

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 7041 PCB PIE 21-05 Elections

SPONSOR(S): State Affairs Committee and Appropriations Committee and Public Integrity & Elections Committee, Ingoglia and others

TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 77 Y's 40 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/CS HB 7041 passed the House as CS/CS/CS SB 90 as amended on April 28, 2021. The Senate further amended the House amendment on April 29, 2021, and returned the bill to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2021. The bill includes the substance of HB 457.

The bill makes numerous revisions to the Florida Election Code.

The bill increases security in elections by:

- Requires two-factor verification of voter registration changes and vote-by-mail (VBM) requests;
- Provides for greater list maintenance of address changes from Highway Safety and Motor Vehicle records;
- Shortens VBM requests from two general election cycles to one;
- Requires in person monitoring of all ballot drop boxes used by Supervisors of Elections to collect ballots;
- Makes it a misdemeanor for anyone to possess VBM ballots unless authorized by law.

The bill increases transparency by:

- Requiring all election records be retained 22 months;
- Requiring greater access to election materials at relevant times;
- Requiring a voter's name to appear on VBM ballot return envelopes;
- Making more complete records of VBM requests, delivery and signature matching;
- Requiring supervisors to report on uncounted VBM ballots, live turnout data, official canvassing board membership and any sitting alternates per meeting notice.

The bill reforms statutes ruled unconstitutional including:

- Third party voter registration regulation;
- The voter registration application checkbox regarding felony convictions.

The bill improves election administration by:

- Clarifying the Party Executive Committee's role in filling district and circuit nomination vacancies;
- Revising time allowed for the Department of State to validate new voting equipment; consolidating reports;
- Prohibiting private funding of official election activities, except donation of polling locations.

The bill repeals mandatory special elections for vacancies created by the "resign to run" law. Finally, the bill requires candidates in partisan office to be a member of the party whose nomination is sought for 365 days and candidates with no party affiliation may not be registered in any party for 365 days prior to qualification.

The bill is expected to have an indeterminate negative fiscal impact, primarily on county election offices. There appears to be minimal impact on state government affordable within existing resources.

The bill was approved by the Governor on May 6, 2021, ch. 2021-11, L.O.F., and became effective on that day.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Judicial challenges to election laws

Present Situation

Agencies and local officials have broad authority to settle litigation challenging implementation of the laws. When a party challenges the constitutionality of a Florida statute, the Attorney General or the local state attorney must be served with a copy of the complaint and is entitled to be heard.¹ In addition, an agency or state official may not settle or agree to a consent decree requiring an expenditure in excess of \$1 million, or a loss of revenue in excess of \$10 million, the legislative leadership and the Attorney General must be notified of the negotiations and any proposed resolution.²

Effect of Proposed Changes

The bill imposes additional requirements that a state or county agency must satisfy before it can settle a case, agree to a consent decree, or agree to a condition that nullifies, suspends or invalidates any provision of the Florida Election Code. The bill provides that the state or county party must provide written notice to the President of the Senate, the Speaker of the House and the Attorney General, of the onset of negotiations and the substance of any proposed settlement, consent decree or order. They must provide further notification at least 10 days' before such agreement or order is to be made final. The bill provides a general direction to an agency subject to a binding order invalidating or suspending enforcement of an election law to move promptly to terminate any ongoing jurisdiction after the Legislature amends the general law to remove the invalidity.

Voter registration application, changes, security

Present Situation

Voter registration changes

In order for an elector to change his or her residence address, he or she must submit a voter registration application.³ However, if the address change is within the state, the voter may contact the supervisor of elections (supervisor) of the county where the voter has moved via telephone or through electronic means and provide their date of birth.⁴ Alternatively, the voter may submit the change on a voter registration application or another signed written notice.⁵

In order to change party affiliation, the elector must notify the supervisor of the county in which they are registered by using a signed written notice that contains the elector's date of birth or voter registration number.⁶

In order to change his or her name, the elector must notify the supervisor by using a signed written notice that contains the elector's date of birth or voter registration number.⁷

¹ S. 86.091, F.S.

² S. 45.062, F.S.

³ S. 97.1031(1)(a), F.S.

⁴ S. 97.1031(1)(b), F.S.

⁵ S. 97.1031(1)(b)2., F.S.

⁶ S. 97.1031(2), F.S.

⁷ S. 97.1031(2), F.S.

In 2015, the Legislature passed legislation that requires an online voter registration system to be available for registering first-time voters and updating voter registrations.⁸ The online registration system allows a voter to submit the necessary information listed above to register or update their voter registration records.⁹

Online Voter Registration System

The Division is required to maintain an online voter registration system where an applicant can submit a voter registration application and update their voter registration information.¹⁰ The online system must use a unique identifier for each applicant to prevent unauthorized persons from altering a voter's registration information.¹¹ The system must compare the Florida driver license or identification card number of the applicant to the information maintained by the Department of Highway Safety and Motor Vehicles (DHSMV).¹²

The Division must conduct a comprehensive risk assessment of the system every two years.¹³ The assessment must comply with specified methodology for identifying security risks, determining the magnitude of such risks, and identifying areas that require safeguards.¹⁴

Voter registration by the Department of Highway Safety and Motor Vehicles

The National Voter Registration Act of 1993¹⁵ requires states to allow motor vehicle driver license applications to serve as an application for voter registration with respect to Federal elections unless the applicant fails to sign the voter registration application.¹⁶ In Florida, the Department of Highway Safety and Motor Vehicles (DHSMV) provides such an opportunity to register or update voter registration information whenever a Floridian applies for or renews a driver license or identification card or changes an address on an existing license or card.¹⁷ Changes to a person's voter registration through the DHSMV process is on an "opt in" basis.

A person's domicile constitutes his or her legal residence in Florida for both motor vehicle registration and voter registration purposes. It is a nonmoving violation with a penalty for failure to obtain a replacement driver license or identification card reflecting a change in legal residence or mailing address within 30 days of such change.¹⁸ Legal residence is a qualification to vote in Florida and providing an address of legal residence is a requirement to register to vote.

The Division of Elections (Division), within the Department of State (DOS) has no express duty to compare residence addresses in DHSMV records as part of maintaining the statewide voter registration database. DHSMV has no express duty to report to the Division or to a supervisor when a Floridian changes her or his residence in DHSMV records but does not indicate a desire, or sign an application, to update voter registration information.

Supervisors are required to conduct registration list maintenance at least every odd numbered year to "protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records" in the Florida voter registration system (FVRS).¹⁹ Supervisors must incorporate certain procedures when conducting registration list maintenance including change-of-address information

⁸ Ch. 2015-36; S. 97.0525(2), F.S.

⁹ S. 97.0525(2), F.S.

¹⁰ S. 97.0525(2), F.S.

¹¹ S. 97.0525(3)(a), F.S.

¹² S. 97.052(4)(a), F.S.

¹³ S. 97.0525(3)(b), F.S.

¹⁴ S. 97.0525(3)(b), F.S.

¹⁵ 52 U.S.C. §§ 20501 – 20511.

¹⁶ 52 U.S.C. § 20504.

¹⁷ S. 97.057, F.S.

¹⁸ S. 322.19(3), F.S.

¹⁹ S. 98.065(1), F.S.

supplied by the U.S. Postal Service, change-of-address information identified from the return of non-forwardable return-if-undeliverable mail addressed to a voter, change-of-address information provided by the courts regarding jury notices signed by the voter, or information provided by DHSMV or other sources.²⁰ State law requires a supervisor that receives change-of-address information through list maintenance to send an address change notice if the new address is within the state or an address confirmation final notice if the address is outside the state.²¹ If a voter receives a confirmation final notice and does not confirm or correct such change, the voter is designated “inactive” in the FVRS.²²

Third-party voter registration organizations

Under the federal Voting Rights Act of 1965,²³ an organization has a federal right to conduct a voter-registration drive, collect voter-registration applications, and mail in the application to a state voter-registration office.²⁴ In 2011, the Legislature passed HB 1355, which amended s. 97.0575, F.S., and added additional responsibilities for third-party voter registration organizations. Specifically, the bill imposed a 48-hour deadline for an organization to deliver applications to a voter-registration office and increased the record-keeping and reporting requirements.

Third-party voter registration organizations are required to provide the names, permanent addresses, and temporary addresses of each registration agent registering persons to vote in Florida on behalf of the organization.²⁵ Each registration agent employed by or volunteering for the organization must file a sworn statement with the Division stating that the agent will obey all state laws and rules regarding the registration of voters.²⁶

The division is required to adopt rules to ensure the integrity of the registration process, including rules requiring third-party voter registration organizations to account for all state and federal registration forms used by their registration agents.²⁷

In 2011, Judge Robert Hinkle entered a preliminary injunction against DOS precluding enforcement of several rules, and blocking enforcement of the above-mentioned provisions of s. 97.0575, F.S.²⁸ DOS amended its rules to conform to the Court’s order and agreed to a permanent injunction barring enforcement of the offending provisions of statute.

Felony conviction disclosures on uniform voter registration applications

Prior to the 2018 election, Art. VI, s. 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until his or her civil rights were restored.²⁹ In the 2018 General Election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Florida Constitution to provide that “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.”³⁰ The provision excludes a “person

²⁰ S. 98.065(2)-(4), F.S.

²¹ S. 98.065(4), F.S.

²² *Id.*

²³ 42 U.S.C. § 10301.

²⁴ See *Charles H. Wesley Education Foundation, Inc. v. Cox*, 408 F.3d 1349 (11th Cir. 2005).

²⁵ S. 97.0575(1)(c), F.S.

²⁶ S. 97.0575(1)(d), F.S.

²⁷ S. 97.0575(5), F.S.

²⁸ *League of Women Voters of Fla. v. Browning*, 863 F.Supp.2d 1155 (N.D. Fla. 2012).

²⁹ Article VI, s. 4, FLA. CONST.

³⁰ *Id.*

convicted of murder or a felony sexual offense” from restoration of voting rights unless and until his or her civil rights are restored.³¹

Prior to 2019, Florida’s voter registration form required that an applicant mark a checkbox affirming he or she was not a convicted felon, or, if so, that he or she had his or her voting rights restored.

In 2019, the Legislature passed SB 7066, implementing the 2018 constitutional amendment. That bill included changes to the felon declaration of voter eligibility in the voter registration application. The changes were designed to track more closely the language of Amendment 4. Specifically, SB 7066 provided that the statewide voter registration application must elicit:

- Whether the applicant has never been convicted of a felony by including the statement “I affirm I have never been convicted of a felony.” and providing a box for the applicant to check to affirm the statement.
- Whether the applicant has been convicted of a felony, and if convicted, has had his or her civil rights restored through executive clemency, by including the statement “If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency.” A check box was provided for the applicant to affirm the statement.
- Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored pursuant to s. 4, Art. VI of the Florida Constitution, by including the statement “If I have been convicted of a felony, I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation.” and providing a box for the applicant to check to affirm the statement.

When the 2019 statutory changes were made to the application, a public records exemption was adopted to protect the felony information collected on the new application.³²

In October 2019, Judge Robert Hinkle of the United States District Court for the Northern District of Florida invalidated the new statutory language for the application. He declared the language defective for failing to “reach felons whose rights have been restored in other states or through other methods, including executive pardons.”³³

Subsequently, the Secretary of State represented to Judge Hinkle that Florida’s 67 county supervisors had reverted to accepting the old voter registration felon voting declaration language, which currently appears on a registration form on the Division’s website.

Effect of Proposed Changes

The bill requires additional identifying information of a voter who wishes to change his or her address, name, or political party affiliation. A voter making a change to his or her voter registration file by telephone or electronic means must supply identifying information verifiable by the supervisor. Otherwise, a voter wishing to change his or her address, name, or political party affiliation must submit a completed voter registration application and include his or her Florida driver license number, Florida identification number, or last four digits of the social security number. Once a voter registration application is completed, DOS must verify the authenticity of the information. A voter also has the option of using the DOS online voter registration system to update his or her registration information.

³¹ The Department of State, Division of Elections, *Proposed Constitutional Amendments and Revisions for the 2018 General Election*, p. 10-11, <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf>.

³² S. 97.0585(1)(d), F.S.

³³ *Jones v. DeSantis*, 410 F.Supp.3d 1284, 1308 (N.D. Fla. 2019).

The bill creates additional requirements for the comprehensive risk assessment of the online registration system, requiring:

- Load testing and stress testing to ensure that the system has sufficient capacity to accommodate foreseeable use, including during specified periods of high volume;
- Screening of computers and networks used to support the system for malware and other vulnerabilities;
- Evaluation of database infrastructure in order to fortify defenses against cyberattacks; and
- Identification of any anticipated threats to the security and integrity of data collected, maintained, received, or transmitted by the system.

The bill also requires DHSMV to assist DOS to identify changes in residence address on driver licenses and Florida identification cards. DOS must report identified changes to supervisors who have a duty under current law³⁴ to notify voters and correct the voting records.

The bill reverts the language on the voter registration application regarding a voter's felony conviction to its pre-2019 form. Specifically, the bill requires a registrant to respond, with a checkmark, to the following statement: "I affirm that I am not a convicted felon or, if I am, my right to vote has been restored." In addition, the bill eliminates the public-records exemption specifically created for the application form's invalidated felon voting attestation requirements. Any information received by the application that was exempt from public records information will remain exempt.³⁵

The bill reforms and amends the sections of the code invalidated by the federal court. Specifically, the bill provides that those who only solicit applications and do not collect or handle voter registration applications are exempt from registration with DOS.

The bill repeals the mandatory sworn statement regarding obedience to the laws and extends the 48-hour deadline to submit the voter registration application to 14 days. In addition, the bill requires the organization to notify the applicant that his or her application may not be submitted within 14 days. The bill also requires the organization to inform the applicant that he or she may submit his or her own application or register online with the Division as well as how he or she may determine whether the application has been delivered.

The bill clarifies that a voter registration application may only be delivered to the Division or to the supervisor of the county of residence of the voter.

Finally, the bill revises the Division's rulemaking guidance for third party registration activities to ensure that all completed forms are promptly delivered to the Division or an appropriate supervisor.

³⁴ S. 98.065(4), F.S.

³⁵ See s. 119.15(7), F.S.

Partisan elections and nomination vacancies

Present Situation

Each candidate for any office other than a judicial office must take and subscribe to in writing a specified oath or affirmation.³⁶ Any person seeking to qualify for nomination as a candidate of any political party, at the time of subscribing to the oath or affirmation, must also state in writing:

- The party of which the person is a member;
- That the person has not been a registered member of any other political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify; and
- That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.³⁷

A person qualifying as a candidate in a partisan election with “no party affiliation” makes no statement regarding party affiliation.

When in particular circumstances a party has a vacancy in nomination for a statewide office, the state party chair calls the meeting of the executive board to consider a designation of a nominee to fill the vacancy.³⁸

When there occurs a vacancy nomination for United States Representative, state senator, state representative, state attorney, or public defender, the state party chair notifies the appropriate county chair or chairs.³⁹ Within five days, the appropriate county chair calls a meeting of the members of the executive committee in the affected county or counties to consider the designation of a nominee to fill the vacancy.⁴⁰

Effect of Proposed Changes

The bill changes the requirement for the oath of a person seeking to qualify for office as a candidate with a party affiliation from affirming that they do not belong to any other political party, to affirming that they have been a member of the political party for which they wish to run for the preceding 365 days.

The bill requires a person seeking to qualify for office in a partisan election as a candidate with no party affiliation, at the time of subscribing to the oath or affirmation, to state in writing that he or she:

- Is registered without any political party affiliation; and
- Has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

The revised oaths are added to the applicable candidate qualifications for partisan elections.

The bill also clarifies that when a vacancy in party nomination for United States Representative, state senator, state representative, state attorney, or public defender occurs, the state party chair calls a meeting of the state executive committee members residing in the affected county or counties to consider designation of a nominee to fill the vacancy.

³⁶ Section 99.021(1)(a), F.S.

³⁷ Section 99.021(1)(b), F.S.

³⁸ S. 100.111(3)(a)1., F.S.

³⁹ S. 100.111(3)(a)2., F.S.

⁴⁰ S. 100.111(3)(a)2., F.S.

Resign to run

Present Situation

Current law requires a state, district, county, or municipal public officer⁴¹ who seeks to qualify as a candidate for another office,⁴² or any officer qualifying for federal office,⁴³ to resign if the offices have concurrent terms.⁴⁴ The resignation must be in writing and once proffered it is irrevocable. The resignation must be submitted at least 10 days prior to the first day of qualification for the office sought and is effective on the date the officer would take office, if elected, or the date the officer's successor is required to take office, whichever is earlier.⁴⁵ With regard to elective office, the resignation creates a vacancy in office to be filled by election.⁴⁶ A vacancy in elective charter county office or elective municipal office may be filled for the portion of the unexpired term in a manner provided by the respective charter.⁴⁷ The office is deemed vacant upon the effective date of the resignation submitted by the official.⁴⁸

Effect of Proposed Changes

The bill repeals the requirement that in the case of an elective office, the required resignation must be filled by election. The bill also repeals provisions that expressly allowed the unexpired term of an elective charter county officer or elective municipal officer required to resign under the resign-to-run law to be filled in a manner provided by the county or municipal charter. Consequently, the law, charter provision or ordinance governing vacancy upon resignation of such office will govern the vacancy in case of a resignation to run for another office.

Vote-by-mail ballots

Requests for vote-by-mail ballots

Present Situation

The supervisor must accept a request for a vote-by-mail (VBM) ballot from an elector in person or in writing.⁴⁹ The request from a voter for a VBM ballot is sufficient to receive a VBM ballot for all elections through the end of the calendar year of the second ensuing regularly scheduled general election, unless the voter indicates at the time of the request the elections for which he or she would like to receive a VBM ballot.⁵⁰ For example, under the current law, if, during 2021, a voter makes a general request to vote by mail, then he or she would receive VBM ballots for all elections through the end of 2024.

The voter may request a VBM ballot in person or by phone to be sent to the residence or mailing address on file in the FVRS.⁵¹ If the person wishes the ballot to be sent to an address other than one on file, the elector must make a signed request in writing.⁵² The elector may directly instruct the supervisor to accept a

⁴¹ Section 99.012(1)(a), F.S., defines the term "officer" to mean a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the Florida Constitution or laws of the state. With respect to a municipality, the term "officer" means a person, whether elected or appointed, having authority to exercise municipal power as provided by the Florida Constitution, state laws, or municipal charter.

⁴² S. 99.012(3), F.S.

⁴³ S. 99.012(4), F.S.

⁴⁴ S. 99.012(3), F.S.

⁴⁵ S. 99.012(3)-(4), F.S.

⁴⁶ Ss. 99.012(3)(f) and 99.012(4)(g), F.S.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ S. 101.62(1)(a), F.S.

⁵⁰ *Id.*

⁵¹ S. 101.62 (1)(b), F.S.

⁵² *Id.*

request for a VBM ballot by a member of the elector's immediate family, or the elector's legal guardian.⁵³ If the elector chooses someone, the person must disclose:

- The name of the elector for whom the ballot is requested;
- The elector's address;
- The elector's date of birth.
- The requester's name;
- The requester's address;
- The requester's driver license number, if available;
- The requester's relationship to the elector; and
- The requester's signature (written requests only).⁵⁴

A supervisor is required to record the date the request was made, the date the VBM ballot was delivered to the voter or the voter's designee or the date the VBM ballot was delivered to the post office or other carrier, the date the ballot was received by the supervisor, the absence of the voter's signature on the voter's certificate, if applicable, and such other information he or she may deem necessary.⁵⁵ This information is confidential and exempt from s. 119.07(1), F.S., and is available only to the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.⁵⁶

No later than 45 days before each election, the supervisor must send a VBM ballot to each absent uniformed voter.⁵⁷ The supervisor must mail VBM ballots to absent qualified voters who have requested ballots between the 40th and 33rd day before the election.⁵⁸ The supervisor must enclose with each VBM ballot two envelopes: a secrecy envelope into which the absent elector must enclose his or her marked ballot; and a mailing envelope, into which the elector must then place the secrecy envelope. The mailing envelope must be addressed to the supervisor and bear on the back side a voter's certificate that the elector must sign.⁵⁹ The supervisor must receive all ballots no later than 7:00 p.m. on Election Day.⁶⁰

An elector may designate in writing another person to pick up the VBM ballot from the supervisor.⁶¹ However, a designee may not pick up more than two VBM ballots per election, other than the designee's own ballot or that of an immediate family member.⁶²

It is a first-degree misdemeanor for a paid ballot collector to possess more than two ballots belonging to someone other than the collector or the collector's "immediate family."⁶³ There is no limit on the possession of ballots by unpaid collectors.

⁵³ S. 101.62(1)(b), F.S.; an immediate family member means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. S. 101.62(4)(c)4., F.S.

⁵⁴ S. 101.62 (1)(b), F.S.

⁵⁵ S. 101.62(3), F.S.

⁵⁶ *Id.*

⁵⁷ S. 101.62(4)(a), F.S.

⁵⁸ *Id.*

⁵⁹ S. 101.64(1), F.S.

⁶⁰ S. 101.65, F.S.

⁶¹ S. 101.62(4)(c)4, F.S.

⁶² *Id.*; An immediate family member means a person's spouse, or the parent, child, grandparent, or sibling of the person or the person's spouse. S. 104.0616(1), F.S.

⁶³ S. 104.0616, F.S.;

Effect of Proposed Changes

The bill provides that whenever an elector requests a VBM ballot by phone, he or she must provide a Florida driver license number, a Florida identification card number, or the last four digits of his or her social security number, whichever of these the supervisor can verify.

The bill requires additional verifying information whenever an elector makes a request to have his or her VBM ballot sent to an address not on file. An elector must now submit a signed written request and must provide the last four digits of a social security number, a Florida driver license number, or a Florida identification card number, whichever of these the supervisor can verify.

The bill imposes additional requirements for a designee making a VBM ballot request for another elector. In addition to the current requirements in statute, a designee must also provide the elector's Florida driver license number, the elector's Florida identification card number, or the last four digits of the elector's social security number, whichever of these the supervisor can verify.

The bill requires the supervisors to document the identity of the voter's designee or the address to which the ballot was mailed. In addition, the supervisor must document if there was a mismatched signature on a ballot.

The bill reduces the period an elector's VBM ballot request is valid to the end of the calendar year of the next regularly scheduled election. After the effective date of the act, if a voter makes a general request to VBM in 2021, he or she would receive VBM ballots for all elections through the end of the 2022 calendar year. The bill preserves the period under current law for a VBM ballot request made after November 6, 2018, and before November 3, 2020. Any request made after November 3, 2020 will be valid through the end of the 2022. .

The bill explicitly spells out that no county, municipality, or state agency may send a VBM ballot to a voter unless the voter has requested the VBM ballot as authorized under law. The bill makes exemptions for VBM ballots under s.101.662, F.S., relating to voters having disability, s. 101.697, F.S., relating to overseas voters, and under ss. 101.6102-101.6103, F.S., relating to local referenda.

The bill also prohibits any indication of the voter's political party on any envelope used by the supervisor to send a VBM ballot, the return mailing envelope, or the secrecy envelope. The bill further provides that whenever a signature is verified, the person verifying the signature may not use any knowledge of the political affiliation of the voter whose signature they are verifying.

The bill requires the return mailing envelope to bear the name and an encoded mark used by the supervisor's office.

Return of Vote-by-mail ballots

Present Situation

Under current law, upon receipt of a VBM ballot, the supervisor of the county where the absent elector resides must compare the signature on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine whether the elector is duly registered in the county and may record on the elector's registration certificate that the elector has voted.⁶⁴ After the supervisor receives a VBM ballot, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.⁶⁵

⁶⁴ S. 101.68(1), F.S.

⁶⁵ *Id.*

A supervisor must allow an elector to return his or her VBM ballot to a secure drop box.⁶⁶ Secure drop boxes must be placed at the supervisor's main office, branch office, and early voting sites.⁶⁷ In addition, secure drop boxes can be placed at any other site that qualifies as an early voting site if an employee of the supervisor's office or a sworn law enforcement officer staffs the site during the county's early voting hours of operation.⁶⁸

The county canvassing board may begin the canvassing of VBM ballots beginning at 7:00 a.m. on the 22nd day before the election, but not later than noon on the day following the election.⁶⁹

The canvassing board must compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file.⁷⁰ If the supervisor has not compared the signature on the ballots, the canvassing board must compare the signature on the voter's certificate or the VBM ballot cure affidavit to see that the elector is duly registered in the county and to determine the legality of that VBM ballot.⁷¹

A VBM ballot may only be counted if:

- The signature on the voter's certificate or cure affidavit matches the elector's signature in the registration books; or
- The cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification, which confirms the identity of the elector.⁷²

If any elector or candidate present believes that a VBM ballot is illegal due to a defect apparent on the voter's certificate or the cure affidavit, he or she may, at any time before the ballot is separated from the envelope, file with the canvassing board a protest against the canvass of that ballot specifying the reason he or she believes the ballot is illegal.⁷³ A challenge based upon a defect in the voter's certificate or the cure affidavit may not be accepted after the ballot has been removed from the mailing envelope.⁷⁴

If the canvassing board determines that a ballot is illegal, they mark the ballot as "rejected as illegal" and preserved in the same manner that official ballots are preserved.⁷⁵ The canvassing board records the ballot upon the proper record, unless the supervisor has already recorded that ballot.⁷⁶ The mailing envelopes must be opened and the secrecy envelopes must be mixed to make it impossible to determine which secrecy envelope came out of which signed mailing envelope.⁷⁷

If the VBM ballot received does not contain a signature or the signature does not match the elector's signature, the supervisor must notify the voter as soon as possible by first class mail and either by email, text message, or telephone.⁷⁸ The elector must then complete a cure affidavit and submit it to the supervisor no later than 5:00 p.m. on the 2nd day after the election.⁷⁹ The canvassing board then decides on the validity of each cure affidavit. If the ballot is validated following submission of a cure affidavit, the supervisor must make a copy of the affidavit, affix it to a voter registration application, and immediately process it as a valid request for a signature update.⁸⁰

⁶⁶ S. 101.69(2), F.S.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ S. 101.68(2)(a), F.S.

⁷⁰ S. 101.68(2)(b), F.S.

⁷¹ S. 101.68(2)(c)1, F.S.

⁷² *Id.*

⁷³ S. 101.68(2)(c)4, F.S.

⁷⁴ *Id.*

⁷⁵ S. 101.68(2)(c)5, F.S.

⁷⁶ S. 101.68(2)(d), F.S.

⁷⁷ *Id.*

⁷⁸ S. 101.68(4)(a), F.S.

⁷⁹ Ss. 101.68(4)(a) and 101.68(4)(d), F.S.

⁸⁰ S. 101.68(4)(g), F.S.

If the ballot is rejected as illegal, the supervisor must notify the elector whose ballot was rejected as illegal after the election results have been certified and provide the specific reason for why the ballot was rejected.⁸¹ In addition, the elector must be mailed a voter registration application to be completed indicating the elector's current signature if the signature on the voter's certificate or cure affidavit did not match the elector's signature in the registration books or precinct register.⁸²

Effect of Proposed Changes

The bill makes it a first-degree misdemeanor to possess the ballot of another unless the person possessing has lawful authority to handle the ballot. A person may carry a ballot belonging to an immediate family member and may carry a maximum of two ballots belonging to persons who are not family members. The bill extends the definition of "immediate family" to include a grandchild. The bill exempts supervised voting at assisted living facilities from this section of statute.

The bill revises the drop box provisions in law. Drop boxes may be placed at the main office of the supervisor, each permanent branch office of the supervisor, any early voting site, and any discretionary early voting site. Early voting site drop boxes and discretionary drop boxes may only be used as secure drop box locations during early voting hours. There are no time constraints on use of drop boxes at supervisors' offices. Drop boxes must be monitored by an employee of the supervisor whenever in use.

The bill requires the supervisors to designate the location of all drop box sites and notify the Division no later than the 30th prior to the election of the location of such sites. Drop boxes must be geographically located to provide all voters in the county with an equal opportunity to cast a ballot, insofar as is practicable. Once a drop box location is set, the location may not be moved or changed.

The bill requires all drop boxes to be emptied at the end of each day's usage, and more frequently if usage requires, and all retrieved ballots must be promptly delivered to the supervisor's office. Employees of the supervisor must comply with procedures for the chain of custody of ballots as required in s. 101.015(4), F.S. The bill imposes a civil penalty of \$25,000 on any supervisor that leaves a drop box accessible other than as authorized by the bill. The Division is authorized to enforce this provision.

The bill requires the supervisor to post on his or her website, at least once every hour while actively counting, the number of VBM ballots that have been received and the number of VBM ballots that remain uncounted beginning at 7:00 p.m. on Election Day.

Solicitation-free polling places

Present Situation

Currently, a person, political committee, or other group or organization may not solicit voters inside the polling place or within 150 feet of the entrance to any polling place,⁸³ polling room⁸⁴ where the polling place is also a polling room, early voting site,⁸⁵ or an office of the supervisor where VBM ballots are requested

⁸¹ S. 101.68(4)(h), F.S.

⁸² *Id.*

⁸³ The term "polling place" is defined to mean the building that contains the polling room where ballots are cast. S. 97.021(27), F.S.

⁸⁴ The term "polling room" is defined to mean the actual room in which ballots are cast on Election Day and during early voting. S. 97.021(28), F.S.

⁸⁵ 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. S. 97.021(11), F.S.

and printed on demand.⁸⁶ Each supervisor must inform the clerk⁸⁷ of the area within which soliciting is unlawful based on the particular characteristics of that polling place.⁸⁸ 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.⁸⁹ 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.⁹⁰

A separate provision of the code discusses the ability of an elector who requires assistance voting. Any voter who needs assistance voting can seek the assistance of either 1) two election officials or 2) some person of his or her choice.⁹¹ The person requesting assistance must sign a declaration to secure assistance. If the elector chooses someone to assist him or her in voting, then the person assisting must also sign a declaration to provide assistance.⁹² Further, the code provides that a person at a polling place or early voting site, or within 100 feet of an early polling place or voting site, may not solicit a voter in an effort to provide assistance to vote.⁹³

Effect of Proposed Changes

The bill amends the voter assistance solicitation statute to conform to the other solicitation provisions so that no voter may be solicited within 150 feet of the entrance of a polling place, early voting site, or drop box.

The bill expands the definition of solicitation to include that no person may engage in any activity with the intent to influence or effect of influencing a voter. The bill clarifies that an employee or volunteer with the supervisor is not prohibited from providing nonpartisan assistance to voters within the no-solicitation zone, including giving items to voters.

The bill narrows the type of solicitation outside the no-solicitation zone that the owner of a property, which has a polling place or early voting site, may not prohibit to only solicitation by a candidate or a candidate’s designee.

County canvassing boards

Present Situation

The County Canvassing Board (CCB) is the entity responsible for tabulating and canvassing the vote for an election in each county.⁹⁴ The CCB is composed of three members: the supervisor, the chair of the board of county commissioners, and a county court judge, who serves as chair of the CCB.⁹⁵ The CCB must have alternate members in case of a conflict or if one of the members is unable to serve.⁹⁶ The CCB meets in a

⁸⁶ S. 102.031(4)(a), F.S.

⁸⁷ 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. S. 102.012(1)(a), F.S.

⁸⁸ S. 102.031(4)(c), F.S.

⁸⁹ S. 102.031(4)(a), F.S.

⁹⁰ S. 102.031(4)(b), F.S.

⁹¹ S. 101.051(1), F.S.

⁹² *Id.*

⁹³ S. 101.051(4), F.S.

⁹⁴ S. 102.141(1), F.S.

⁹⁵ S. 102.141(1)(e), F.S.

⁹⁶ See S. 102.141(1), F.S. The chief judge of the judicial circuit in which the county is located shall appoint a county court judge as an alternate member of the county canvassing board or, if each county court judge is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as an alternate. If no county judge is able to serve, the chief judge of the judicial circuit shall appoint as a substitute a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or

building accessible to the public to canvass the VBM ballots and the provisional ballots.⁹⁷ In addition, as soon as the canvass of the provisional and VBM ballots is completed, the CCB proceeds to publicly canvass the votes given to each candidate as shown by the returns on file in the office of the supervisor.⁹⁸ In many counties, the CCB meets several times to canvass ballots.

Public notice of the specific time and place of the CCB meetings must be posted at least 48 hours prior to publication on the supervisor's website and published in one or more newspapers of general circulation in the county, or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county.⁹⁹

During any meeting of the CCB, a physical notice must be placed in a conspicuous area near the public entrance to the building in which the meeting is taking place.¹⁰⁰ The physical notice must include 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 anticipated activities of the CCB.¹⁰¹

The CCB may begin meetings to canvass VBM ballots beginning at 7:00 a.m. on the 22nd day before the election, but no later than noon on the day following the election.¹⁰² In addition, for any county using electronic tabulating equipment, the processing of VBM ballots through such tabulating equipment may begin at 7:00 a.m. on the 22nd day before the election.¹⁰³

Effect of Proposed Changes

The bill requires the supervisor to post the names of the CCB members on his or her website upon the completion of the logic and accuracy test. In addition, the bill requires the CCB to include the names of the members of the CCB and of the alternates on the supervisor's website when they post the notice of time and place of the meeting 48 hours prior to the meeting.

candidacy of any candidate with opposition in the election being canvassed. If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissions shall appoint as a substitute a member of the board of county commissions who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. If the chair of the board of county commissioner is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. The chair of the board of county commissioners shall appoint a member of the board of county commissions as an alternate member of the canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member.

⁹⁷ S. 102.141(2)(a), F.S.

⁹⁸ *Id.*

⁹⁹ Ss. 102.141(2)(b)-(c), F.S.

¹⁰⁰ S. 102.141(2)(c), F.S.

¹⁰¹ *Id.*

¹⁰² S. 101.68(2)(a), F.S.

¹⁰³ *Id.*

Public inspection of ballots and election materials

Present Situation

Currently, official ballots and ballot cards received from election boards and removed from VBM ballot mailing envelopes must be open for public inspection or examination while in custody of the supervisor or CCB at any reasonable time, under reasonable conditions. However, no persons other than the supervisor and his or her staff or the CCB may handle any ballot or ballot card.

Effect of Proposed Changes

The bill requires a candidate, political party official, or political committee official, or designee thereof, to be granted reasonable access upon request to review or inspect ballot materials prior to canvassing or tabulation, including access to voter certificates, cure affidavits, corresponding comparison signatures, duplicate ballots, and corresponding originals. Before the supervisor begins comparing signatures on VBM voter certificates, the supervisor must publish notice of access required under the bill. During such review, the bill prohibits any person from making a copy of a signature. The bill also specifies that the supervisor must make voter certificates open to inspection.

Ballot duplication

Present Situation

If a VBM ballot is physically damaged so that it cannot be properly counted by the voting system's automatic tabulating equipment, a true duplicate copy of the damaged ballot is created in the presence of witnesses and substituted for the damaged ballot.¹⁰⁴

A duplicate ballot is also made of a VBM ballot containing an overvoted race or one in which every race is undervoted.¹⁰⁵ Upon request by a physically present candidate, a political party official, a political committee official, or an authorized designee must be allowed to watch the duplication process.¹⁰⁶ All duplicate ballots must be clearly labeled "duplicate," bear a serial number, which must be recorded on the defective ballot and be counted in lieu of the defective ballot.¹⁰⁷ After a ballot has been duplicated, the defective ballot is placed in an envelope, and the duplicate ballot is tallied with the other ballots for that precinct.¹⁰⁸

If there is no clear indication on the ballot that the voter has made a definite choice for an office or ballot measure, the elector's ballot must not be counted for those choices which are unclear but the ballot will not be invalidated as to those names or measures that are properly marked.¹⁰⁹

The automatic tabulating equipment may count VBM ballots if they are marked in a manner that will enable them to be properly counted by the equipment.¹¹⁰ The return printed by the automatic tabulation equipment to which has been added to the return of write-in, VBM, and manually counted votes and votes from provisional ballots, constitutes the official return upon certification by the CCB.¹¹¹ Upon the completion of the count, the returns are made available to the public.¹¹² A copy of the returns may be posted at the

¹⁰⁴ S. 101.5614(4)(a), F.S.

¹⁰⁵ *Id.* The mandate includes any blank ballot, a duplication for which would be meaningless. An undervoted race is carefully scrutinized in a manual recount, s. 102.166, F.S.

¹⁰⁶ S. 101.5614(4)(b), F.S.

¹⁰⁷ S. 101.5614(4)(b), F.S.

¹⁰⁸ *Id.*

¹⁰⁹ S. 101.5614(5), F.S.

¹¹⁰ S. 101.5614(6), F.S.

¹¹¹ S. 101.5614(7), F.S.

¹¹² *Id.*; If anyone releases the results of the election prior to the closing of polls they commit a third degree felony. S. 101.5614(8), F.S.

central counting place or at the supervisor's office in lieu of the posting of returns at individual precincts.¹¹³ Additionally, during an automatic recount, the CCB must put each marksense ballot through the automatic tabulating equipment and determine whether the returns correctly reflect the votes cast.¹¹⁴ If any marksense ballot is physically damaged so that the automatic tabulating equipment cannot properly count it during the recount, a duplicate is made.¹¹⁵

Effect of Proposed Changes

The bill requires the duplication process to happen in an open and accessible room where the process can be observed. The bill clarifies that a duplicate of an overvoted race must only be made if there is a clear indication on the ballot that the voter made a definite choice in a race or on a ballot measure. The bill removes a mandate that a ballot in which all races are undervoted must be duplicated. A duplicate may be made of a ballot containing an undervoted race or ballot measure if there is a clear indication on the ballot that the voter has made a definite choice in the undervoted race or ballot measure. A duplicate may not be made if the voter's intent in such a race or measure is not clear. The bill provides that an observer witnessing the duplication process must be allowed to see the markings on each ballot and the duplication process taking place. The bill requires the duplication process to happen in the presence of at least one canvassing board member.

If there is a reasonable objection to a duplication, the ballot must be presented to the CCB for a determination on the validity of the duplicate. The CCB must document the serial number in the CCB minutes. The CCB must decide whether the duplication is valid. If the duplicate ballot is determined to be valid, it must be counted. If the duplicate is determined to be invalid, then the ballot must be rejected and a proper duplicate ballot must be made and counted in lieu of the original.

Precinct level election results and live voter turnout

Present Situation

Within 30 days following the certification of the election results by the Elections Canvassing Commission,¹¹⁶ supervisors are required to collect and submit to DOS precinct-level election results.¹¹⁷ 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.¹¹⁸ The results must also contain subtotals for each candidate and ballot type, unless fewer than 30 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.¹¹⁹ After DOS has received the results, it must make the information available, through its website, on a searchable, sortable, and downloadable database.¹²⁰

Effect of Proposed Changes

The bill clarifies that only those precincts having fewer than 30 voters voting on the ballot type or in the precinct are not to be reported in the results. The bill requires the supervisor to post on his or her website live voter turnout information once per hour on election day. The supervisor must transmit that data to the Division, which must create and maintain a real-time statewide turnout dashboard on its website.

¹¹³ S. 101.5614(7), F.S.

¹¹⁴ S. 102.141(7)(a), F.S.

¹¹⁵ *Id.*

¹¹⁶ 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. S. 102.111, F.S.

¹¹⁷ S. 98.0981(2)(a), F.S.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ S. 98.0981(2)(b), F.S.

Poll watchers

Present Situation

Currently, a political party, political committee, and a candidate who requests to have poll watchers, must designate in writing such watchers for each polling room prior to noon of the second Tuesday preceding the election.¹²¹ Poll watchers may observe the election process and may challenge the right of a person to vote in that county.¹²² Designations for early voting must be in writing to the supervisor on a form prescribed by the Division and received by the supervisor at least two weeks before early voting begins. Supervisors have one week in which to approve such designations.¹²³ The supervisor must furnish a list of such designees and the polling room or early voting area for which they were approved to the election board.¹²⁴ Each party, committee, and candidate may have one watcher for each polling room or early voting area at any one time during the election.¹²⁵ Poll watchers are allowed to enter and watch polls in all polling rooms and early voting areas within a county in which they have been designated, so long as the number of poll watchers at any particular polling place does not exceed the total number allowed.¹²⁶ The supervisor must provide each designated poll watcher, no later than seven days before early voting begins, a poll watcher identification badge, which must be worn while in the polling room or early voting area.¹²⁷

Effect of the Proposed Changes

The bill requires the badge provided to each poll watcher be no larger than three inches by five inches and may not identify the candidate, party, or political committee that designated the poll watcher. The bill removes the requirement that a supervisor provide the badge no later than seven days before early voting begins.

State election administration

Present Situation

Electronic or Electromechanical Voting Systems

A “voting system” is a method of casting and processing votes that consists of electromechanical components and, in most instances, utilizes marksense ballots.¹²⁸ The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system’s operation.¹²⁹ An “electronic or electromechanical voting system” means a system of casting votes by use of voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment.¹³⁰

DOS must approve all electronic or electromechanical voting systems used in Florida elections.¹³¹ The Electronic Voting Systems Act¹³² in the Florida Election Code prescribes the general standards for the approval of voting systems; DOS rules further detail the complex, technical certification requirements.¹³³

¹²¹ S. 101.131(2), F.S.

¹²² Ss. 101.131(1) and 101.111, F.S.

¹²³ S. 101.131(2), F.S.

¹²⁴ *Id.*

¹²⁵ S. 101.131(1), F.S.

¹²⁶ S. 101.131(4), F.S.

¹²⁷ S. 101.131(5), F.S.

¹²⁸ S. 97.021(46), F.S.

¹²⁹ *Id.*

¹³⁰ S. 101.5603(4), F.S.

¹³¹ Ss. 101.5605 and 101.5606, F.S.

¹³² Ss. 101.5601 – 101.5614, F.S., are referred to as the Electronic Voting Systems Act. S. 101.5601, F.S.

¹³³ *Id.*; see Florida Division of Elections, Bureau of Voting Systems Certification, Form DS-DE 101 (eff. Jan. 12, 2005) (incorporated by reference, Rule 1S-5.001, F.A.C.) (66-page *Florida Voting System Standards* document containing

The certification process tests the reliability of both the hardware and software components of the voting system to make sure it meets rigorous standards. DOS must approve or disapprove any voting system submitted to it within 90 days after the date of its initial submission.¹³⁴

Logic and Accuracy Test

Once approved by DOS, the electronic voting systems must be publicly tested to ascertain whether the equipment will correctly count the votes cast.¹³⁵ The supervisor must give public notice of the testing at least 48 hours before it begins.¹³⁶ Each member of the CCB must convene and certify the results of the test.¹³⁷ The date the test must be conducted is tied to the start of early voting; it must be conducted no earlier than 25 days before the early voting period begins.¹³⁸ Current law provides a mandatory early voting period, during which a supervisor must offer early voting, and a discretionary early voting period, during which a supervisor may offer early voting. The mandatory period begins on the 10th day before an election and ends on the third day before an election.¹³⁹ The discretionary period extends the early voting period to begin as early as the 15th day before an election and as late as the second day before an election.¹⁴⁰

Effect of Proposed Changes

The bill extends the timeframe that DOS has for approving electronic voting systems from 90 days to 120 days. The bill allows the CCB to begin the canvassing of VBM ballots immediately upon the completion of the logic and accuracy test. Thus, the CCB will be able to begin canvassing VBM ballots as early as 40 days prior to Election Day.

Private grants

Present Situation

There is no provision in law to address the acceptance of grants or donations from private or nongovernmental agencies.

Effect of Proposed Changes

The bill prohibits any agency, state, or local official responsible for conducting elections from soliciting, accepting, using, or disposing of any donation in the form of money, grants, property, or personal services from an individual or a nongovernmental entity for the purpose of funding election-related expenses or voter education, voter outreach, or registration programs. However, the bill specifies that it does not prohibit the donation and acceptance of space to be used for a polling room or early voting location.

Retention of records

Present Situation

technical requirements for certification), available at <http://dos.myflorida.com/media/693718/dsde101.pdf>, (last visited Feb. 3, 2021).

¹³⁴ S. 101.5605(2)(d), F.S.

¹³⁵ S. 101.5612, F.S. This type of testing is often referred to as logic and accuracy testing.

¹³⁶ S. 101.5612(2), F.S.

¹³⁷ *Id.*

¹³⁸ 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. S. 97.021(9), F.S. Early voting must begin on the 10th day before an election and end on the third day before the election. S. 101.657(1)(d), F.S. additionally, a supervisor may choose to have early voting on the 15th, 14th, 13th, 12th, 11th, and second day before an election. *Id.*

¹³⁹ S. 101.657(1)(d), F.S.

¹⁴⁰ *Id.*

Under Florida law, the retention of election materials is governed by the schedule approved by the Division of Library and Information Services within DOS.¹⁴¹ All ballots, forms, and other election materials must be retained in the custody of the supervisor in accordance with the schedule approved by the Division of Library and Information Services.

Federal law requires every election officer to retain and preserve all election materials for 22 months.¹⁴²

Effect of Proposed Changes

The bill conforms Florida law to the federal law regarding the length of time election records are required to be retained. The new provision requires records to be retained for a minimum of 22 months and in accordance with the schedule approved by the Division of Library and Information Services.

Post-election reports

Present Situation

The CCB or the board certifying the election is required to conduct a post-election audit and submit a report to DOS. Immediately after the certification of each election, the CCB or the local board responsible for certifying the election must conduct a manual audit or an automated audit of the voting systems used in select random precincts.¹⁴³ The manual audit consists of counting all the ballots in one race in not more than 2 percent of precincts.¹⁴⁴ The automated audit consists of 20 percent of random precincts.¹⁴⁵ The CCB is required to post a notice of the audit, including the date, time, and place, in four conspicuous places in the county and on the home page of the county supervisor's webpage.¹⁴⁶ The CCB or board certifying the election must submit this report to DOS within 15 days after the audit is completed.¹⁴⁷

The supervisor is also required to submit an undervote/overvote report to DOS no later than December 15 of each general election year. The report must include the total number of overvotes and undervotes in the President and Vice President, Governor and Lieutenant Governor, or race that appears first on the ballot.¹⁴⁸ DOS submits a report on the overvotes and undervotes to the Legislature by January 31 of the year following the general election.¹⁴⁹

¹⁴¹ S. 101.545, F.S.; see General Records Schedule GS1-SL, available at [https://www.flrules.org/gateway/readRefFile.asp?refId=12098&filename=GS1-SL%20\(2020\)%20Final.pdf](https://www.flrules.org/gateway/readRefFile.asp?refId=12098&filename=GS1-SL%20(2020)%20Final.pdf) (last visited Apr. 15, 2021).

¹⁴² 52 U.S.C. § 20701.

¹⁴³ S. 101.591(1), F.S.

¹⁴⁴ S. 101.591(2)(a), F.S.

¹⁴⁵ S. 101.591(2)(b), F.S.

¹⁴⁶ S. 101.591(3), F.S.

¹⁴⁷ S. 101.591(5), F.S.

¹⁴⁸ S. 101.595(1), F.S.

¹⁴⁹ S. 101.595(3), F.S.

Effect of Proposed Changes

The bill consolidates the post-election audit report and the undervote/overvote report into one report, and requires the CCB or supervisor to submit the report to DOS by December 15 following the election. The bill also extends the deadline for DOS to submit the overvote/undervote report to the Legislature from January 31 to February 15.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could have a negative fiscal impact on local government expenditures. The fiscal impacts on supervisors is indeterminate and cannot be quantified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.