

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/HB 7101 PCB SAC 19-01 Elections
SPONSOR(S): Public Integrity & Ethics Committee; State Affairs Committee; Ingoglia and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 7066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	23 Y, 0 N	Toliver	Williamson
1) Public Integrity & Ethics Committee	13 Y, 4 N, As CS	Poreda	Rubottom
FINAL HOUSE FLOOR ACTION: 67 Y's 42 N's			
GOVERNOR'S ACTION: Approved			

SUMMARY ANALYSIS

CS/HB 7101 passed the House on May 1, 2019, as CS/SB 7066 as amended. The Senate concurred in the House amendment as amended by the Senate and subsequently passed the bill as amended on May 2, 2019. The House concurred with the Senate amendment and subsequently passed the bill as amended on May 3, 2019. The bill includes portions of CS/HB 689 and CS/HB 7089.

The bill implements s. 4, Art. VI of the Florida Constitution, related to felon voting rights. The bill defines terms; establishes a process for verifying voter eligibility; requires information on outstanding terms of a sentence be provided to a person released from prison, probation, or parole; and creates a work group to review specified voter registration verification processes.

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

- Revises deadlines relating to vote-by-mail (VBM) ballots including deadlines for curing defective VBM ballot signatures, requesting VBM ballots and mailing out such ballots, mailing domestic VBM ballots, canvassing of VBM ballots, and updating a voter's signature for purposes of validating a VBM ballot.
- Allows a voter to drop off his or her VBM ballot at secure drop boxes at specified locations.
- Requires the Department of State (DOS) to provide formal signature matching training.
- Creates a provisional ballot signature cure process that mirrors the revised VBM ballot signature cure process.
- Requires the county canvassing board (CCB) to meet certain notice requirements for its meetings in certain instances.
- Requires each CCB member and all CCB staff to wear identification badges at certain times.
- Expands the no-solicitation zone at polling places and early voting sites from 100 feet to 150 feet.
- Allows a voter to photograph his or her ballot in a polling place.
- Requires DOS to adopt rules regarding minimum security standards that address chain of custody of ballots, transport of ballots, and ballot security.
- Requires all voting be via paper marksense ballot or via voter interface device that meets state and federal standards for accessibility and produces a voter-verifiable paper output.
- Establishes requirements for ballots, including placement of ballot instructions and the use of oval vote targets.
- Allows a supervisor of elections (supervisor) to forego publication of a sample ballot in a newspaper of general circulation if certain requirements are met.
- Prohibits a supervisor from receiving a special qualification salary for a specified period after being found to have willfully violated the Florida Election Code.

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

The bill was approved by the Governor on June 28, 2019, ch. 2019-162, L.O.F., and will become effective on July 1, 2019, except as otherwise provided.

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

STORAGE NAME: h7101z1.SAC.DOCX

DATE: 7/1/2019

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Voting Rights Restoration

Background

Voter Registration

The Florida Voter Registration Act (act)¹ governs the voter registration process, from the requirements necessary for registration to the operation and administration of the Florida Voter Registration System (FVRS).² The Secretary of State, as Florida's chief election officer, administers and maintains the FVRS.³ However, it is each county's supervisor of elections (supervisor) that is responsible for ensuring each applicant is eligible to vote and is processed in accordance with the law.⁴ A person may be eligible to vote in Florida only if that person is at least 18 years old, a United States citizen, a legal resident of Florida, a legal resident of the county in which the person seeks to register, and registered pursuant to the Florida Election Code.⁵ A person may not register or vote if the person has been:

- Adjudicated mentally incapacitated with respect to voting in Florida or any other state and has not had his or her voting rights restored; or
- Convicted of a felony and not had his or her voting rights restored.⁶

The Department of State (DOS) developed a uniform statewide voter registration application for distribution to any person seeking to register to vote.⁷ The application elicits specified information from the applicant, including, but not limited to, the applicant's name, date of birth, address, county of residence, race or ethnicity, state or county of birth, sex, and party affiliation.⁸ An application must include the applicant's signature, swearing and affirming under oath that the information in the application is true, including whether the applicant is a United States citizen; is a convicted felon, and if so, whether his or her civil rights are restored; and has been adjudicated mentally incapacitated with respect to voting, and if so, whether his or her right to vote is restored.⁹

An applicant must check a box affirming the oath requirement to complete the application.¹⁰ If an applicant willfully swears or affirms falsely to the oath or willfully submits false voter registration information, he or she commits a third degree felony.¹¹ The application is only accepted as valid and complete if the applicant has provided all information necessary to ascertain his or her eligibility¹² and if DOS has verified the authenticity of the applicant's driver license number, identification number, or the last four digits of his or her social security number.¹³ The voter registration application is then entered into the FVRS and is immediately forwarded to the appropriate supervisor.¹⁴

¹ Section 97.032, F.S.

² The FVRS is a single, uniform, centralized, interactive, computerized statewide voter registration system that contains the name and registration information of every legally registered voter in the state. Section 98.035, F.S.

³ Section 97.012(11), F.S.

⁴ Section 98.045(1), F.S.

⁵ Section 97.041(1)(a), F.S.

⁶ Section 97.041(2), F.S.; *see also* art. VI, s. 4(a), FLA. CONST.

⁷ Section 97.052(1)(b), F.S.

⁸ Section 97.052(2), F.S.

⁹ Section 97.052(2)(s)-(u), F.S.

¹⁰ Section 97.053(5)(a), F.S.; *see also* art. VI, s. 3, FLA. CONST.

¹¹ Section 104.011, F.S. A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 97.053(2), F.S.; *see also* s. 97.053(5)(a), F.S.

¹³ Section 97.053(6), F.S.

¹⁴ Section 97.053(7), F.S.

A supervisor may not remove a voter from the statewide voter registration system unless the voter is deceased, has requested removal, is convicted of a felony or adjudicated as mentally incapacitated with respect to voting, or the removal is pursuant to specified list maintenance activities.¹⁵ DOS identifies ineligible registered voters who qualify for removal from the registration system and forwards that information to the appropriate supervisor for a final determination.¹⁶ To identify ineligibility because of a felony conviction, DOS compares information received from a circuit court clerk,¹⁷ the Board of Executive Clemency (Board),¹⁸ the Department of Corrections,¹⁹ the Department of Law Enforcement,²⁰ or a United States Attorney's Office.²¹

DOS reviews ineligibility information and makes an initial credibility and reliability determination.²² If DOS determines the information is credible and reliable, it notifies the appropriate supervisor and provides a copy of supporting documentation indicating the voter's potential ineligibility.²³ Once a supervisor receives notification from DOS, the supervisor must notify the registered voter of his or her potential ineligibility by mail within seven days. The notice must include:

- A statement regarding the basis for potential ineligibility and a copy of any supporting documentation;
- A statement that failing to respond within 30 days after receiving the notice may result in an ineligibility determination and removal from the statewide voter registration system;
- A return form requiring the registered voter to admit or deny the accuracy of the information used to make the initial ineligibility determination;
- Instructions for contacting the supervisor if the person requires assistance; and
- Instructions for seeking restoration of civil rights following a felony conviction, if applicable.²⁴

If a registered voter fails to respond to the notice, or responds without requesting a hearing, the supervisor makes a final ineligibility determination and may remove the voter from the statewide voter registration system and provide a notification of removal.²⁵

If the voter denies the accuracy of the information and requests a hearing, the supervisor must conduct a hearing at which the registered voter may present evidence prior to making an eligibility determination.²⁶ If the supervisor determines the voter is ineligible following a hearing, the supervisor may remove the voter from the statewide voter registration system and notify the voter of such action.²⁷ An eligibility determination must be supported by a preponderance of the evidence and upon removal, a voter has the right to appeal the determination.²⁸

¹⁵ Section 98.045(2)(a), F.S.

¹⁶ Sections 98.075(1)-(5), F.S.

¹⁷ Section 98.075(5), F.S.

¹⁸ This information, provided bimonthly by the Florida Commission on Offender Review, identifies persons granted clemency in the preceding month or any updates to prior records, which occurred in the preceding month. Section 98.093(1)(e), F.S.

¹⁹ Identifying persons convicted of a felony and committed to the department's custody or placed on community supervision. Section 98.093(1)(f), F.S.

²⁰ Identifying persons convicted of a felony whose name appears in the voter registration records. Section 98.093(1)(d), F.S.

²¹ Identifying persons convicted of a felony in federal court. Section 98.093(1)(c), F.S.

²² Section 98.075(5), F.S.

²³ *Id.*; The supervisor is also authorized to remove the name of an ineligible person from the statewide voter registration system based on information received from other sources and not provided by DOS. Section 98.093(3), F.S.

²⁴ Section 98.075(7), F.S.

²⁵ Section 98.075(7)(a)3., F.S.

²⁶ Section 98.075(7)(a)5., F.S.

²⁷ *Id.*

²⁸ Section 98.075(7)(b), F.S.

Executive Clemency

Article IV, s. 8 of the Florida Constitution grants the Governor, with the approval of two Cabinet members, sitting as the Board, the power to restore civil rights.²⁹ The Board may grant, at any time, for any reason, any of the following types of clemency:

- Full pardon;
- Pardon without firearm authority;
- Pardon for a misdemeanor;
- Commutation of sentence;
- Remission of fines and forfeitures;
- Specific authority to own, possess, or use a firearm;
- Restoration of civil rights in Florida; and
- Restoration of alien status under Florida law.³⁰

Restoration of civil rights restores to an applicant all the rights of citizenship in Florida that he or she enjoyed before a felony conviction, except the right to own, possess, or use a firearm. An applicant's civil rights may be restored without a hearing if the applicant has not committed or been arrested for any crime for five years from the date of completion of all sentences and conditions of supervision imposed and meets the following requirements:

- Has completed all sentences imposed and all conditions of supervision have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;
- Has no outstanding detainers or pending criminal charges;
- Owes no restitution pursuant to a court order, civil judgment, or ch. 960, F.S.,³¹ and
- Was not convicted for:
 - Murder, attempted murder, attempted felony murder, or manslaughter;³²
 - Driving under the influence (DUI) manslaughter or DUI causing serious bodily injury;³³
 - Leaving the scene of an accident involving injury or death;³⁴
 - Sexual battery, attempted sexual battery, unlawful sexual activity with a minor, or female genital mutilation;³⁵
 - Any violation of ch. 800, F.S.;
 - Lewd or lascivious offense on an elderly or disabled person;³⁶
 - Sexual performance by a child;³⁷
 - Aggravated child abuse;³⁸
 - Failure to register as a sexual predator or sexual offender;³⁹
 - Computer pornography, transmission of computer pornography, or any crime involving a minor in violation of ch. 847, F.S.;
 - Kidnapping, false imprisonment, or luring or enticing a child;⁴⁰
 - Aggravated battery;⁴¹

²⁹ Article IV, s. 8, FLA. CONST.; s. 940.01, F.S.

³⁰ Rules of Executive Clemency, r. 4, https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last visited May 7, 2019).

³¹ Chapter 960, F.S., provides compensation for crime victim assistance services including, but not limited to, mental health counseling, forensic physical examinations, and relocation assistance for specified crimes.

³² Chapter 782, F.S.

³³ Section 316.193, F.S.

³⁴ Section 316.027, F.S.

³⁵ Chapter 794, F.S.

³⁶ A conviction for attempt to commit the offense also disqualifies a person from eligibility. Section 825.1025, F.S.

³⁷ A conviction for attempt to commit the offense also disqualifies a person from eligibility. Section 827.071, F.S.

³⁸ Section 827.03, F.S.

³⁹ Sections 775.21 and 943.0435, F.S.

⁴⁰ A conviction for attempt to commit any of these offenses also disqualifies a person from eligibility. Chapter 787, F.S.

⁴¹ A conviction for attempt to commit the offense also disqualifies a person from eligibility. Section 784.045, F.S.

- Felony battery or domestic battery by strangulation;⁴²
- Robbery, carjacking, home invasion;⁴³
- Poisoning food or water;⁴⁴
- Abuse of a dead human body;⁴⁵
- Burglary of a dwelling or first degree burglary;⁴⁶
- Arson;⁴⁷
- Aggravated assault;⁴⁸
- Aggravated stalking;⁴⁹
- Battery, aggravated battery, or aggravated assault on an officer;⁵⁰
- Trafficking or conspiracy to traffic in a controlled substance or any other first or second degree felony violation of ch. 893, F.S.;
- Aircraft piracy;⁵¹
- Unlawful throwing, placing, or discharging of a destructive device or bomb;⁵²
- Facilitating or furthering terrorism;⁵³
- Treason;⁵⁴
- Possession of a firearm by a convicted felon or violent career criminal;⁵⁵
- Bribery, misuse of public office,⁵⁶ extortion by a state officer,⁵⁷ misappropriation of money by a commission to make a sale,⁵⁸ or any crime committed by an elected official while in office;
- Illegal use of explosives;⁵⁹
- Racketeering;⁶⁰
- Exploitation of an elderly person;⁶¹
- Public corruption;
- Any felony violation of election law;
- A "dangerous crime" as defined by s. 907.041, F.S.; or
- A similar offense committed in another jurisdiction.

Additionally, an applicant may not be previously declared a habitual felony offender,⁶² three-time violent felony offender,⁶³ violent career criminal,⁶⁴ prison releasee reoffender,⁶⁵ or sexual predator.⁶⁶

⁴² Section 784.041, F.S.

⁴³ A conviction for attempt to commit any of these offenses also disqualifies a person from eligibility. Chapter 812, F.S.

⁴⁴ Section 859.01, F.S.

⁴⁵ Section 872.06, F.S.

⁴⁶ An attempt to commit these offenses also disqualifies a person from eligibility. Section 810.02, F.S.

⁴⁷ The attempt or conspiracy to commit such offense also disqualifies a person from eligibility. Section 806.01, F.S.

⁴⁸ Section 784.021, F.S.

⁴⁹ Section 784.048, F.S.

⁵⁰ Section 784.07, F.S.

⁵¹ Section 860.16, F.S.

⁵² Section 790.161, F.S.

⁵³ Section 775.31, F.S.

⁵⁴ Section 876.32, F.S.

⁵⁵ Sections 790.23 and 790.235, F.S.

⁵⁶ Chapter 838, F.S.

⁵⁷ Section 839.11, F.S.

⁵⁸ Section 839.17, F.S.

⁵⁹ Chapter 552, F.S.

⁶⁰ Chapter 895, F.S.

⁶¹ Section 825.103, F.S.

⁶² Section 775.084(1)(b), F.S.

⁶³ Section 775.084(1)(c), F.S.

⁶⁴ Section 775.084, F.S.

⁶⁵ Section 775.082(9)(a), F.S.

⁶⁶ Section 775.21, F.S.

The Florida Commission on Offender Review (FCOR) reviews an applicant's eligibility for restoration of civil rights without a hearing and if so qualified, the Board may restore the applicant's civil rights. If approval is denied, FCOR notifies the applicant who may pursue a hearing to restore his or her civil rights.⁶⁷ To qualify for restoration of civil rights with a hearing, an applicant must:

- Not be convicted of a felony for seven years or more after completing all sentences imposed for the applicant's most recent felony conviction, and all conditions of supervision are expired or completed, including but not limited to, imprisonment, parole, community control, control release, and conditional release; and
- Pay all restitution pursuant to a court order, civil judgment, or ch. 960, F.S.⁶⁸

Clemency hearings occur four times a year. During the hearing, the Board allows an applicant to make a five-minute presentation. Following a hearing, the Board may issue an Executive Order restoring a person's civil rights. For each case, the applicant is entitled to a letter stating the official disposition of his or her case.⁶⁹ A person granted or denied any form of executive clemency may not apply for further relief for at least two years from the date of final action.⁷⁰

Amendment 4

Prior to 2019, art. VI, s. 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until the restoration of his or her civil rights.⁷¹ At that time, Florida was one of only four states, including Iowa, Kentucky, and Virginia, that did not restore voting rights to a convicted felon unless and until restored by a state officer or board.⁷²

In the 2018 general election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Constitution to provide "any disqualification arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation."⁷³ The amendment excludes a "person convicted of murder or a felony sexual offense" from restoration of voting rights unless and until his or her civil rights are restored.⁷⁴

Following the amendment's passage, advocates have asserted the amendment is self-executing and requires no legislative implementation.⁷⁵ However, officials responsible for determining voter eligibility have expressed considerable confusion and DOS, the entity responsible for reviewing criminal records for voting eligibility purposes, has suspended the process of sending such records to supervisors for ineligibility determinations.⁷⁶ In December 2018, the Secretary of State called for the Legislature to direct DOS as to "implementation, definitions, [and other ambiguities raised by the supervisors of

⁶⁷ Rules of Executive Clemency, r. 9 (B), https://www.fcor.state.fl.us/docs/clemency_rules.pdf (last visited May 7, 2019).

⁶⁸ *Id.* r. 10 (A).

⁶⁹ *Id.* r. 12 (D).

⁷⁰ *Id.* r. 14.

⁷¹ Article VI, s. 4, FLA. CONST.

⁷² Florida Association of Counties, *Amendment 4: Voting Rights Restoration for Felons Initiative*, <http://www.fl-counties.com/amendment-4> (last visited May 7, 2019).

⁷³ *Id.* See also Alejandro De Le Garza, 'Our Voice Will Count.' Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People, *Time* (Nov. 7, 2018) <http://time.com/5447051/florida-amendment-4-felon-voting/> (last visited May 7, 2019).

⁷⁴ Article VI, s. 4, FLA. CONST.

⁷⁵ Florida Rights Restoration Coalition, *Amendment 4 Implementation, Frequently Asked Questions*, <https://floridarrc.com/amendment-4-faq/> (last visited Mar. 15, 2019). This webpage has subsequently been removed; however, the House Judiciary Committee retains a copy printed from the website on the referenced date.

⁷⁶ Zac Anderson, *Florida elections officials confused on how to give felons the vote*, *Herald Tribune* (Dec. 4, 2018), <https://www.heraldtribune.com/news/20181204/florida-elections-officials-confused-on-how-to-give-felons-vote> (last visited May 8, 2019).

elections].”⁷⁷ Amendment 4 took effect January 8, 2019, and while supervisors continue to register new voters, the supervisors are doing so without an initial eligibility verification from DOS.

Much of the confusion centers around ambiguity in the amendment's language including which crimes qualify as “murder” or a “felony sexual offense” and what it means for an offender to complete all terms of a sentence.⁷⁸ As recently as March 2019, the Florida Rights Restoration Coalition (FRRRC), a grassroots organization that was instrumental in the passage of Amendment 4, stated on its website that “completion of all terms of sentence” includes any period of incarceration, probation, parole and financial obligations imposed as part of an individual's sentence.⁷⁹ The FRRRC further stated, “these financial obligations may include restitution, fines, and fees imposed as part of a sentence or a condition of probation under existing Florida statute.”⁸⁰ However, it stated, “fees not specifically identified as part of a sentence or a condition of probation are therefore not necessary for ‘completion of sentence’ and thus, do not need to be paid before an individual may register.” The FRRRC contends this interpretation is consistent with the policy FCOR uses to determine completion of a sentence; however, such language does not align to language used in the current clemency rules.⁸¹

Murder

Chapter 782, F.S., defines the term “homicide” and assigns penalties for an offense. First degree murder is a capital felony⁸² and is the unlawful killing of a human being when committed:

- With premeditation to cause the death of the person killed or any human being; or
- By a person engaged in perpetrating, or attempting to perpetrate, any:
 - Drug trafficking offense;⁸³
 - Arson;
 - Sexual battery;
 - Robbery or home-invasion robbery;
 - Burglary;
 - Kidnapping;
 - Escape;
 - Aggravated child abuse;
 - Aggravated abuse of an elderly person or disabled adult;
 - Aircraft piracy;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Carjacking;
 - Aggravated stalking;
 - Murder of a human being;
 - Resisting an officer with violence;
 - Aggravated fleeing or eluding with serious bodily injury or death;
 - A felony act of terrorism,⁸⁴
 - Human trafficking; or
 - Unlawful distribution of a specified controlled substance,⁸⁵ which is the proximate cause of a user's death.⁸⁶

⁷⁷ Dara Kim, *Florida elections officials express confusion over restoring felon voting rights*, Orlando Sentinel (Dec. 4, 2018), <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-election-felon-voting-rights-20181204-story.html> (last visited May 8, 2019).

⁷⁸ Steven Lemongello, *Florida election supervisors will register ex-felons Jan. 8, despite confusion over amendment*, Orlando Sentinel (Dec. 20, 2018), <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-former-felons-register-vote-20181220-story.html> (last visited May 8, 2019).

⁷⁹ Florida Rights Restoration Coalition, *supra* n. 75.

⁸⁰ *Id.*

⁸¹ *Id.* See also Rules of Executive Clemency, https://www.fcor.state.fl.us/docs/clemency_rules.pdf (last visited May 7, 2019).

⁸² The offense is punishable by death or life imprisonment. Section 775.082, F.S.

⁸³ Specified in s. 893.135(1), F.S.

⁸⁴ Or an act in furtherance of terrorism, including a felony under ss. 775.30, 775.32, 775.33, 775.34, or 775.35, F.S.

The unlawful killing of a human being, when perpetrated by an imminently dangerous act and demonstrating a depraved mind regardless of human life, is murder in the second degree;⁸⁷ a first degree felony, punishable by a term of imprisonment not exceeding life.⁸⁸ If a person is killed during the commission of, or during the attempt to commit an enumerated felony,⁸⁹ by a person other than the person engaged in such felony, the person committing or attempting to commit such felony commits second degree murder,⁹⁰ a first degree felony punishable by imprisonment for a term of years not exceeding life.⁹¹

Lastly, third degree murder is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony other than a felony⁹² enumerated by statute.

Other offenses included in ch. 782, F.S., but not specifically defined as murder, include:

- Attempted felony murder;⁹³
- Manslaughter and aggravated manslaughter;⁹⁴
- Vehicular homicide⁹⁵ and vessel homicide;⁹⁶
- Assisting self-murder⁹⁷ and commercial exploitation of self-murder;⁹⁸
- Killing of an unborn child by injury to its mother;⁹⁹
- Unnecessary killing to prevent an unlawful act;¹⁰⁰ and
- Partial-birth abortion.¹⁰¹

Felony Sexual Offenses

Florida law defines the term “sexual offense” in ch. 92, F.S., relating to special protections for witnesses,¹⁰² as any offense for which a conviction requires an offender to register as a sexual

⁸⁵ A substance controlled under s. 893.03(1), F.S., including cocaine; opium or any synthetic or natural salt, compound, derivative, or preparation of opium; methadone; alfentanil; carfentanil; fentanyl; sufentanil; or specified controlled substance analogs.

⁸⁶ Section 782.04, F.S.

⁸⁷ Section 782.04(2), F.S.

⁸⁸ Sections 775.082, 775.083, and 775.084, F.S.

⁸⁹ Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; and a felony act of terrorism or act in furtherance of terrorism. Section 782.04(3), F.S.

⁹⁰ Section 782.04(3), F.S.

⁹¹ Sections 775.082, 775.083, and 775.084, F.S.

⁹² Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; a felony act of terrorism or act in furtherance of terrorism; and drug distribution of a specified controlled substance when such drug is the proximate cause of a user's death. Section 782.04(3), F.S.

⁹³ Section 782.051, F.S.

⁹⁴ Section 782.07(1)-(4), F.S.

⁹⁵ Section 782.071, F.S.

⁹⁶ Section 782.072, F.S.

⁹⁷ Section 782.08, F.S.

⁹⁸ Section 782.081, F.S.

⁹⁹ Section 782.09, F.S.

¹⁰⁰ Section 782.11, F.S.

¹⁰¹ Section 782.34, F.S.

¹⁰² Section 92.55, F.S.

predator¹⁰³ or sexual offender.¹⁰⁴ Additionally, ch. 90, F.S., defines the term “sexual offense” for determining the admissibility of prior acts when a defendant is charged with a sexual offense, and offers a narrower definition.¹⁰⁵

Sexual Offenders

Qualifying convictions for sexual offender designation in Florida include:

- Sexual misconduct with a person having a developmental disability;¹⁰⁶
- Sexual misconduct with a mental health patient by an employee;¹⁰⁷
- Kidnapping or falsely imprisoning a minor, with sexual intent or motive;¹⁰⁸
- Luring or enticing a child, by a person with a prior sexual conviction;¹⁰⁹
- Human trafficking for commercial sexual activity;¹¹⁰
- Sexual battery;¹¹¹
- Unlawful sexual activity with a minor;¹¹²
- Lewd or lascivious battery, molestation, conduct, or exhibition;¹¹³
- Video voyeurism, involving a minor victim;¹¹⁴
- Lewd or lascivious offense on an elderly or disabled person;¹¹⁵
- Sexual performance by a child;¹¹⁶
- Providing obscene materials to a minor;¹¹⁷
- Computer pornography involving a minor;¹¹⁸
- Soliciting a minor over the internet;¹¹⁹
- Traveling to meet a minor;¹²⁰
- Lewd or lascivious exhibition over the internet;¹²¹
- Transmitting child pornography by electronic device or equipment;¹²²
- Transmitting material harmful to a minor by electronic device;¹²³
- Selling or buying a minor to engage in sexually explicit conduct;¹²⁴
- Racketeering involving a sexual offense;¹²⁵
- Sexual misconduct with a forensic client;¹²⁶

¹⁰³ Section 775.21(4)(a)1., F.S.

¹⁰⁴ Section 943.0435(1)(h)1.a.(I), F.S.

¹⁰⁵ For the purpose of s. 90.404, F.S., the term “sexual offense” means conduct proscribed by s. 787.025(2)(c), s. 787.06(3)(b), (d), (f), or (g), former s. 787.06(3)(h), s. 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s. 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

¹⁰⁶ Section 393.135(2), F.S.

¹⁰⁷ Section 394.4593(2), F.S.

¹⁰⁸ Sections 787.01 and 787.02, F.S.

¹⁰⁹ Section 787.025(2), F.S.

¹¹⁰ Section 787.06(3)(b), (d), (f), or (g), F.S.

¹¹¹ Section 794.011, excluding s. 794.011(10), F.S.

¹¹² Section 794.05, F.S.

¹¹³ Section 800.04, F.S.

¹¹⁴ Section 810.145(8), F.S.

¹¹⁵ Section 825.1025, F.S.

¹¹⁶ Section 827.071, F.S.

¹¹⁷ Section 847.0133, F.S.

¹¹⁸ Section 847.0135(2), F.S.

¹¹⁹ Section 847.0135(3), F.S.

¹²⁰ Section 847.0135(4), F.S.

¹²¹ Section 847.0135(5), F.S.

¹²² Section 847.0137, F.S.

¹²³ Section 847.0138, F.S.

¹²⁴ Section 847.0145, F.S.

¹²⁵ Section 895.03, F.S.

¹²⁶ Section 916.1075(2), F.S.

- Sexual misconduct by an employee with a juvenile offender;¹²⁷ and
- Attempting, soliciting, or conspiring to commit any enumerated offense.¹²⁸

Felonies with a Sexual Element

Some felony offenses in Florida do not require a convicted person to register as a sexual offender, yet still contain a sexual element. Such offenses include:

- Female genital mutilation;¹²⁹
- Prostitution or soliciting a prostitute, subsequent conviction;¹³⁰
- Video voyeurism;¹³¹
- Incest;¹³²
- Lewd or lascivious exhibition in the presence of a correctional facility employee;¹³³
- Sexual offenses against a student by an authority figure;¹³⁴
- Locating an adult entertainment store within 2,500 feet of a school;¹³⁵
- Committing an enumerated offense by a person who is HIV positive;¹³⁶
- Sexual cyberharassment, second or subsequent offense;¹³⁷
- Sexual misconduct between a detention facility employee and an inmate;¹³⁸
- Sexual misconduct by a psychotherapist with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact;¹³⁹
- Sexually abusing a dead human body;¹⁴⁰
- Sexual misconduct by a correctional facility employee with an inmate;¹⁴¹
- Committing specified acts with obscene, lewd, etc. materials, second or subsequent offense;¹⁴²
- Requiring as a condition to sale or delivery for resale of a publication that a purchaser or consignee receive for resale any other obscene publication;¹⁴³
- Knowingly promoting, conducting, performing, or participating in an obscene show, second or subsequent offense;¹⁴⁴
- Sale or distribution to minors or using minors in production of harmful materials;¹⁴⁵ and
- Wholesale promotion of obscene materials.¹⁴⁶

Incarceration, Probation, and Parole

A court may sentence a defendant convicted of a felony offense to any term of incarceration authorized under s. 775.082, F.S.¹⁴⁷ As an alternative or in addition to incarceration, a court may sentence a

¹²⁷ Section 985.701(1), F.S.

¹²⁸ Section 943.0435(1)(h)1.a.(I), F.S.

¹²⁹ Section 794.08, F.S.

¹³⁰ Sections 796.07 and 796.08, F.S.

¹³¹ When committed by a person 19 or older, or when the offense is a second or subsequent offense. Section 810.145(6) and (7), F.S.

¹³² Section 826.04, F.S.

¹³³ Section 800.09(2), F.S.

¹³⁴ Section 800.101(2), F.S.

¹³⁵ Section 847.0134(1), F.S.

¹³⁶ Section 775.0877, F.S.

¹³⁷ Section 784.049(3)(b), F.S.

¹³⁸ Section 951.221(1), F.S.

¹³⁹ Section 491.0112(1) and (2), F.S.

¹⁴⁰ Section 872.06(2), F.S.

¹⁴¹ Section 944.35(3)(b)2., F.S.

¹⁴² Section 847.011(1), F.S.

¹⁴³ Section 847.011(3), F.S.

¹⁴⁴ Section 847.011(4), F.S.

¹⁴⁵ Section 847.012, F.S.

¹⁴⁶ Section 847.07(2) and (3), F.S.

¹⁴⁷ For example, a third degree felony is punishable by up to five years in prison; a second degree felony is punishable by up to 15 years in prison; and a first degree felony is punishable by up to 30 years in prison. Section 775.082, F.S.

person to probation or community control for a felony and the Department of Corrections (DOC) supervises and monitors compliance with such supervision. Standard terms and conditions of probation generally require a probationer or person on community control to:

- Report to a probation officer as directed;
- Permit a probation officer to visit his or her workplace or home;
- Maintain employment, if possible;
- Remain within a specified place;
- Live without violating the law;
- Make restitution to a victim, if applicable;
- Make payment of a debt due to a county or municipal detention facility for medical care;
- Support his or her legal dependents to the best of his or her ability;
- Pay the state any debt due for crime victim compensation;¹⁴⁸
- Pay specified application¹⁴⁹ and attorney fees;¹⁵⁰
- Not associate with persons engaging in criminal activity;
- Submit to random drug or alcohol testing;
- Be prohibited from possessing, carrying, or owning a firearm;¹⁵¹
- Not use intoxicants to excess;
- Submit to drawing of blood or other biological specimens, for specified reasons; and
- Take a digitized photograph.¹⁵²

In addition to standard conditions of probation, a court may order an offender to complete specific terms of supervision, including community service,¹⁵³ restitution,¹⁵⁴ residential treatment,¹⁵⁵ a work program,¹⁵⁶ an educational program,¹⁵⁷ a batterer's intervention program,¹⁵⁸ or any other special term or condition of probation reasonably related to the circumstances of the offense and appropriate for the offender.¹⁵⁹

Prior to 1983, Florida law authorized a defendant sentenced for certain felonies to be released onto parole supervision prior to the expiration of the inmate's court ordered sentence. Parole is a period of supervision during which a parolee must comply with conditions and terms of a release agreement ordered by FCOR. Currently an inmate who committed a crime prior to October 1, 1983, may be considered for release on parole. Among other conditions,¹⁶⁰ FCOR must require a parolee to pay fines, fees, restitution, and other court-ordered costs as a condition of parole unless the commission states on the record the reasons for not ordering such payments.¹⁶¹ FCOR may discharge a parolee from supervision following satisfactory rehabilitation, cooperation, and a finding that release is in the best interests of the person and society.¹⁶²

¹⁴⁸ Section 960.17, F.S.

¹⁴⁹ Section 27.52(1)(b), F.S.

¹⁵⁰ Section 938.29, F.S.

¹⁵¹ Section 948.03(1)(m)2., F.S. The prohibition also includes "weapons" generally, unless the consent of the probation officer is obtained.

¹⁵² Section 948.03, F.S.

¹⁵³ Section 948.031, F.S.

¹⁵⁴ Section 948.032, F.S.

¹⁵⁵ Section 948.035, F.S.

¹⁵⁶ Section 948.036, F.S.

¹⁵⁷ Section 948.037, F.S.

¹⁵⁸ Section 948.038, F.S.

¹⁵⁹ Section 948.039, F.S.

¹⁶⁰ Section 947.18, F.S.

¹⁶¹ Section 947.181, F.S.

¹⁶² Section 947.24, F.S.

Court Costs, Fines, and Supervision Fees

A person convicted of a felony offense is assessed court costs and fines upon the disposition of a case.¹⁶³ The clerk of court collects and deposits fines into the clerk's fines and forfeiture fund.¹⁶⁴ In addition to standard court costs and fines, a person ordered to supervision must pay DOC monthly supervision fees and may be subject to fees for additional conditions such as electronic monitoring or urinalysis. Failure to pay supervision fees may result in revocation of probation; however, DOC can exempt a person from payment of supervision fees if it makes specified findings related to the offender's financial or employment status.¹⁶⁵

Restitution

A court must order restitution as a condition of an offender's probation when a crime results in direct or indirect damage or loss to a victim.¹⁶⁶ A court may require an offender to make restitution payments within a specified period or in installments. An offender must pay restitution no later than:

- The end of the period of probation, if probation is ordered;
- Five years after the end of the term of imprisonment, if the court does not order probation; or
- Five years after the sentencing date in any other case.¹⁶⁷

A court may order the clerk to collect and dispense restitution payments in any case or DOC to collect and dispense restitution and other payments from a person remanded to its custody or supervision.¹⁶⁸ A court may also order an income deduction order related to restitution.¹⁶⁹ The clerk of court receives a payment made pursuant to an income deduction order.¹⁷⁰

If an offender does not pay within the specified time, a court may continue a restitution order through a civil judgment, by which the state or a victim can enforce an order in the same manner as a judgment in a civil action.¹⁷¹ The outstanding unpaid amount accrues interest and when properly recorded, becomes a lien on real estate owned by the defendant.¹⁷²

Effect of the Bill

The bill delegates rulemaking authority to DOS to implement a process to authenticate voter eligibility under art. VI, s. 4 of the Florida Constitution. If DOS makes an initial ineligibility determination based upon an applicant's felony conviction, DOS must forward the information to the appropriate supervisor, who must provide the voter registration applicant information on voting rights restoration under art. VI, s. 4 of the Florida Constitution. If the basis for ineligibility is a felony conviction from another jurisdiction, the supervisor must include information on the conviction in the notice of ineligibility mailed to the applicant. A person whom the supervisor determines is ineligible to vote may request a hearing, at which he or she may present evidence as under current law.

The bill revises the voter registration application to replace the checkbox asking whether the applicant is a convicted felon and if so, whether his or her civil rights are restored, with checkboxes that are more specific. The checkboxes ask whether the applicant has never been convicted of a felony, whether the applicant has had his or her voting rights restored by the Board of Executive Clemency, and whether the applicant's voting rights have been restored pursuant to s. 4, Art. VI of the Florida Constitution.

¹⁶³ Section 775.083, F.S.

¹⁶⁴ *Id.*

¹⁶⁵ Section 948.09, F.S.

¹⁶⁶ Section 775.089(1), F.S.

¹⁶⁷ Section 775.089(3)(b), F.S.

¹⁶⁸ Section 775.089(11)(a) and (b), F.S.

¹⁶⁹ Section 775.089(12)(a), F.S.

¹⁷⁰ Section 775.089(12)(b)4., F.S.

¹⁷¹ Section 775.089(5), F.S.

¹⁷² *Id.*

The bill requires DOS to construe any provision susceptible to differing interpretations in favor of the applicant. For example, in a situation where DOS is unable to determine whether a conviction from another jurisdiction qualifies as a similar offense to preclude voting eligibility or where the state has lost or destroyed records required for DOS to verify an applicant's eligibility, DOS must resolve the conflict in favor of the applicant's eligibility.

The bill defines the terms “murder” and “felony sexual offense” to provide consistency and accuracy in voter eligibility authentications as those terms were not defined by the amendment. The term “murder” is defined as a conviction for any of the following crimes, or a similar offense from another jurisdiction, that results in the actual killing of a human being:

- First degree murder; and
- Second degree murder.¹⁷³

The term “felony sexual offense” is defined as a felony violation for committing or attempting to commit one of the following crimes or a similar offense from another jurisdiction:

- Sexual misconduct with a person having a developmental disability;¹⁷⁴
- Sexual misconduct with a mental health patient by an employee;¹⁷⁵
- Kidnapping or false imprisonment of a minor, involving sexual intent or motive;¹⁷⁶
- Luring or enticing a child, by a person with a prior sexual conviction;¹⁷⁷
- Human trafficking for commercial sexual activity or forced labor;¹⁷⁸
- Sexual battery;¹⁷⁹
- Unlawful sexual activity with a minor;¹⁸⁰
- Female genital mutilation;¹⁸¹
- Lewd or lascivious battery, molestation, conduct, or exhibition;¹⁸²
- Video voyeurism involving a minor;¹⁸³
- Lewd or lascivious offense on an elderly or disabled person;¹⁸⁴
- Sexual performance by a child;¹⁸⁵
- Providing obscene material to a minor;¹⁸⁶
- Computer pornography involving a minor or traveling to meet a minor;¹⁸⁷
- Transmitting child pornography by electronic device;¹⁸⁸
- Transmitting material harmful to a minor by electronic device;¹⁸⁹
- Selling or buying a minor to engage in sexually explicit conduct;¹⁹⁰
- Racketeering, involving a sexual offense;¹⁹¹

¹⁷³ Section 782.04 (1)-(3), F.S.

¹⁷⁴ Section 393.135(2), F.S.

¹⁷⁵ Section 394.4593(2), F.S.

¹⁷⁶ Sections 787.01 and 787.02, F.S.

¹⁷⁷ Section 787.025(2)(c), F.S.

¹⁷⁸ Section 787.06(3) , F.S.

¹⁷⁹ Section 794.011, F.S., excluding falsely accusing another person of sexual battery under subsection (10).

¹⁸⁰ Section 794.05, F.S.

¹⁸¹ Section 794.08, F.S.

¹⁸² Section 800.04, F.S.

¹⁸³ Section 810.145(8), F.S.

¹⁸⁴ Section 825.1025, F.S.

¹⁸⁵ Section 827.071, F.S.

¹⁸⁶ Section 847.0133, F.S.

¹⁸⁷ Excluding owners or operators of computer services under subsection (6). Section 847.0135, F.S.

¹⁸⁸ Section 847.0137, F.S.

¹⁸⁹ Section 847.0138, F.S.

¹⁹⁰ Section 847.0145(8), F.S.

- Sexual misconduct with a forensic client;¹⁹²
- Sexual misconduct by an employee with a juvenile offender;¹⁹³
- Prostitution or soliciting prostitution while HIV positive;¹⁹⁴
- Incest;¹⁹⁵
- Sexual offenses against a student by an authority figure;¹⁹⁶
- Sexual cyberharassment, second or subsequent offense;¹⁹⁷
- Sexual misconduct between a detention facility employee and an inmate;¹⁹⁸
- Sexual misconduct by a psychotherapist with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact;¹⁹⁹
- Sexually abusing a dead human body;²⁰⁰
- Sexual misconduct by a correctional facility employee with an inmate,²⁰¹ and
- Selling or distributing to minors or using minors to produce harmful materials.²⁰²

The bill also defines the term “completion of all terms of sentence” to mean any portion of a sentence that is contained in the four corners of the sentencing document, including but not limited to:

- Release from any term of imprisonment ordered by a court as part of the sentence;
- Termination from any term of probation or community service ordered by the court as part of the sentence;
- Termination from any term of supervision, including parole, monitored by the FCOR;
- Fulfillment of any term ordered by the court as part of the sentence; and
- Full payment of restitution ordered to a victim by the court as part of the sentence and full payment of any fines or fees ordered by the court as part of the sentence or ordered as a condition of any form of supervision.

The bill specifically provides that the required financial obligations do not include any fines, fees, or costs that accrue after the date the obligation is ordered as part of the sentence. A financial obligation is considered complete if the payment is made in full, the court terminates the obligation upon the payee’s approval, or upon the completion of all community service hours if the court has converted the obligation to community service. If the court modifies the original sentencing order to no longer require the completion of a term, that term is deemed completed. However, the conversion of a financial obligation to a civil lien by a court does not render the obligation completed for purposes of the restoration of voting rights.

The bill specifies that a person convicted of a felony who registers to vote by affirming that he or she is eligible because his or her voting rights are restored may not be charged or prosecuted for falsely swearing to or submitting false voter registration information if the violation is alleged to have occurred between January 8, 2019, and July 1, 2019. By prohibiting prosecution for such an offense, the bill ensures that a person who registered to vote while the constitutional provision was undefined will not be penalized.

¹⁹¹ Section 895.03, F.S.

¹⁹² Section 916.1075(2), F.S.

¹⁹³ Section 985.701(1), F.S.

¹⁹⁴ Section 796.08, F.S.

¹⁹⁵ Section 826.04, F.S.

¹⁹⁶ Section 800.101(2), F.S.

¹⁹⁷ Section 784.049(3)(b), F.S.

¹⁹⁸ Section 951.221(1), F.S.

¹⁹⁹ Section 491.0112(1) and (2), F.S.

²⁰⁰ Section 872.06(2), F.S.

²⁰¹ Section 944.35(3)(b)2., F.S.

²⁰² Section 847.012, F.S.

The bill also requires DOC and county detention facilities to inform an inmate or probationer about voting rights restoration following a felony conviction under art. VI, s. 4 of the Florida Constitution and to provide an accounting of all outstanding financial obligations. A person released from incarceration may use the information to determine his or her eligibility for voting rights restoration.

The bill codifies eligibility requirements for restoration of voting rights in s. 944.292, F.S. The bill updates references to restoration of “civil rights” in voter registration laws to “voting rights” to reflect that a voter is no longer required to obtain executive clemency restoring all civil rights to be eligible to vote.

Finally, the bill creates an unnumbered section of law that establishes the Restoration of Voting Rights Work Group within DOS for the purpose of conducting a comprehensive review of the process of verifying registered voters who have been convicted of a felony, but who may be eligible for restoration of voting rights under art. VI, s. 4 of the Florida Constitution. The bill provides that the work group is comprised of the following persons:

- The Secretary of DOS or his or her designee.
- The Secretary of DOC or his or her designee.
- The executive director of FDLE or his or her designee.
- The Chairman of the FCOR or his or her designee.
- Two clerks of circuit court, appointed by the Governor.
- Two supervisors, appointed by the Governor.

The bill provides that the Secretary of DOS or his or her designee serves as chair of the work group. The bill requires the appointment of all members be made by August 1, 2019, and provides that the members serve for the duration of the work group. If a vacancy occurs, the original appointing authority must appoint a new member to fill the vacancy.

The work group is directed to develop recommendations for the Legislature related to:

- The consolidation of all relevant data necessary to verify the eligibility of a registered voter for restoration of voting rights.
- The process of informing a registered voter of the entity or entities that are custodians of the data necessary for verifying his or her eligibility for restoration of voting rights.
- Any other relevant policies or procedures for verifying the eligibility of a registered voter for restoration of voting rights.

The work group must submit a report of its findings, conclusions, and recommendations to the President of the Senate and the Speaker of the House of Representatives by November 1, 2019. Upon submission of the report to the Legislature, the work group is dissolved.

Vote-by-Mail Ballots

Background

Florida allows any voter to vote by requesting a vote-by-mail (VBM) ballot²⁰³ from his or her supervisor, completing the VBM ballot, and returning the VBM ballot to his or her supervisor.²⁰⁴ A voter can request and vote a VBM ballot without offering any excuse or reason for doing so.²⁰⁵ A supervisor must accept

²⁰³ Prior to 2016, VBM ballots were known as “absentee ballots.” In 2016, the Legislature passed SB 112, which replaced the phrase “absentee ballot” with “vote-by-mail ballot” in the Florida Election Code. *See* ch. 2016-37, L.O.F. However, a voter voting a VBM ballot is still termed an “absent elector” for purposes of the Florida Election Code. *See* s. 97.021(1), F.S.

²⁰⁴ Sections 101.62, 101.64, 101.65, 101.655, 101.661, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, and 101.697, F.S.

²⁰⁵ 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.

a request made by the voter for a VBM ballot in person or in writing²⁰⁶ and may accept a telephonic request from the voter.²⁰⁷ A member of the voter's immediate family²⁰⁸ or his or her legal guardian can also request a VBM ballot on behalf of the voter.²⁰⁹ 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.²¹⁰

The supervisor must, for each VBM ballot 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.²¹¹ The supervisor must provide the information to the Division of Elections (division) within DOS each day beginning 60 days before the primary election until 15 days after the general election.²¹² The information is confidential and exempt from public records requirements except it must be provided to the voter requesting the VBM ballot, a canvassing board, an election official, a political party or official thereof, a candidate, and registered political committees for political purposes.²¹³

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.²¹⁴ 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.²¹⁵ If a supervisor receives a request for a VBM ballot between the 28th day prior to the election and the sixth day prior to the election, the supervisor must send the requested VBM ballot to the voter within two days of receiving the request.²¹⁶

After receiving the request, the supervisor must mail the elector a letter containing a ballot, instructions for completing the ballot,²¹⁷ a secrecy envelope, and a mailing envelope for returning the ballot.²¹⁸ 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.²¹⁹

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

²⁰⁶ Section 101.62(1)(a), F.S.

²⁰⁷ Section 101.62(1)(b), F.S.

²⁰⁸ 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.

²⁰⁹ Section 101.62(1)(b), F.S.

²¹⁰ Section 101.62(1)(c), F.S.

²¹¹ Section 101.62(3), F.S.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Section 101.62(4)(b), F.S.

²¹⁵ Section 101.62(2), F.S.

²¹⁶ Section 101.62(4)(b), F.S.

²¹⁷ Section 101.65, F.S.

²¹⁸ Section 101.64(1), F.S.

²¹⁹ *Id.*

and bear a serial number that must also be recorded on the defective ballot.²³⁸ 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.²³⁹

After the election, the supervisor must notify each elector whose ballot was rejected and provide the reasons for the rejection.²⁴⁰ 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.²⁴¹

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.²⁴² The United States District Court for the Northern District of Florida declared, "Florida's statutory scheme as it relates to mismatched-signature [VBM] ballots" unconstitutional and ordered "mismatched-signature ballots to be cured in precisely the same fashion as currently provided for non-signature ballots."²⁴³ In response to the court's decision, the Florida Legislature passed CS/HB 105 (2017), which created a statutory process to cure those VBM ballots with a signature mismatch.

In 2018, the U.S. District Court for the Northern District of Florida held that the opportunity to cure VBM ballots and provisional ballots was illusory and "unconstitutionally burdens the fundamental right of Florida citizens to vote and have their votes counted."²⁴⁴ 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.²⁴⁵ 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.²⁴⁶ 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.²⁴⁷ 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.²⁴⁸

Effect of the Bill

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

- Moves the last day for voters to request VBM ballots from six days to 10 days before an election, and prohibits supervisors from mailing out such ballots less than eight days prior to the election (currently four days).
- Moves the first day a voter may send a designee to pick up VBM ballot from 5 days to 9 days prior to an election.
- Allows supervisors to mail domestic VBM ballots between 40 days and 33 days before an election instead of the current window of the 35th to the 28th day.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Section 101.68(4)(f), F.S.

²⁴¹ *Id.*

²⁴² Section 101.68(4)(b), F.S. (2016).

²⁴³ *Fla. Democratic Party v. Detzner*, 4:16-CV-607 (N.D. Fla. 2016).

²⁴⁴ *Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017 (N.D. Fla. 2018).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Democratic Exec. Comm. of Fla. v. Detzner*, 915 F. 3d 1312 (11th Cir. 2018).

- 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 ballot canvassing period to when the VBM ballot is received.
- For canvassing purposes, requires CCBs to find by majority vote and beyond a reasonable doubt that a signature on a voter's certificate or cure affidavit does not match the signature in the registration records.
- Creates a new signature-deficiency notification process for timely received VBM ballots, requiring notification by first class mail in addition to at least one other method including by phone, email or text message. However, beginning the day before the election, the supervisor is not required to provide notice by first class mail of the signature deficiency.
- Creates a process to update immediately voter registration signatures with the signature on a valid VBM ballot cure affidavit, and makes conforming changes to the post-election voter notification/signature update request for voters whose ballots were rejected due to defective signatures.
- Alters the VBM ballot voter's certificate requesting additional voter contact information (e-mail address, home phone number, mobile phone number) for the limited purpose of correcting signature deficiencies.
- Requires secure drop boxes, for the purpose of receiving voted VBM ballots, be placed at every supervisor's office and at each early voting site. A supervisor may place a secure drop box at any site that would otherwise qualify as early voting site so long as the site is staffed by an employee of the supervisor or a sworn law enforcement officer.
- Requires that the total number of VBM ballots dropped off at a secure drop box at an early voting site be made publicly available each day.
- Requires the instructions accompanying a VBM ballot notify voters that they may drop off their ballot at the supervisor's office or a secure drop box at an early voting location.
- Requires the security envelope accompanying a VBM ballot to notify voters of the deadline their ballot must be received by the SOE.
- Requires DOS to provide formal signature matching training to supervisors and CCB members.

Provisional Ballots

Background

The Help America Vote Act of 2002 (HAVA) requires states to allow a voter whose eligibility to vote at a polling place cannot be immediately established to vote using a provisional ballot for elections for federal office.²⁴⁹ Florida allows any voter claiming to be properly registered in the state and eligible to vote at the precinct in the election, but whose eligibility cannot be determined, or a person whom an election official asserts is not eligible, be allowed to vote a provisional ballot.²⁵⁰ A provisional ballot, like a VBM ballot, is inserted into a secrecy envelope, which is then sealed in a provisional ballot envelope.²⁵¹ On the back of the provisional envelope is a provisional ballot voter's certificate and affirmation.²⁵² The provisional ballot voter's certificate and affirmation reads as follows:

STATE OF FLORIDA
 COUNTY OF _____

²⁴⁹ 52 U.S.C. s. 21082.

²⁵⁰ Section 101.048(1), F.S.

²⁵¹ *Id.*

²⁵² Section 101.048(3), F.S.

- For canvassing purposes, requires CCBs to find by majority vote and beyond a reasonable doubt that a signature on a voter's certificate or cure affidavit does not match the signature in the registration records.
- Modifies the Provisional Ballot Voter's Certificate and Affirmation to include requests for additional phone and electronic contact information.
- Requires supervisors to provide notification to a voter whose provisional ballot has a signature defect of such defect by first class mail in addition to at least one other method including by phone, email, or text message.
- Creates a process to update immediately voter registration signatures with the signature on a valid provisional ballot cure affidavit.
- Incorporates the current VBM ballot 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.

Election Contests

Background

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.²⁶³ In 2011, the Legislature changed the law to limit the court's review of a CCB's decision on the legality of a VBM ballot signature in an election contest by limiting a court to only looking at the voter's signature of record and the signature on the VBM ballot voter's certificate.²⁶⁴ The Legislature subsequently authorized the "curing" of VBM ballots by affidavit and submission of additional identification,²⁶⁵ but never amended this contest limitation to conform.

Effect of the Bill

In addition to what is currently allowed, the bill allows courts reviewing the validity of voter signatures in election contests to consider the signature on VBM and provisional ballot voter certificates and cure affidavits.

Early Voting

Background

Early voting is the casting of a ballot prior to election day at an early voting site designated by the supervisor and depositing the voted ballot in the tabulation system.²⁶⁶ Each supervisor must offer early voting in his or her county for any election that contains state or federal races.²⁶⁷ The supervisor must allow early voting in his or her main office and, if applicable, any branch offices.²⁶⁸ The supervisor may also designate any of the following facilities as early voting sites:

- Any city hall;
- Permanent public library facility;
- Fairground;
- Civic center;
- Courthouse;
- County commission building;
- Stadium;
- Convention center;

²⁶³ Section 102.168(1), F.S.

²⁶⁴ Chapter 2011-40, s. 44, LAWS OF FLA.

²⁶⁵ Chapter 2013-57, s. 15, LAWS OF FLA.

²⁶⁶ Section 97.021(10), F.S.

²⁶⁷ Section 101.657(1)(d), F.S.

²⁶⁸ Section 101.657(1)(a), F.S.

- Government-owned senior center; or
- Government-owned community center.²⁶⁹

Each of those sites, however, must be geographically located to provide all voters in the county an equal opportunity to cast a ballot.²⁷⁰

Effect of the Bill

The bill requires each early voting site to provide sufficient nonpermitted parking to accommodate the anticipated amount of voters.

County Canvassing Board

Background

The CCB is the body that tabulates and canvasses the vote for an election in that county. The CCB is composed of the supervisor, the chair of the board of county commissioners, and a county court judge, who serves as chair.²⁷¹ 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.²⁷²

Prior to canvassing ballots, the supervisor designates a time for the CCB to meet for that purpose.²⁷³ 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.²⁷⁴ The notice must be given at least 48 hours prior to the time of meeting and must be posted on the supervisor's website and published in one or more newspapers of general circulation in the county.²⁷⁵ 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.²⁷⁶ 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.²⁷⁷ 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.²⁷⁸

Effect of the Bill

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

The bill requires each CCB member, substitute member, alternate member, and all CCB staff to wear an identification badge during any period in which the CCB is canvassing votes or engaging in other

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ Section 102.141(1), F.S.

²⁷² Section 102.141(1)(e), F.S.

²⁷³ Section 102.141(2), F.S.

²⁷⁴ Section 102.141(2), F.S.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

official duties. The identification badge must be displayed in a conspicuous, unobstructed area and include the name of the individual and their official position.

Primary Elections

Background

A primary election is held in each year a general election is held. Article VI, s. 5 of the Florida Constitution requires a general election be held “in each county on the first Tuesday after the first Monday in November of each even-numbered year.”²⁷⁹ Current law requires a primary election be held for the purpose of nominating candidates of political parties on the Tuesday 10 weeks prior to the general election.²⁸⁰ The following are the dates for the past two primary elections, as well as the date for the forthcoming 2020 primary election:

Year	Primary Election	General Election
2016	August 30	November 8
2018	August 28	November 6
2020	August 25	November 3

Effect of the Bill

The bill moves the primary election from 10 weeks preceding the general election to 11 weeks preceding the general election. As such, the forthcoming 2020 primary election would be held on August 18.²⁸¹

No Solicitation Zone

Background

Currently, no person, political committee, or other group or organization may solicit²⁸² voters inside the polling place or within 100 feet of the entrance to any polling place,²⁸³ polling room²⁸⁴ where the polling place is also a polling room, early voting site,²⁸⁵ or an office of the supervisor where VBM ballots are requested and printed on demand.²⁸⁶ Each supervisor must inform the clerk²⁸⁷ of the area within which soliciting is unlawful based on the particular characteristics of that polling place.²⁸⁸ 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.²⁸⁹

²⁷⁹ See also s. 97.021(16), F.S.

²⁸⁰ Section 100.061, F.S.

²⁸¹ 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.

²⁸² 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.

²⁸³ 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.

²⁸⁴ 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.

²⁸⁵ 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.

²⁸⁶ Section 102.031(4)(a), F.S.

²⁸⁷ 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.

²⁸⁸ Section 102.031(4)(c), F.S.

²⁸⁹ Section 102.031(4)(a), F.S.

Effect of the Bill

The bill expands the no solicitation zone at polling places and early voting sites from 100 feet to 150 feet. The bill also requires the owner, operator, or lessee of a property on which a polling place or early voting site is located to allow the solicitation of voters outside of the no-solicitation zone during polling hours by expressly prohibiting the exclusion of such activity in that area.

Polling Room Photography Prohibition

Background

Photography is currently prohibited in the polling room or early voting area.²⁹⁰ The election board can enforce the prohibition.²⁹¹

Effect of the Bill

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

Precinct Level Election Results

Background

Supervisors are required to, within 30 days following the certification of the election results by the Elections Canvassing Commission,²⁹² collect and submit to DOS precinct-level election results.²⁹³ 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.²⁹⁴ 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.²⁹⁵ After DOS has received the results, it must make the information available, through its website, on a searchable, sortable, and downloadable database.²⁹⁶

Effect of the Bill

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

Ballot Design

Background

DOS is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system.²⁹⁷ The rules are required to incorporate clear and unambiguous ballot instructions, individual race layout, and overall ballot layout.²⁹⁸ Additionally the rules are required to depict graphically a sample uniform primary and general election ballot form for each certified voting

²⁹⁰ Section 102.031(5), F.S.

²⁹¹ 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.

²⁹² 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.

²⁹³ Section 98.0981(2)(a), F.S.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Section 98.0981(2)(b), F.S.

²⁹⁷ Section 101.151(9)(a), F.S.

²⁹⁸ *Id.*

system.²⁹⁹ DOS rule 1S-2.032, F.A.C., allows that ballot instructions to appear “immediately below the ballot title either across the page or in the first column.” The graphic depictions of sample ballots, incorporated by reference into the rule, display the ballot instructions placed horizontally across the top of the ballot in some³⁰⁰ and placed in the first column in others.³⁰¹

Rule 1S-2.032, F.A.C., allows each supervisor to choose between four types of vote targets:³⁰² ovals, squares, rectangles, or broken arrows.³⁰³ 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.³⁰⁴

Effect of the Bill

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

Chain of Custody of Ballots and Ballot Security

Background

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

- The supervisor must safely keep in his or her office any envelopes containing marked VBM ballots and must, before the canvassing of the election returns, deliver the envelopes to the CCB.³⁰⁵
- 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.³⁰⁶
- 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.³⁰⁷
- Provisional ballots are required to be deposited in a ballot box and must remain sealed in their envelopes for return to the supervisor.³⁰⁸
- 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.³⁰⁹

²⁹⁹ Section 101.151(9)(b), F.S.

³⁰⁰ See DS-DE-205, incorporated by reference into r. 1S-2.032, F.A.C.

³⁰¹ See DS-DE-202, incorporated by reference into r. 1S-2.032, F.A.C.

³⁰² 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.

³⁰³ *Id.*

³⁰⁴ Rule 1S-2.032(9)(a)4., F.S.

³⁰⁵ Section 101.67(1), F.S.

³⁰⁶ Section 101.68(3), F.S.

³⁰⁷ Section 101.24, F.S.

³⁰⁸ Section 101.048(1), F.S.

³⁰⁹ Section 102.071, F.S.

DOS must adopt rules to establish minimum security standards for voting systems.³¹⁰ 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.³¹¹ Supervisors must establish written procedures based on these minimum security standards to assure accuracy and security in his or her county.³¹² DOS must review the procedures every odd-numbered year.³¹³ 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.³¹⁴

Effect of the Bill

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

Voter Interface Devices

Background

Current law requires all electors without disabilities to vote by marksense ballots³¹⁵ that can be electronically tabulated.³¹⁶ However, electors with disabilities may vote using touchscreen voting equipment, called "voter interface devices," that meet the requirements listed in HAVA and specified state accessibility requirements; only voters with disabilities may cast ballots on these voting devices.³¹⁷ A "voter 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.³¹⁸ To be available for use by those with disabilities, the voter interface device must be certified by DOS to meet certain minimum standards of accessibility.³¹⁹ At least one voter interface device certified for use by persons with disabilities must be available at each polling place.³²⁰

A voter interface device may mark a marksense ballot, produce a paper output, or tabulate the votes cast directly from touchscreen choices made by the elector.³²¹ By 2020, however, each voter interface device must be able to mark a paper marksense ballot in order to comply with state law.³²² In regards to

³¹⁰ 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.

³¹¹ Rule 1S-2.015, F.A.C.

³¹² Section 101.015(4)(b), F.S.

³¹³ *Id.*

³¹⁴ Section 101.015(4)(c), F.S.

³¹⁵ The term "marksense ballot" is defined to mean a printed sheet of paper, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote. Section 97.021(5)(a), F.S.

³¹⁶ Section 101.56075(1), F.S.

³¹⁷ Section 101.56075(2), F.S.

³¹⁸ Section 97.021(42), F.S.

³¹⁹ Section 101.56062, F.S.

³²⁰ Section 101.56062(2), F.S.; s. 97.021(27), F.S., defines the term "polling place" to mean the building that contains the polling room where ballots are cast.

³²¹ Section 101.56075(2), F.S.

³²² Section 101.56075(3), F.S.

this deadline, the Legislature has delayed implementation (to 2012,³²³ 2016,³²⁴ and lastly to the current deadline in 2020³²⁵), to allow election technology to catch up with the requirement that voters with disabilities be able 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.

Currently, there are three DOS-certified systems for voters with disabilities:

- ES&S AutoMARK (22 counties);³²⁶
- Dominion ImageCast Evolution (16 counties);³²⁷ and
- ES&S ExpressVote (25 counties).³²⁸

Generally, these systems “mark” a scannable paper ballot that can be used for canvassing and recount purposes.³²⁹ 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) but allows an “undervote” after confirming the voter’s intent. 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.³³⁰ 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 requires that all voting be either via paper marksense ballot or via a voter interface device that meets state and federal standards for accessibility and produces a voter-verifiable paper output. The bill allows any eligible elector to use either method to vote, eliminating the current requirement that only individuals with a disability use voter interface devices. Four counties — Glades, Jefferson, Miami-Dade,³³¹ and Palm Beach³³² — are still using voter interface devices that do not produce a paper

³²³ Chapter 2007-30, s. 6, L.O.F.. (codified at s. 101.56075(3), F.S. [2007]).

³²⁴ Chapter 2010-167, s. 5, L.O.F. (codified at s. 101.56075(3), F.S.[2010]).

³²⁵ Chapter 2013-57, s. 9, L.O.F.. (codified at s. 101.56075(3), F.S. [current]).

³²⁶ 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 May 8, 2019).

³²⁷ 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 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 May 8, 2019).

³²⁸ 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 May 8, 2019).

³²⁹ About two-thirds of Florida’s counties (47/67) currently use either the ES&S AutoMARK or ExpressVote systems for disabled voters. See DIVISION OF ELECTIONS, *2019 Voting Systems* (Feb. 25, 2019 update), *available at* <https://dos.myflorida.com/media/695246/voting-systems-in-use-by-county.pdf> (last visited on May 8, 2019).

³³⁰ Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

³³¹ In December 2017, the Miami-Dade County Board of County Commissioners, noting that they would have buy new machines to meet the 2020 deadline, voted to extend the support contract for their current machines and allow the county Elections Department to evaluate available technology that complies with the law prior to the deadline. Thereafter, a recommendation would be presented to the board. MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS, Legislative Item, File Number: 172341, December 5, 2017,

output.³³³ The remaining 63 counties have purchased touchscreen equipment for voters with disabilities that produces a scannable paper output, though the printed ballot/ballot card varies in format.³³⁴

The bill prohibits voter interface devices from being used to tabulate votes and requires that all vote tabulation be based on a subsequent scan of the marksense ballot or the voter-verifiable paper output after the voter interface device process has been completed.

Lastly, the bill prohibits DOS from promulgating a rule allowing the use of any electronic or electromechanical reading device to review certain hybrid voting style ballots produced by a voter interface device to discern voter intent, unless the printed text is illegible.

Voting Systems

Background

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, the act required that any hardware or software used to identify and sort overvotes and undervotes for a manual recount be capable of simultaneously counting votes.³³⁵ However, no requirement exists that mandates a voting system be able to count and sort multiple races simultaneously, thereby allowing the processing of multiple recounts at the same time.

Effect of the Bill

The bill prohibits 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, even though the County is already in the process of replacing that system for the 2020 election cycle.

Ballot-on-Demand

Background

A ballot-on-demand (BOD) system is a system in which ballots may be printed quickly and to the specifications required for the individual voter. For instance, during early voting, which occurs at centralized locations where voters of different precincts all vote together, a BOD system can print a precinct specific ballot for each voter. Currently, BOD systems are permitted to be used, at the supervisor's discretion, for early voting but the Florida Election Code is silent as to the use of BOD systems on election day.³³⁶

Effect of the Bill

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

available at <http://www.miamidade.gov/govaction/matter.asp?matter=172341&file=true&fileAnalysis=false&yearFolder=Y2017> (last visited May 8, 2019).

³³² In February 2019, the Palm Beach County Board of County Commissioners voted to appropriate \$15,682,546.70 to purchase new voting equipment, to include at least 525 ExpressVote terminals. PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, BCC Brief, February 5, 2019, available at

<http://discover.pbcgov.org/Lists/Newsroom/NewsDispForm.aspx?ID=1890&RootFolder=%2FLists%2FNewsroom&Source=http%3A%2F%2Fdiscover%2Epbcbgov%2Eorg%2Fcountycommissioners%2FPages%2FBriefs%2Easpx> (last visited March 8, 2019).

³³³ See DIVISION OF ELECTIONS, *2019 Voting Systems* (Feb. 25, 2019 update), available at

<https://dos.myflorida.com/media/695246/voting-systems-in-use-by-county.pdf> (last visited on May 8, 2019).

³³⁴ *Id.*

³³⁵ Chapter 2001-40, s. 42, LAWS OF FLA. (currently codified at s. 102.166, F.S.[2018]).

³³⁶ Section 101.151(1)(b), F.S.

Distribution of Sample Ballots

Background

Current law requires a sample ballot, once the list of qualified candidates is completed, be published by each supervisor in a newspaper of general circulation in the county before election day.³³⁷ 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.³³⁸ 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.³³⁹

Effect of the Bill

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

Supervisors of Elections' Special Qualification Salary

Background

Each supervisor is eligible to receive a special qualification salary of \$2,000 per year if he or she has met certain certification requirements established by DOS within six years after first taking office.³⁴⁰ DOS has promulgated a rule establishing stringent requirements for a supervisor seeking the certification.³⁴¹ To maintain his or her certification, a supervisor must annually complete a course of continuing education.³⁴²

Effect of the Bill

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

Candidates for Governor and Lieutenant Governor

Background

Each gubernatorial candidate must designate a Lieutenant Governor.³⁴³ 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.³⁴⁴ 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.³⁴⁵ 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.³⁴⁶

³³⁷ Section 101.20(2), F.S.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ Section 145.09(3), F.S.

³⁴¹ Rule 1S-2.0115, F.A.C.

³⁴² Section 145.09(3)(c), F.S.

³⁴³ Section 99.063(1), F.S.; *see also* art. IV, s. 2, FLA. CONST.

³⁴⁴ Section 99.063(1), F.S.

³⁴⁵ 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.

³⁴⁶ 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 ballot if a Lieutenant Governor has not been designated.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely have an indeterminate, negative workload impact due to the provisions relating to agency rulemaking, conducting voter eligibility research, and the requirement to provide staff support for the work group. It is expected that these costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal negative fiscal impact on local government expenditures.

The bill requires a county detention facility to provide an inmate information on any outstanding financial obligation imposed for a felony conviction for which he or she is being released from incarceration.

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.

The bill requires counties that do not currently own voting interface devices that either mark a marksense ballot or produce voter-verifiable paper outputs to purchase those machines. However, the removal of the requirement to publish sample ballots in a newspaper of general circulation and mail or email those ballots instead should result in a cost savings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a positive fiscal impact on vendors in the private sector that produce voter interface devices meeting the requirements of the bill.

D. FISCAL COMMENTS:

None.