mirrors the revised VBM signature cure process; provides for cure through 5 p.m. on the

---

<sup>1</sup> Florida State Association of Supervisors of Elections 2019 Legislative Package, #1 TOP PRIORITY, available at [https://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2019\\_Session\\_Priorities.pdf](https://www.myfloridaelections.com/portals/fsase/Documents/Public%20Policy/2019_Session_Priorities.pdf) (last accessed April 1, 2019)[hereinafter, FSASE Priorities].

<sup>2</sup> *Id.* at #9 (partial).

<sup>3</sup> *Id.* at #16 (similar; extend deadline for curing defective VBM issues to 5pm on Election Night).

2<sup>nd</sup> day *after* an election; modifies the ballot-envelope voter's certificate to request additional contact information; creates additional phone and electronic notice requirements, to conform.

- **VBM Ballots/request and mail-out deadlines<sup>4</sup>**: Moves the last day for voters to request VBM ballots from six to 10 days before an election, and prohibits supervisors of elections (supervisors) from mailing out such ballots less than eight days prior to the election (currently four days); allows voter designees to physically pick-up VBM ballots for electors beginning 9 days before an election instead of the current five days, to conform.<sup>5</sup>
- **VBM Ballots/domestic mailing deadlines<sup>6</sup>**: Allows supervisors to mail domestic VBM ballots between 40 and 33 days before an election (currently 35 to 28 days prior).
- **VBM Ballots/drop-off locations<sup>7</sup>**: Allows a voter to drop off his or her VBM ballot at a secure drop box located solely at each early voting location and the supervisor's main or branch office.
- **VBM Ballots/start of canvassing period<sup>8</sup>**: Allows canvassing of VBM ballots to start one week earlier, at 22 days before an election rather than 15 days before the election.
- **VBM Ballots/duplication**: Permits physically-present candidate and political party/political committee officials, and/or their designees, to observe duplication of VBM ballots.
- **Voter Signature Updates/deadline<sup>9</sup>**: Moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- **Voter Signature Updates/cure affidavits<sup>10</sup>**: Creates a process to use valid provisional and VBM ballot cure affidavits to update voter signatures immediately; provides for post-election notice to electors whose ballots are invalidated due to a signature discrepancy.
- **Polls/no-solicitation zone**: Expands the no-solicitation zone around polling places/rooms and early voting sites from 100 feet to 150 feet.
- **Polls/photographs**: Allows a voter to photograph his or her ballot in a polling place.
- **Election Results/precinct-level reporting<sup>11</sup>**: Prohibits precinct-level results by ballot type if 30 or fewer votes are cast rather than 10, to ensure voter anonymity.
- **Ballot Design/uniformity**: Provides ballot uniformity, requiring ballot instructions either be centered across the top of the ballot or in the leftmost column as long as there are no individual races below the column instructions, in most cases; requiring all vote targets to be ovals.
- **Ballot Design/Lt. Gov. designation<sup>12</sup>**: Removes “not yet designated” language on primary ballot for the joint Gov./Lt. Gov. ticket if a running mate has not been selected.

<sup>4</sup> *Id.* at #13 (move last day to request VBM ballots to 10 days before an election, and prohibit mailing VBM ballots after the 8<sup>th</sup> day before an election).

<sup>5</sup> Conforming change supported by FSASE.

<sup>6</sup> FSASE Priorities #10 (similar; allow flexibility to mail domestic VBM ballots not later than 28 days before an election).

<sup>7</sup> Though not formally adopted as an FSASE Legislative Priority, Senate staff is aware of individual supervisors who currently employ VBM drop boxes, notwithstanding a binding directive from the Secretary of State prohibiting the practice. Secretary of State, Directive 2013-01—Return of Absentee Ballots (Nov. 25, 2013), available at [https://dos.myflorida.com/media/693333/sos\\_directive\\_2013-01.pdf](https://dos.myflorida.com/media/693333/sos_directive_2013-01.pdf) (last accessed Apr. 1, 2019). A number of Senate bills have been filed in recent years to authorize VBM drop boxes at early voting sites. See SB 810 (2018); SB 726 (2017).

<sup>8</sup> FSASE Priorities #11 (allow canvassing of VBM ballots 22 days prior to the election).

<sup>9</sup> *Id.* at #15 (similar; remove deadline to update signature prior to start of canvassing board).

<sup>10</sup> *Id.* at #14 (use signatures on cure affidavits to update voter signatures of record).

<sup>11</sup> Though not formally adopted as an FSASE Legislative Priority, individual supervisors contacted Senate Ethics and Elections staff last year to discuss this issue, resulting, for example, in the filing of SB 1582 (2018).

<sup>12</sup> FSASE Legislative Priorities #5.

- **Ballots/security**: Requires the Department of State (DOS) rule regarding minimum security standards to address in detail chain of custody of ballots, transport of ballots, and ballot security.
- **Ballots/ballot-on-demand technology**: Allows supervisors to use ballot-on-demand printing systems at polling places on election day, not just at early voting sites.
- **Ballots/sample ballot publication**<sup>13</sup>: Allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation if the supervisor e-mails or mails every registered voter a sample ballot at least seven days before an election.
- **County Canvassing Boards (CCBs)**: Mandates a number of meeting notice content and publication requirements, along with measures to make CCB personnel more easily identifiable by requiring I.D. badges.
- **Election Code Violations/supervisors**: Prohibits a supervisor from receiving a special qualification salary for a period of 24 months after being found to have willfully violated the Florida Election Code.
- **Election Contests**: Authorizes courts reviewing the validity of voter signatures in election contests to consider the signature on VBM/provisional ballot voter certificates and cure affidavits, along with voter ID submitted therewith, to conform.

Except for some of the voting systems disability provisions incorporated from CS/CS/SB 268 (2019), which take effect on January 1, 2020, the bill takes effect July 1, 2019.

## II. Present Situation:

The 2018 General Election was, to put it mildly, *extraordinary*: three (3) simultaneous, statewide election recounts with razor-thin margins, two requiring a manual recount. The state had never even seen *one* statewide recount before. Not to mention that certain counties had other legislative and local recounts to sort out, too. By most objective measures, however, Florida's post-2000 recount reforms performed admirably.

A November 2018 *FloridaToday* article, published while the manual recount was still in progress, provides some meaningful context for a discussion of the bill's proposed clean-up measures:

New state laws written after 2000 set uniform statewide standards for how and when to conduct recounts. That remedied most of the issues that 2000's court battles focused on.

...

*In the end, the process worked largely as it was supposed to, though with some notable glitches. ... [And] a manual review of ballots showing no or too many votes was proceeding without drama. ...*

Susan MacManus, a professor at the University of South Florida who became "the world's most quoted political scientist" *during the 2000 recount, said the difference between the two was "night and day," despite what casual observers might think. ...*

---

<sup>13</sup> FSASE Priorities #7 (eliminate duplicate publication requirement for sample ballots).

But she also said the drama of the last week and a half still exposed some weaknesses in how we conduct elections. *She also notes similar or worse problems could have easily happened in just about any other state, but came to light here because Florida is the one state in the union that regularly has whisker-thin margins in statewide elections. ...*

"We fixed things and other states followed," MacManus said of the changes made following the 2000 election. "And this time around we will probably fix things and other states will follow."<sup>14</sup>

(emphasis added).

Given the extensive number of issues in the bill, a further discussion of the *Present Situation* is included within each specific issue contained in Section **III., Effect of Proposed Changes**, below.

### III. Effect of Proposed Changes:

#### Voting Systems/disability voting

##### *Present Situation*

The Department of State's Division of Elections (Division)<sup>15</sup> provides administrative support to the Secretary of State,<sup>16</sup> Florida's Chief Election Officer,<sup>17</sup> to ensure that Florida has fair and accurate elections.<sup>18</sup> The Division of Elections consists of three bureaus – the Bureau of Election Records, the Bureau of Voter Registration Services, and the Bureau of Voting Systems Certification. Through these bureaus and the Director's Office,<sup>19</sup> the Division ensures compliance with the elections laws, provides statewide coordination of election administration and promotes public participation in the electoral process. The Division also assists county Supervisors of Elections in their duties, including providing technical support.

A "voting system" is a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system's operation.<sup>20</sup> A "voter

<sup>14</sup> John McCarthy, FloridaToday, "Florida Recount: Things Smoother Than in 2000, But Fixes Needed; Gillum Ends Campaign" (November 17, 2018), available at

<https://www.floridatoday.com/story/news/politics/elections/2018/11/17/florida-recount-some-fixes-still-needed-florida-elections/2024542002/> (last accessed Apr. 1, 2019).

<sup>15</sup> Section 20.10(2)(a), F.S.

<sup>16</sup> Section 20.10(1), F.S. The head of the Department of State is the Secretary of State. The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary of State performs the functions conferred by the State Constitution upon the custodian of state records.

<sup>17</sup> Section 97.012, F.S. *See also* s. 97.035, F.S.

<sup>18</sup> *See* Department of State, Division of Elections, About Us, available at <https://dos.myflorida.com/elections/about-us/> (last visited on Feb. 14, 2019).

<sup>19</sup> *Id.* The mission of the Director's Office is to provide statewide coordination and direction for the interpretation and enforcement of election laws and to provide supervision to the Bureaus in the Division.

<sup>20</sup> Section 97.021(45), F.S.

interface device” is any device that communicates voting instructions and ballot information to a voter and allows the voter to select and vote for candidates and issues.<sup>21</sup>

The Division approves the voting system used in most Florida elections. The Division tests the reliability of both the hardware and software components to make sure that they meet the standards set out in law and rules. Florida’s certification process is among the most comprehensive in the nation.

The law currently requires all voting by electors *without* disabilities to be done by marksense ballots that can be electronically tabulated.<sup>22</sup> Since July 1, 2008, however, counties have been allowed to use touchscreen voting equipment for voters *with* disabilities that tabulates votes electronically, without a VVPO; *ONLY* voters with disabilities may cast ballots on these accessible voting systems.<sup>23</sup> At least one piece of accessible voting equipment must be available at each precinct,<sup>24</sup> which often sits idle much of the day.

Since authorizing this “dual” voting requirement in 2007, the Legislature has three times delayed targeted statutory implementation dates (to 2012,<sup>25</sup> 2016,<sup>26</sup> and 2020<sup>27</sup>), to allow election technology to catch-up with the ability to allow voters with disabilities to cast an independent ballot that is:

- Recorded on paper, for canvassing and recount purposes; and
- Cast in the same manner as voters without disabilities.

Four Florida counties — Glades, Jefferson, Miami-Dade, and Palm Beach — are still using non-VVPO legacy systems.<sup>28,29</sup> The remaining 63 counties have purchased touchscreen equipment for voters with disabilities that produces a scannable VVPO, though the printed ballot/ballot card varies in format.<sup>30</sup>

There are currently three state-certified systems for voters with disabilities:

- ES&S AutoMARK<sup>31</sup> (22 counties);
- Dominion ImageCast Evolution<sup>32</sup> (16 counties); and

<sup>21</sup> Section 97.021(41), F.S.

<sup>22</sup> Section 101.56075(1), F.S.

<sup>23</sup> Section 101.56075(2), F.S.

<sup>24</sup> Section 101.56062(2), F.S.

<sup>25</sup> Ch. 2007-30, s.6, LAWS OF FLA. (codified at s. 101.56075(3), F.S. [2007]).

<sup>26</sup> Ch. 2010-167, s.5, LAWS OF FLA. (codified at s. 101.56075(3), F.S.[2010]).

<sup>27</sup> Ch. 2013-57, s.9, LAWS OF FLA. (codified at s. 101.56075(3), F.S. (current)).

<sup>28</sup> See Department of State, Division of Elections, *2019 Voting Systems* (Feb. 4, 2019 update), available at <https://dos.myflorida.com/media/695246/voting-systems-in-use-by-county.pdf> (last visited on Feb. 14, 2019).

<sup>29</sup> Palm Beach is in the process of replacing its outdated machinery with a new countywide system. Jeff Ostrowski, Palm Beach Post, *After Election Debacle, Palm Beach County to Spend \$16M on Voting Machines for 2020* (Feb. 5, 2019), available at <https://www.palmbeachpost.com/news/20190205/after-election-debacle-palm-beach-county-to-spend-16m-on-voting-machines-for-2020> (last visited on Feb. 6, 2019).

<sup>30</sup> DOS, *2019 Voting Systems*.

<sup>31</sup> This system marks the same type of optical scan ballot design familiar to voters, effectively serving as an electronic “pen.” See Verified Voting, ES&S AutoMARK Description and Instructional Video, available at <https://www.verifiedvoting.org/resources/voting-equipment/ess/automark/> (last visited on Feb. 18, 2019).

<sup>32</sup> ImageCast Evolution is a second-generation system similar to AutoMARK in that it marks a typical optical scan ballot using the voter’s electronic selections. Evolution goes a step further, however, by *automatically* forwarding the marked ballot

- ES&S ExpressVote<sup>33</sup> (25 counties).

Generally, these systems “mark” a scannable paper ballot — a voter-verifiable paper trail that can be used for canvassing and recount purposes.<sup>34</sup> AutoMARK and ImageCast Evolution produce the familiar optical-scan ballot style; ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voters’ choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voters’ choices in each contest.

These systems prevent an elector from “overvoting” (selecting more than one candidate per race) and warn or prompt the voter if he or she “undervotes” (completely skips a race). There is a summary review screen at the end of the selection process to allow a voter to go back and make or change a selection.<sup>35</sup> After the ballot is printed on an AutoMARK or ExpressVote system, voters are able to review the ballot for accuracy before depositing it themselves in an optical scanner; the ImageCast Evolution system automatically deposits the optical-scan ballot into the ballot box for the voter.

### ***Effect of the Bill***

The bill revises the definition of “voter interface device” to stipulate that a voter interface device may not be used to tabulate votes, and any vote tabulation must be based upon a subsequent scan of the marked marksense ballot or the voter-verifiable paper output after the voter interface device process has been completed.

The bill provides that, for the purpose of designating ballot selections, all voting must be done by marksense ballot using a marking device (i.e., ink pen) or voter interface device (i.e., touchscreen) that produces a voter verified paper output. *All* voters, those with disabilities and those without, will be able to cast *paper ballots* on the *same* certified voting equipment — thereby fulfilling a promise that the Legislature made to the disability community back in 2007.

This change effectively puts the ExpressVote ballot card on a par with the more familiar optical scan ballot for purposes of canvassing and recounts. It will potentially save millions of dollars in equipment upgrades in the 25 counties currently using ExpressVote for voters with disabilities. In order to meet the 2020 disability implementation deadline, however, the four Florida counties still recording votes on legacy direct recording electronic (DRE), non-VVPO touchscreen systems — Glades, Jefferson, Miami-Dade, and Palm Beach — will have to purchase at least one new piece of disability voting equipment per polling place.

---

into the tabulator — especially helpful for voters with certain physical limitations. See Dominion Voting, ImageCast Evolution, available at <https://www.dominionvoting.com/products> (last visited on Feb. 18, 2019).

<sup>33</sup> The ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voter’s choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voter’s choice in each contest. See Verified Voting, ES&S ExpressVote Description and Instructional Video, available at <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/> (last visited on Feb. 18, 2019).

<sup>34</sup> About two-thirds of Florida’s counties (47/67) currently use either the ES&S AutoMark or ExpressVote systems for disabled voters. See *supra* note 12.

<sup>35</sup> Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

Also, allowing *any* elector, not just voters with disabilities, to use touchscreen VVPO systems will mean fewer idle machines at the polls and possibly shorter lines at certain polling places.

Finally, the bill revises requirements for Department of State rules concerning manual recounts of overvotes and undervotes. The Department of State's rules may not authorize the use of an electronic or electromechanical reading device to review a hybrid voting system ballot that is produced using a voter interface device and contains both machine-readable fields and machine-printed text of the contest titles and voter selections, unless the printed text is illegible.

### **Voting Systems/sorting and counting ballots**

#### ***Present Situation***

The Florida Election Reform Act of 2001, enacted in direct response to the 2000 U.S. presidential recount, completely revamped Florida's voting systems. Among other major changes (i.e., the elimination of hand-count, lever machine, and punch card ballot systems), the requirements with respect to manual recounts included:

...(a) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State as part of the voting system pursuant to s. 101.015. Any such hardware or software must be capable of simultaneously counting votes.

...

(c) Overvotes and undervotes shall be identified and sorted while recounting ballots pursuant to s. 102.141, if the hardware or software for this purpose has been certified or the department's rules so provide.<sup>36</sup>

Note that there is NO requirement that the system be able to count and sort *multiple races* simultaneously, thereby allowing the processing of multiple recounts at the same time. Notwithstanding, by the 2018 election cycle every county had voluntarily upgraded its' voting system to provide for this capability — except for Palm Beach County.

#### ***Effect of the Bill***

The bill updates legacy language from the 2001 Election Reform Act to prohibit voting systems that cannot *simultaneously* count and sort overvotes and undervotes in *multiple races*. This change effectively de-certifies Palm Beach County's legacy voting system used in the 2018 elections, notwithstanding that the County is already in the process of replacing that system for the 2020 election cycle.<sup>37</sup>

---

<sup>36</sup> Chapter 2001-40, s. 42, LAWS OF FLA. (currently codified at s. 102.166, F.S.[2018]).

<sup>37</sup> Jeff Ostrowski, Palm Beach Post, "After Election Debacle, Palm Beach County to Spend \$16M on Voting Machines for 2020" (Feb. 5, 2019), available at <https://www.palmbeachpost.com/news/20190205/after-election-debacle-palm-beach-county-to-spend-16m-on-voting-machines-for-2020> (last visited Feb. 6, 2019).

## Vote-by-Mail (VBM) Ballots<sup>38</sup>

### *Present Situation*

Florida allows any voter to vote by requesting a vote-by-mail (VBM) ballot from his or her supervisor of elections (supervisor), completing it and returning it to his or her supervisor. A voter can request and vote a VBM ballot without offering any excuse or reason for doing so.<sup>39</sup> A supervisor must accept a request made by the voter for a VBM ballot in person or in writing<sup>40</sup> and may accept a telephonic request from the voter.<sup>41</sup> A member of the voter's immediate family<sup>42</sup> or his or her legal guardian can also request a VBM ballot on behalf of the voter.<sup>43</sup> Once a voter has requested a VBM ballot, the supervisor must notify the voter of the free access system for determining the status of his or her VBM ballot.<sup>44</sup>

The supervisor must, for each VBM request received, record the date the request was made, the date the VBM ballot was delivered to the voter, the date the VBM ballot was received by the supervisor, and the absence of the voter's signature on the voter's certificate, if applicable.<sup>45</sup> The supervisor must provide the information to the Division of Elections each day beginning 60 days before the primary election until 15 days after the general election.<sup>46</sup> The information is confidential and exempt from public records requirements except it must be provided to the voter requesting the VBM ballot, a CCB, an election official, a political party or official thereof, a candidate, and registered political committees for political purposes.<sup>47</sup>

If the supervisor receives the request for a VBM ballot from a domestic voter prior to 35 days before the election, the supervisor must mail the VBM ballot to the voter between 35 days and 28 days before the election.<sup>48</sup> The last day to request a VBM ballot is six days prior to the election and the last day a supervisor may send out VBM ballots is on the fourth day preceding the election.<sup>49</sup> If a supervisor receives a request for a VBM ballot between the 28<sup>th</sup> day prior to the

<sup>38</sup> Includes all or part of FSASE Priorities #10 (similar; allow flexibility to mail domestic VBM ballots not later than 28 days before an election), #11 (allow canvassing of VBM ballots 22 days prior to the election), #13 (move last day to request VBM ballots to 10 days before an election, and prohibit mailing VBM ballots after the 8<sup>th</sup> day before an election), #14 (use signatures on cure affidavits to update voter's signature of record), #15 (remove deadline to update signature prior to start of canvassing board), #16 (similar; extend deadline for curing defective VBM issues to 5 p.m. on Election Night). In addition, Senate Ethics and Elections staff is aware of individual supervisors who currently employ VBM drop boxes, notwithstanding a binding directive from the Secretary of State prohibiting the practice. Secretary of State, Directive 2013-01—Return of Absentee Ballots (Nov. 25, 2013), available at [https://dos.myflorida.com/media/693333/sos\\_directive\\_2013-01.pdf](https://dos.myflorida.com/media/693333/sos_directive_2013-01.pdf) (last accessed Apr. 1, 2019). A number of Senate bills have been filed in recent years to authorize VBM drop boxes at early voting sites. See SB 810 (2018); SB 726 (2017).

<sup>39</sup> Prior to 2001, a voter was required to show cause to vote using an absentee ballot, the previous statutory term for what is now a VBM ballot. The Election Reform Act of 2001 eliminated the requirement, allowing any voter to vote using an absentee ballot. See Ch. 2001-40, s. 53, L.O.F.

<sup>40</sup> Section 101.62(1)(a), F.S.

<sup>41</sup> Section 101.62(1)(b), F.S.

<sup>42</sup> The term "immediate family" is defined to mean the voter's spouse or the parent, child, grandparent, or sibling of the voter. Section 101.62(4)(c)3., F.S.

<sup>43</sup> Section 101.62(1)(b), F.S.

<sup>44</sup> Section 101.62(1)(c), F.S.

<sup>45</sup> Section 101.62(3), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Section 101.62(4)(b), F.S.

<sup>49</sup> Section 101.62(2), F.S.



election and the sixth day prior to the election, the supervisor must send the requested VBM ballot to the voter within two days of receiving the request.<sup>50</sup>

After receiving the request, the supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,<sup>51</sup> a secrecy envelope, and a mailing envelope for returning the ballot.<sup>52</sup> Once the elector has completed the ballot and placed it in the secrecy envelope, the elector must complete a voter's certificate affixed to the back of the mailing envelope.<sup>53</sup>

A voter may also physically pick-up a VBM ballot from the supervisor's office in-person through election day, and may designate someone to do so on his or her behalf beginning on the fifth day before an election.<sup>54</sup>

The voter's certificate reads as follows:

#### VOTER'S CERTIFICATE

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

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

\_\_\_\_\_  
(Voters Signature)<sup>55</sup>

VBM ballots must be received by the supervisor no later than 7 p.m. on election day to be counted.<sup>56</sup> Upon timely receipt of the VBM ballot, the supervisor, or if the supervisor has not done so, the county canvassing board (CCB), compares the signature on the voter's certificate to the signature of the elector in the registration books or the precinct register "to determine whether the elector is duly registered in the county."<sup>57</sup> A supervisor is prohibited from opening the VBM ballots and must safely keep the VBM ballots in his or her office until the CCB canvasses VBM ballots.<sup>58</sup>

In order for a VBM ballot to be valid, the signature on the voter's certificate must match the signature on the registration books or the precinct register.<sup>59</sup> A voter's VBM ballot may be invalidated based upon two deficiencies in signing the voter's certificate: signature omission and

<sup>50</sup> Section 101.62(4)(b), F.S.

<sup>51</sup> Section 101.65, F.S.

<sup>52</sup> Section 101.64(1), F.S.

<sup>53</sup> *Id.*

<sup>54</sup> Section 101.62(4)(c), F.S.

<sup>55</sup> The supervisor must create the mailing envelope so that the voter's signature portion of the certificate crosses the seal of the envelope. Section 101.64(2), F.S.

<sup>56</sup> Section 101.67(2), F.S.

<sup>57</sup> Section 101.68(1), F.S.

<sup>58</sup> Section 101.68(1), F.S.

<sup>59</sup> Section 101.68(2)(c)1., F.S.

signature mismatch. If an elector's signature is omitted from the certificate, or if the signature on the certificate does not match the signature on file, the voter may cure the ballot using a cure affidavit.<sup>60</sup> Once a signature deficiency is discovered, the supervisor is required to immediately notify the voter of the defect.<sup>61</sup> The voter then has until 5 p.m. on the day *before* the election to complete a cure affidavit<sup>62</sup> and provide identification confirming the voter's identify<sup>63</sup> to the supervisor.<sup>64</sup> If the cure affidavit and identification meet the statutory requirements, the ballot will be counted.<sup>65</sup>

The Florida Election Code allows a voter voting by mail to update his or her signature for verification purposes at any time before the CCB begins canvassing the VBM ballots.<sup>66</sup> After canvassing begins, a voter voting a VBM ballot may not update his or her signature for this purpose.<sup>67</sup> CCBs *may* begin canvassing VBM ballots 15 days before the election but *must* begin canvassing those ballots by noon the day after the election.<sup>68</sup>

If a VBM ballot is physically damaged so that it cannot be placed in the automatic tabulating machine, a duplicate ballot must be made of the damaged ballot.<sup>69</sup> The duplication must be done in the presence of witnesses.<sup>70</sup> Similarly, if a VBM ballot contains an overvoted race or is marked but every race is undervoted, the ballot must be duplicated but the duplication will be based on the CCB's determination of what on the ballot constitutes a valid vote.<sup>71</sup> All duplicate ballots must be clearly labeled "duplicate" and bear a serial number that must also be recorded on the defective ballot.<sup>72</sup> After the duplication process has been completed, the defective ballot must be placed in a special envelope and the duplicate ballot will be counted as a valid ballot thereafter.<sup>73</sup>

After the election, the supervisor must notify each elector whose ballot was rejected and provide the reasons for the rejection.<sup>74</sup> If the reason for the rejection was a discrepancy between the signature on the VBM ballot cure affidavit or voter's certificate and the signature on file, the supervisor must send the voter registration application to the voter so the voter may update his or her signature on file.<sup>75</sup>

---

<sup>60</sup> Section 101.68(4), F.S.

<sup>61</sup> Section 101.68(4)(a), F.S.

<sup>62</sup> Each supervisor, as well as DOS, are required to include the cure affidavit and instructions on their websites. Section 101.68(4)(d), F.S.

<sup>63</sup> Section 101.68(4)(c)3., F.S., provides the specified list of acceptable forms of identification in two tiers.

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

<sup>65</sup> Section 101.68(2)(c)1., F.S.

<sup>66</sup> Section 98.077(4), F.S.

<sup>67</sup> Section 98.077(4), F.S.; *see also* s. 97.055(1)(b), F.S.

<sup>68</sup> Section 101.68(2)(a), F.S.; *see also* s. 98.077, F.S., requiring each supervisor to publish a notice in each year in which a general election occurs specifying how an elector can update his or her voter registration signature in a newspaper in the county.

<sup>69</sup> Section 101.5614(4)(a), F.S.

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

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

<sup>72</sup> *Id.*

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

<sup>74</sup> Section 101.68(4)(f), F.S.

<sup>75</sup> *Id.*

### ***Recent Litigation***

In 2016, the Florida Election Code provided a method of curing a VBM ballot voter's certificate that did not contain a signature but did not provide a method of curing a signature on the certificate that did not match the signature on file.<sup>76</sup> The United States District Court for the Northern District of Florida struck down Florida's statutory scheme as it relates to mismatched-signatures unconstitutional, and ordered "mismatched-signature ballots to be cured in precisely the same fashion as currently provided for non-signature ballots."<sup>77</sup> In response, the Florida Legislature passed CS/HB 105 (2017), which created a statutory process to cure VBM ballots with a signature mismatch.

In 2018, despite adopting a statute to address the Court's concerns, the same U.S. District Court held that the cure deadline for VBM ballots prior to Election Day and the absence of similar cure provisions for provisional ballots was illusory and "unconstitutionally burdens the fundamental right of Florida citizens to vote and have their votes counted."<sup>78</sup> The court specifically noted that the inability of voters casting VBM ballots that were notified of a signature deficiency after the cure deadline had passed, and the inability of voters casting VBM ballots that were canvassed after the cure deadline to cure their ballot, presented an unconstitutional burden on the right to vote.<sup>79</sup> The court also noted that the absence of uniform standards for comparing signatures was problematic as it could lead to differing comparison standards from county to county.<sup>80</sup> The court granted a preliminary injunction and ordered each supervisor to allow voters who were belatedly notified they had submitted a mismatched signature VBM or provisional ballot to cure their ballots within two days of the order.<sup>81</sup> The National Republican Senatorial Committee, an intervenor in the case, filed a motion with the U.S. Court of Appeals for the 11th Circuit to stay the U.S. District Court's order. The U.S. Court of Appeals denied the motion to stay and largely agreed with the rationale of the U.S. District Court order.<sup>82</sup>

### ***Effect of the Bill***

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

- Allows supervisors to mail domestic VBM ballots between 40 days and 33 days before an election, instead of the current one-week window of the 35<sup>th</sup> to the 28<sup>th</sup> day.
- Moves the earliest start date for canvassing VBM ballots from 15 to 22 days before an election.
- Extends the deadline for curing defective VBM ballot signatures from 5 p.m. on the day *before* the election to 5 p.m. on the second day *after* a primary or general election.
- Moves the deadline for a voter to update his or her signature for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the supervisor receives the VBM ballot.

---

<sup>76</sup> Section 101.68(4)(b), F.S. (2016).

<sup>77</sup> *Fla. Democratic Party v. Detzner*, 4:16-CV-607 (N.D. Fla. 2016).

<sup>78</sup> *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F.Supp.3d 1017 (N.D. Fla 2018)(temporary injunction order).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Democratic Exec. Comm. of Fla. v. Detzner*, 915 F. 3d 1312 (11th Cir. 2018).

- For canvassing purposes, requires CCBs to find, by majority vote and beyond a reasonable doubt, that a signature on a voter’s certificate or cure affidavit *does not match* the signature in the registration records.
- Alters the VBM ballot voter’s certificate, requesting additional voter contact information (e-mail address, home phone number, mobile phone number) for the limited purpose of correcting signature deficiencies.
- Creates a new signature-deficiency notification process for timely received VBM ballots, requiring notification by first-class mail as well as phone, email, or text. However, beginning the day before the election, the supervisor is not required to provide notice by first-class mail — though he or she must continue trying to contact the voter by phone, email, or text.
- Creates a process to update immediately voter registration signatures with the signature on a valid VBM ballot cure affidavit, and makes conforming changes to the post-election voter notification/signature update request for voters whose ballots were rejected due to defective signatures.
- Upon request, permits a physically present candidate, political party official, or political committee official, or authorized designees, to observe any statutorily authorized duplication of VBM ballots.
- Allows a voter to drop off his or her VBM ballot at a secure drop box located solely at a supervisor’s main and branch offices, and at each early voting location; requires that the total number of VBM ballots dropped off at an early voting location be made publicly available each day.
- Mandates that the instructions accompanying a VBM ballot notify voters that they may drop off their ballot at the supervisor’s office or a secure drop box at an early voting location.
- Requires DOS to provide formal signature matching training to supervisors and CCB members.

## **VBM Request and Mailing Deadlines**

### ***Present Situation***

The supervisors stop accepting mail-out requests for VBM ballots at 5 p.m. on the sixth day before an election.<sup>83</sup> (Correspondingly, an elector’s written designee may pick-up a VBM ballot for an elector beginning on the *fifth day* before an election.<sup>84</sup>) Supervisors are required to mail out VBM ballots for valid requests no later than the fourth day before an election.<sup>85</sup> Every election cycle, thousands of ballots arrive after the close of the polls on election day and are not counted.<sup>86</sup>

The Florida State Association of Supervisors of Elections (“FSASE”) has advised committee staff that in the past few years, the United States Postal Service has been systematically closing numerous regional processing centers due to budgetary constraints. This has resulted in delays of

---

<sup>83</sup> Section 101.62(2), F.S.

<sup>84</sup> Section 101.62(4), F.S.

<sup>85</sup> *Id.*

<sup>86</sup> See e.g., Gary Fineout, AP News, “Thousands of Mailed Ballots in Florida Were Not Counted” (Dec. 10, 2018) (6,670 ballots mailed ahead of the Nov. 6 election were not counted because they were not received by Election Day [excluding ballots in Palm Beach and Polk counties]), available at <https://www.apnews.com/8488a401807045fcb642ea2cdf81fc29> (last visited Feb. 8, 2019).



(Driver License Number or Last Four Digits of Social Security Number)<sup>92</sup>

All provisional ballots remain sealed in their envelopes for return to the supervisor.<sup>93</sup> Each voter voting a provisional ballot is entitled to present written evidence supporting his or her eligibility to vote to the supervisor no later than 5 p.m. on the second day following the election.<sup>94</sup> The CCB must examine each provisional ballot voter's certificate and affirmation to determine if the person voting the ballot was entitled to vote at the precinct where the person cast his or her vote and that the person had not already cast a ballot in the election.<sup>95</sup> In making this determination, the CCB must consider the following:

- The information provided in the provisional ballot voter's certificate and affirmation;
- Written evidence presented by the person; and
- Any other evidence presented by the supervisor.<sup>96</sup>

If the CCB determines that the person was not registered or entitled to vote at the precinct where the person cast his or her vote, then the provisional ballot is not opened and not counted.<sup>97</sup> If the CCB determines the person was registered and entitled to vote at the precinct, then the board compares the signature on the provisional ballot voter's certificate and affirmation with the signature on file and, if it matches, the ballot is counted.<sup>98</sup> If the signatures do not match, then the ballot is not opened and not counted.<sup>99</sup>

Each supervisor is required to establish a free access system that allows each person who voted a provisional ballot to determine whether his or her ballot was counted.<sup>100</sup> If the voter's ballot was not counted, the system must inform the voter of the reason why the ballot was rejected.<sup>101</sup>

***Effect of the Bill***

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

- Creates a provisional ballot signature cure and canvassing process that mirrors the revised VBM ballot signature cure process by creating a signature cure affidavit and instructions, providing for voter submission of supporting identification, and creating standards for CCBs to process ballots using the cure affidavit and supporting information. The cure provides that the provisional ballot signature defect may be cured until 5 p.m. two days *after* the election.
- For canvassing purposes, requires CCBs to find, by majority vote and beyond a reasonable doubt, that a signature on a voter's certificate or cure affidavit *does not match* the signature in the registration records.
- Modifies the Provisional Ballot Voter's Certificate and Affirmation to include requests for additional phone and electronic contact information.

---

<sup>92</sup> *Id.*

<sup>93</sup> Section 101.048(1), F.S.

<sup>94</sup> *Id.* Each voter voting a provisional ballot is given instructions concerning his or her right to present additional written evidence to the supervisor. Section 101.048(5), F.S.

<sup>95</sup> Section 101.048(2)(a), F.S.

<sup>96</sup> *Id.* The CCB can, in the case of a challenge, consider any evidence presented by a challenger.

<sup>97</sup> Section 101.048(2)(b)2., F.S.

<sup>98</sup> Section 101.048(2)(b)1., F.S.

<sup>99</sup> *Id.*

<sup>100</sup> Section 101.048(6), F.S.

<sup>101</sup> *Id.*

- Creates a new signature-deficiency notification process for provisional ballots, requiring notification by first-class mail as well as phone, email, or text. However, beginning the day before the election, the supervisor is not required to provide notice by first-class mail — though he or she must continue trying to contact the voter by phone, email, or text.
- Creates a process to immediately update voter registration signatures with the signature on a valid provisional ballot cure affidavit.
- Incorporates the current VBM requirement that supervisors provide voters with a post-election notice and voter registration card to update signatures for voters whose ballots were rejected due to defective signatures.

## County Canvassing Board

### *Present Situation*

The County Canvassing Board is the body that tabulates and canvasses the vote for an election in that county. The CCB is composed of the supervisor, the chair of the board of county commissioners, and a county court judge, who serves as chair.<sup>102</sup> If a member of the CCB is unable to serve, he or she can be replaced in one of two ways, either permanently, through the appointment of a substitute member, or temporarily, through the appointment and selection of an alternate member.<sup>103</sup> In the event a member of the CCB is absent for a temporary period, an alternate member is chosen to assume his or her position as a member of the CCB until the permanent member returns. The chair of the CCB decides which alternate member will serve as a member of the CCB.<sup>104</sup> Alternate members are appointed as follows:

- The chief judge of the judicial circuit in which the county is located must appoint a county court judge as an alternate member unless each judge is unable to serve or is disqualified,<sup>105</sup> then the chief judge must appoint a qualified elector of the county who is not a candidate and who is not an active participant in a campaign; or
- The chair of the board of county commissioners must appoint a member of the board of county commissioners unless each member of the board is unable to serve or is disqualified, the chief judge of the judicial circuit in which the county is located must appoint a qualified elector of the county who is not a candidate and who is not an active participant in a campaign.

When not serving as one of the three members of the CCB, an alternate member may be present, observe, and communicate with the CCB but may not vote in the CCB's determinations.<sup>106</sup>

Prior to canvassing ballots, the supervisor designates a time for the CCB to meet for that purpose.<sup>107</sup> The CCB, or the supervisor on the CCB's behalf, must give public notice of the time and place at which the CCB will meet.<sup>108</sup> The notice must be given at least 48 hours prior to the

---

<sup>102</sup> Section 102.141(1), F.S.

<sup>103</sup> Section 102.141(1)(e), F.S.

<sup>104</sup> Section 102.141(1)(e)3., F.S.

<sup>105</sup> A disqualifying event occurs when the member of the CCB is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed. Section 102.141(1), F.S.

<sup>106</sup> Section 102.141(1)(e)4., F.S.

<sup>107</sup> Section 102.141(2), F.S.

<sup>108</sup> Section 102.141(2), F.S.

time of meeting and must be posted on the supervisor's website and published in one or more newspapers of general circulation in the county.<sup>109</sup> However, if there are no newspapers of general circulation in the county, then the notice must be posted in at least four conspicuous places in the county.<sup>110</sup> The CCB must meet in a building accessible to the public in the county where the election occurred to canvass VBM ballots and provisional ballots.<sup>111</sup> Once the VBM ballots and provisional ballots are canvassed, the CCB then begins to publicly canvass the vote given to each candidate, nominee, constitutional amendment, or other measure as shown by the returns sent from the election board at each polling place.<sup>112</sup>

### ***Effect of the Bill***

The bill requires that if a CCB meeting is recessed or suspended for a period longer than 60 minutes, the CCB must post on the supervisor's website the anticipated time the board expects to reconvene. If the CCB does not reconvene at the specified time, the board must provide at least two hours' notice on the supervisor's website before reconvening. The bill also requires a physical notice detailing the names of the individuals officially serving as the CCB, the names of any alternate members, the time of the meeting, and a brief statement as to the purpose of the meeting to be placed in a conspicuous area near the public entrance to the building in which the CCB meeting is taking place.

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

### **Primary Election<sup>113</sup>**

#### ***Present Situation***

Florida primary election is currently held 10 weeks before the general election. This is NOT a magic date; it has been shuffled around quite a bit in recent years. From 1983 to 2006, the primary election was held 9 weeks before the general election.<sup>114</sup> In 2007, the election was pushed back to 10 weeks before the general, to avoid the Labor Day holiday weekend.<sup>115</sup> In 2011, it was pushed back to 12 weeks before the general election so as not to coincide with the 2012 Republican National Convention in Tampa.<sup>116</sup> In 2013, the primary date was moved back to 10 weeks before the general election.<sup>117</sup>

---

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

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

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> FSASE Legislative Priorities #9 (partial).

<sup>114</sup> For most of that time, it was called the "first primary election," as Florida held a second primary several weeks after the first primary until the 2002 election cycle.

<sup>115</sup> Ch. 2007-30, s. 22, LAWS OF FLA.; *see*, Florida Senate Transportation and Economic Development Appropriations Committee, *Bill Analysis for CS/CS/SBs 960 and 1010* at p. 22 (April 24, 2007), available at <http://archive.flsenate.gov/data/session/2007/Senate/bills/analysis/pdf/2007s0960.ta.pdf> (last visited Feb 19, 2019).

<sup>116</sup> Ch. 2011-10, s. 20, LAWS OF FLA.

<sup>117</sup> Ch. 2013-57, s. 3, LAWS OF FLA.



***Effect of the Bill***

The bill moves the primary election from 10 weeks preceding the general election to 11 weeks preceding the general election. As such, the forthcoming 2020 primary election would be held on August 18.<sup>118</sup>

**No-Solicitation Zone*****Present Situation***

Currently, no person, political committee, or other group or organization may solicit<sup>119</sup> voters inside the polling place or within 100 feet of the entrance to any polling place,<sup>120</sup> polling room<sup>121</sup> where the polling place is also a polling room, early voting site,<sup>122</sup> or an office of the supervisor where VBM ballots are requested and printed on demand.<sup>123</sup> Each supervisor must inform the clerk<sup>124</sup> of the area within which soliciting is unlawful based on the particular characteristics of that polling place.<sup>125</sup> Prior to opening of the polling place or early voting site, the clerk or supervisor must designate the no-solicitation zone and mark the boundaries.<sup>126</sup>

***Effect of the Bill***

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

---

<sup>118</sup> The presidential preference primary election occurs on a different date from the primary election and the two are not related. Currently, the presidential preference primary election occurs on the third Tuesday in March of each presidential election year. Section 103.101(1), F.S.

<sup>119</sup> The term “solicitation” includes, but is not limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except an exit poll; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item. Section 102.031(4)(b), F.S.

<sup>120</sup> The term “polling place” is defined to mean the building that contains the polling room where ballots are cast. Section 97.021(27), F.S.

<sup>121</sup> The term “polling room” is defined to mean the actual room in which ballots are cast on election day and during early voting. Section 97.021(28), F.S.

<sup>122</sup> The term “early voting site” is defined to mean those locations specified in s. 101.657, F.S., and the building in which early voting occurs. Section 97.021(11), F.S.

<sup>123</sup> Section 102.031(4)(a), F.S.

<sup>124</sup> Each precinct has inspectors and a clerk, each appointed by the supervisor. These poll workers are collectively known as the election board. The clerk is in charge of and responsible for seeing that the election board carries out its duties and responsibilities. Section 102.012(1)(a), F.S.

<sup>125</sup> Section 102.031(4)(c), F.S.

<sup>126</sup> Section 102.031(4)(a), F.S.

## **Polling Room Photography**

### *Present Situation*

Photography is currently prohibited in the polling room or early voting area.<sup>127</sup> The prohibition can be enforced by the election board.<sup>128</sup>

### *Effect of the Bill*

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

## **Precinct-Level Election Results<sup>129</sup>**

### *Present Situation*

Supervisors are required to, within 30 days following the certification of the election results by the Elections Canvassing Commission,<sup>130</sup> collect and submit to DOS precinct-level election results.<sup>131</sup> The results must be in a uniform electronic format and include the total number of all ballots cast in each precinct for each candidate or nominee to fill a national, state, county, or district office, or proposed constitutional amendment.<sup>132</sup> The results must also contain subtotals for each candidate and ballot type, unless fewer than 10 voters voted a certain type of ballot, in which case that ballot type will be omitted from the results to ensure that the votes for those voters remain secret.<sup>133</sup> After DOS has received the results, it must make the information available, through its website, on a searchable, sortable, and downloadable database.<sup>134</sup>

### *Effect of the Bill*

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

## **Ballot Design**

### *Present Situation*

DOS is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system.<sup>135</sup> The rules are required to incorporate clear and unambiguous ballot

---

<sup>127</sup> Section 102.031(5), F.S.

<sup>128</sup> The election board consists of the clerk and inspectors appointed to conduct an election. Section 97.021(13), F.S. Each election board possesses full authority to maintain order at the polls and enforce obedience to its lawful commands during an election and the canvassing of votes. Section 102.031(1), F.S.

<sup>129</sup> Though not formally adopted as an FSASE Legislative Priority, individual supervisors contacted Senate Ethics and Elections staff last year to discuss this issue, resulting, for example, in the filing of SB 1582 (2018).

<sup>130</sup> The Elections Canvassing Commission is a body that certifies election results for federal, state, and multicounty offices. The commission consists of the Governor and two members of the Cabinet selected by the Governor. The commission meets at 9 a.m. on the 14th day following a general election to certify the returns. Section 102.111, F.S.

<sup>131</sup> Section 98.0981(2)(a), F.S.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Section 98.0981(2)(b), F.S.

<sup>135</sup> Section 101.151(9)(a), F.S.

instructions, individual race layout, and overall ballot layout.<sup>136</sup> Additionally, the rules are required to graphically depict a sample uniform primary and general election ballot form for each certified voting system.<sup>137</sup> DOS rule 1S-2.032, F.A.C., states that ballot instructions may appear “immediately below the ballot title either across the page or in the first column.” The graphic depictions of sample ballots, incorporate by reference into the rule, display the ballot instructions placed horizontally across the top of the ballot in some<sup>138</sup> and placed in the first column in others.<sup>139</sup>

Rule 1S-2.032, F.A.C., allows each supervisor to choose between four types of vote targets:<sup>140</sup> ovals, squares, rectangles, or broken arrows.<sup>141</sup> Different vote target types are subject to slightly different provisions of the rule. For instance, an oval, square, or rectangle vote target must appear after the candidate’s name, while, for a broken arrow vote target, the name is in front of the party designation, if applicable, and before the broken arrow.<sup>142</sup>

### ***Effect of the Bill***

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

### **Ballot Security/chain of custody**

#### ***Present Situation***

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

- The supervisor must safely keep in his or her office any envelopes containing marked VBM ballots and must, before the canvassing of the election returns, deliver the envelopes to the CCB.<sup>143</sup>
- During the canvassing of VBM ballots, the supervisor or the chair of the CCB has custody of the VBM ballots until a final proclamation is made as to the total vote received by each candidate.<sup>144</sup>
- Prior to the opening of the polls, the supervisor, after securely sealing the ballot box or ballot transfer container, must send the ballot box or ballot transfer container to the clerk or inspector of the precinct in which it is to be used.<sup>145</sup>

---

<sup>136</sup> *Id.*

<sup>137</sup> Section 101.151(9)(b), F.S.

<sup>138</sup> *See* DS-DE-205, incorporated by reference into r. 1S-2.032, F.A.C.

<sup>139</sup> *See* DS-DE-202, incorporated by reference into r. 1S-2.032, F.A.C.

<sup>140</sup> A “vote target” is defined to mean an area on the ballot where the voter indicates his or her vote. Rule 1S-2.032(1)(1), F.A.C.

<sup>141</sup> *Id.*

<sup>142</sup> Rule 1S-2.032(9)(a)4., F.S.

<sup>143</sup> Section 101.67(1), F.S.

<sup>144</sup> Section 101.68(3), F.S.

<sup>145</sup> Section 101.24, F.S.

- Provisional ballots are required to be deposited in a ballot box and must remain sealed in their envelopes for return to the supervisor.<sup>146</sup>
- After the results are tabulated at each precinct, a certificate of the results is drawn up by the inspectors and clerk at each precinct. The certificate must be signed by the inspectors and clerk and must be delivered without delay by one of the inspectors, securely sealed, to the supervisor for immediate publication. All the ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used in the election also must be transmitted, after being sealed by the inspectors, to the supervisor's office. Registration books and the poll lists may not be placed in the ballot boxes but must be returned to the supervisor.<sup>147</sup>

DOS is required to adopt rules to establish minimum-security standards for voting systems.<sup>148</sup> Rule 1S-2.015, F.A.C., sets standards for chain of custody of ballots, ballot distribution, transport of ballots, and receiving and preparing voted ballots.<sup>149</sup> Supervisors must establish written procedures based on these minimum security standards to assure accuracy and security in his or her county.<sup>150</sup> The procedures must be reviewed by DOS every odd-numbered year.<sup>151</sup> If a supervisor revises his or her security procedures, he or she must submit those revisions to DOS at least 45 days prior to the commencement of early voting.<sup>152</sup>

### ***Effect of the Bill***

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

### **Ballot-on-Demand Technology**

#### ***Present Situation***

A ballot-on-demand (BOD) system is a system in which ballots may be printed quickly and to the specifications required for the individual voter. For instance, during early voting, which occurs at centralized locations where voters of different precincts all vote together, a BOD system can print a precinct-specific ballot for each voter. Currently, BOD systems are permitted to be used, at the supervisor's discretion, for early voting but the Florida Election Code is silent as to the use of BOD systems on Election Day.<sup>153</sup>

---

<sup>146</sup> Section 101.048(1), F.S.

<sup>147</sup> Section 102.071, F.S.

<sup>148</sup> Section 101.015(4), F.S. The term "voting system" is defined to mean a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system's operation. Section 97.012(45), F.S.

<sup>149</sup> Rule 1S-2.015, F.A.C.

<sup>150</sup> Section 101.015(4)(b), F.S.

<sup>151</sup> *Id.*

<sup>152</sup> Section 101.015(4)(c), F.S.

<sup>153</sup> See section 101.151(1)(b), F.S. (specifically addressing early voting only).

***Effect of the Bill***

The bill specifically authorizes supervisors to use BOD systems at polling places on Election Day.

**Sample Ballot Distribution<sup>154</sup>*****Present Situation***

Once the list of qualified candidates is completed, the law requires that a sample ballot be published by each supervisor in a newspaper of general circulation in the county before Election Day.<sup>155</sup> A supervisor may, but is not required to, send a sample ballot to each registered voter by e-mail at least seven days before an election — if the voter has opted in and provided an e-mail address.<sup>156</sup> If a voter has opted-out or has not provided an e-mail address, the sample ballot may be mailed to the voter at least seven days before an election.<sup>157</sup>

***Effect of the Bill***

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

**Supervisors' of Elections Qualifications Salary*****Present Situation***

Each supervisor is eligible to receive a special qualification salary of \$2,000 per year if he or she has met certain certification requirements established by DOS within six years after first taking office.<sup>158</sup> DOS has promulgated a rule establishing stringent requirements for a supervisor seeking the certification.<sup>159</sup> To maintain his or her certification, a supervisor must annually complete a course of continuing education.<sup>160</sup>

***Effect of the Bill***

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

---

<sup>154</sup> FSASE Priority #7 (eliminate duplicate publication requirement for sample ballots).

<sup>155</sup> Section 101.20(2), F.S.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Section 145.09(3), F.S.

<sup>159</sup> Rule 1S-2.0115, F.A.C.

<sup>160</sup> Section 145.09(3)(c), F.S.

## **Election Contests; VBM and provisional ballot signature validity**

### ***Present Situation***

Except for legislative contests, an unsuccessful candidate, a qualified elector, or a taxpayer may contest an election in circuit court within 10 days after certification.<sup>161</sup> In 2011, the Legislature changed the law to limit the court’s review of a CCB’s decision on the legality of a VBM signature in an election contest to looking *solely* at the voter’s signature of record and the signature on the VBM Voter’s certificate.<sup>162</sup> The Legislature subsequently authorized the “curing” of VBM ballots by affidavit and submission of additional identification,<sup>163</sup> but never amended this contest limitation to conform. In 2018, the U.S. District Court for the Northern District of Florida noted this shortcoming in its decision extending the time for VBM and provisional ballot voters to cure signature deficiencies.<sup>164</sup>

### ***Effect of the Bill***

In addition to what the law currently provides, the bill allows courts reviewing the validity of voter signatures in election contests to consider the signature on VBM/provisional ballot voter certificates and cure affidavits, along with voter ID submitted therewith.

## **Governor/Lt. Governor Joint Candidacy<sup>165</sup>**

### ***Present Situation***

Each gubernatorial candidate must designate a Lieutenant Governor.<sup>166</sup> While a gubernatorial candidate can make the designation at any time, he or she must designate a Lieutenant Governor by 5 p.m. on the ninth day following the primary election.<sup>167</sup> If a gubernatorial candidate designates a Lieutenant Governor by the end of the qualifying period prior to the primary election, the candidate for Lieutenant Governor will appear on the primary ballot with the gubernatorial candidate.<sup>168</sup> However, if the gubernatorial candidate does not designate a Lieutenant Governor by the end of the qualifying period, the primary ballot will list the name of the candidate for Governor and below the name, the phrase “Not Yet Designated” will appear in lieu of the name of Lieutenant Governor.<sup>169</sup>

---

<sup>161</sup> Section 102.168(1), F.S.

<sup>162</sup> Ch. 2011-40, s. 44, LAWS OF FLA.

<sup>163</sup> Ch. 3013-57, s. 15, LAWS OF FLA.

<sup>164</sup> *Democratic Exec. Comm. of Fla.* at 1031 (N.D. Fla 2018)(voter's opportunity to contest the certification of election results under [Florida Statutes § 102.168](#) will not prevent irreparable harm due to signature review limitations).

<sup>165</sup> FSASE Legislative Priorities #5 (remove “not-yet-designated” primary ballot language where Lt. Gov. has not been chosen).

<sup>166</sup> Section 99.063(1), F.S.; *see also* art. IV, s. 2, FLA. CONST.

<sup>167</sup> Section 99.063(1), F.S.

<sup>168</sup> Section 99.063(4), F.S. The qualification period for candidates for Governor and Lieutenant Governor is noon on the 71st day prior to the primary election until noon on the 67th day prior to the primary election. Section 99.061(1), F.S.

<sup>169</sup> Section 99.063(4), F.S.

***Effect of the Bill***

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

**Effective Date**

Except for some of the voting systems disability provisions incorporated from CS/CS/SB 268 (2019), which take effect on January 1, 2020, the bill takes effect July 1, 2019.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

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

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

Finally, with respect to disability voting systems, local supervisors of elections typically purchase voting equipment using county funds or, occasionally, federal grant money. There is no anticipated impact on state revenues or expenditures.

As discussed herein, adopting the disability voting provisions in this bill will potentially save millions of local dollars in necessary equipment upgrades in 25 counties currently using ExpressVote for voters with disabilities.

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 97.012, 97.021, 98.077, 98.0981, 99.063, 100.061, 101.015, 101.048, 101.151, 101.20, 101.56075, 101.5614, 101.62, 101.64, 101.65, 101.657, 101.68, 101.69, 101.6923, 102.031, 102.141, 102.166, 102.168, and 104.051.

#### IX. 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 on April 23, 2019:**

The CS makes changes to provisions in the original bill by:

- **VBM and Provisional Ballot Signature Deficiencies; notice and cure:** Shortening the cure period for correcting signature deficiencies from 5 p.m. on the 11<sup>th</sup> to the 2<sup>nd</sup> day after an election; providing for first-class mail notice of signature deficiencies to all applicable voters, along with phone, e-mail, or text; and, stopping first-class mail notice on the Monday before an election (though attempted notice by phone, e-mail, or text will continue), to conform; requiring CCBs to find, by majority vote and beyond a reasonable doubt, that a signature on a voter's certificate or cure affidavit *does not match* the signature in the registration records for canvassing purposes.



- **Election Certification/Timelines:** Eliminating a provision providing an extra week for certifying general election recount races, and an extra 5 days for certifying ALL primary races; removing conforming modifications for interim reporting deadlines.
- **VBM Ballots; designee pick-up (conforming):** Allowing an elector's designee to physically pick-up a VBM ballot for an elector up to 9 days before an election (currently 5 days), to conform to the 10 day cut-off date for electors to request a VBM ballot be sent by mail.
- **VBM Ballots; domestic mailing dates:** Changing the supervisors' mailing window for domestic ballots to the 40<sup>th</sup> through the 33<sup>rd</sup> day before an election, instead of allowing open-ended mailing anytime through the 28<sup>th</sup> day.
- **Election Contests (conforming):** Allowing courts reviewing the validity of voter signatures in election contests to consider the signature on VBM/provisional ballot voter certificates and cure affidavits, along with voter ID submitted therewith, to conform.
- **Effective Date:** Changing the effective date from January 1, 2020 to July 1, 2019 (for all but some of the voting system disability provisions added to the bill).

The CS also adds a number of substantial issues not addressed in the original bill:

- **Voting Systems/disability voting:** Incorporates CS/CS/SB 268: mandating that voters with disabilities cast a ballot on voting systems that produce a voter verifiable paper output (VVPO) for canvassing and recount purposes; and, authorizing the general use of such VVPO touchscreen systems by all voters, not just those with disabilities.
- **Ballot Design; targets:** Mandates that all ballot vote targets be ovals, as opposed to squares, rectangles, and broken arrows.
- **Ballot Design; Lt. Gov. designation:** Removes "not yet designated" language on primary ballot for the joint Gov./Lt. Gov. ticket if a running mate has not been selected.
- **Voter Signature Updates:** Moves the voter signature update deadline for purposes of validating a VBM ballot from the beginning of the VBM canvassing period to when the VBM ballot is received.
- **VBM Ballots; drop-off locations:** Allows a voter to drop off his or her VBM ballot at a secure drop box located at each early voting location, or at a supervisor's main or branch office.
- **VBM Ballots/duplication:** Permits physically-present candidate and political party/political committee officials, and/or their designees, to observe duplication of VBM ballots.
- **VBM Ballots; signature training:** Requires the DOS to provide formal signature matching training to supervisors and CCB members.
- **County Canvassing Boards:** Mandates a number of meeting notice content and publication requirements, along with measures to make CCB personnel more easily identifiable by requiring I.D. badges.
- **Polls; no-solicitation zones:** Expands the no-solicitation zone around polling places and early voting sites from 100 feet to 150 feet.
- **Polls; ballot photos:** Allows a voter to photograph his or her ballot in a polling room or early voting site.

- **Election Results/precinct-level reporting:** Prohibits reporting precinct-level results by ballot type if 30 or fewer votes are cast rather than 10, to ensure voter anonymity.
- **Ballots; security:** Requires the DOS rule regarding minimum-security standards to address, in detail, chain of custody of ballots, transport of ballots, and ballot security.
- **Ballots; ballot-on-demand:** Specifically authorizes supervisors to use ballot-on-demand printing systems at polling places on Election Day, not just at early voting sites.
- **Ballots; sample ballot publication:** Allows a supervisor to forego publication of a sample ballot in a newspaper of general circulation, if the supervisor e-mails or mails every registered voter a sample ballot at least seven days before an election.
- **Election Code Violations; special supervisor penalties:** Prohibits a supervisor from receiving a special qualification salary for a period of 24 months after a court finds the supervisor has willfully violated the Florida Election Code.

B. Amendments:

None.