

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 7061 PCB PIE 22-03 Elections

**SPONSOR(S):** Appropriations Committee, Public Integrity & Elections Committee, Perez and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Public Integrity & Elections Committee	12 Y, 6 N	Roy	Rubottom
1) Appropriations Committee	18 Y, 10 N, As CS	Hicks	Pridgeon

### SUMMARY ANALYSIS

CS/HB 7061 adds new election security provisions, reforms voter registration list maintenance activities, and directs the Department of State (Department) to study and report by January 1, 2023, on a plan to use identification numbers for Vote-by-Mail voter certificates and ballot validation.

The elections security provisions:

- Create a new election security office in the Department of State (Department) to investigate violations of election laws and rules;
- Limit governor-appointed special officers to 10 FDLE officers, with at least one per FDLE region;
- Clarify that special officers are not permitted in polling locations without consent of election officials;
- Impose criminal penalties on persons with access to certain information during election canvassing who release votes cast or other election results early;
- Reclassify three election related misdemeanors to felonies; and
- Increase the aggregate fine that may be levied in a year against third-party voter registration organizations (3PVRO) for violations relating to mishandling registration applications.
- Impose a \$1,000 fine on a 3PVRO, when its agent is convicted of altering a registration application without the applicant's consent.

The registration list maintenance reforms:

- Specify additional list maintenance program requirements;
- Require inactive voters to confirm residence address when appearing to vote, conforming identification requirements at polling places; and
- Increase the information officials may access in order to confirm voter eligibility.

CS/HB 7061 also:

- Extends a nonprofit organization donation prohibition to include litigation costs of election offices.
- Requires Supervisors of Election to keep all valid and invalid initiative petition signature forms for 1 year, and to catalog and publish regular counts.
- Clarifies responsibilities of Attorney General and Financial Impact Estimating Conference when initiative petition fails to qualify for the ballot for a general election.
- Expands time allowed for mail voting and canvassing in local mail ballot referendum elections;
- Expands time allowed for assisted voting at certain residential institutions;
- Creates a new law to prohibit ranked-choice voting.
- Requires a subset of county commissioners elected in single member districts to run for re-election following decennial redistricting.

The bill has a significant fiscal impact on the Department, FDLE, and SOEs. HB 5001, the proposed House of Representatives General Appropriations Act for FY 2022-23, provides contingent appropriations based on this bill's provisions. See Fiscal Analysis for additional details.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Elections Security**

##### Officers Enforcing Election Laws

###### *Present Situation*

Sheriffs must exercise strict vigilance in the detection of any violations of the election laws and in the apprehending of violators. The Governor may appoint special officers to investigate alleged violations of the election laws, when it is deemed necessary to see that violators of the election laws are apprehended and punished.<sup>1</sup> This latter provision is in keeping with the Governor's constitutional responsibility to see that the laws are faithfully executed.<sup>2</sup>

The Elections Commission must consider all sworn complaints filed with it and all matters reported to it by the Division of Elections (Division) within the Department of State (Department).<sup>3</sup> The Elections Commission's investigative jurisdiction extends to the campaign finance laws and violation of most Florida Election Code crimes.<sup>4</sup>

Notwithstanding their law enforcement responsibilities, no sheriff, deputy sheriff, police officer, or other officer of the law is allowed within a polling place without permission from the clerk<sup>5</sup> or a majority of the inspectors, except to cast his or her own ballot. Upon the failure of any of said officers to comply with this provision, the clerk or the inspectors or any one of them may have the officer arrested.<sup>6</sup>

The Florida Department of Law Enforcement (FDLE) is headed by the Governor and Cabinet. The executive director of FDLE, appointed by the Governor with approval of three members of the Cabinet, serves at the pleasure of the Governor and Cabinet, and may establish command, operational, and administrative services to assist, manage, and support operating programs and services such as criminal investigations, information programs, and professional programs.<sup>7</sup> The Governor has no direct authority over FDLE or its special officers. FDLE operates seven regional offices:

- Ft. Myers
- Jacksonville
- Miami
- Orlando
- Pensacola
- Tallahassee
- Tampa Bay

A number of field offices operate under the regional offices.

The Department administers and oversees the elections laws. It has authority to ensure enforcement of the laws and implementing rules. The Secretary of State (Secretary) is the chief elections officer of the state with responsibility to conduct preliminary investigations into allegations of irregularities or fraud involving voter registration or voting, or candidate or issue petition activities other than campaign finance violations.<sup>8</sup> In 2021, the Secretary testified before the Public Integrity & Elections Committee and stated that tips on election fraud or irregularities are ordinarily referred to the local supervisors of

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<sup>1</sup> Ss. 102.091(1) and 102.091(2), F.S.

<sup>2</sup> S. 1, Art. IV, Fla. Const.

<sup>3</sup> S. 106.26(1), F.S.

<sup>4</sup> S. 106.25(1), F.S. (Jurisdiction includes violations of chapters 104 and 106, F.S.)

<sup>5</sup> The clerk is in charge of, and responsible for, seeing that the election board carries out its duties and responsibilities. S. 102.012, F.S.

<sup>6</sup> S. 102.101, F.S.

<sup>7</sup> S. 20.201, F.S.

<sup>8</sup> S. 97.012(15), F.S.

elections (SOEs).<sup>9</sup> The Department maintains a voter fraud hotline with an associated website advising that it is a felony to knowingly and willfully make false statements in any matter within the jurisdiction of the Department.<sup>10</sup>

### *Effect of Proposed Changes*

CS/HB 7061 creates the Office of Election Crimes and Security in the Department. The Secretary must appoint a director and the office must employ non-sworn officers to review notices and reports generated by government officials or other persons, and to review complaints, initiate independent inquiries and conduct preliminary investigations into alleged violations of the Florida Election Code or any rule adopted pursuant thereto and any election irregularities.<sup>11</sup> The jurisdiction of the investigators extends to all violations of the Florida Election Code, which includes campaign finance crimes.

The office must oversee the Department's voter fraud hotline. The office is also required to report, by January 15 of each year, on complaints it has received, detailing its investigations and providing the number of complaints forwarded to special officers employed by FDLE. The report must include the current status of all matters investigated.

The bill requires the Governor, in consultation with the executive director of FDLE, to designate at least one special officer, who must be a sworn special agent employed by FDLE, for each FDLE operational region of the state. The bill provides that the special officers serve as dedicated investigators of alleged violations of the election laws and clarifies that such officers are not permitted in polling locations without consent of election officials. Appointment as a special officer does not preclude a sworn investigator from conducting other investigations of alleged violations of law, provided that such other investigations do not hinder or interfere with the special officer's ability to investigate alleged violations of the Florida Election Code.

### Ballot Duplication Observers; Private Inspection and Review of Ballot Materials

#### *Present Situation*

A ballot duplication must be made if a vote-by-mail (VBM) ballot is damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, or of a VBM ballot containing an overvoted or undervoted race if there is a clear indication on the ballot that the voter has made a definite choice on the ballot. A duplicate must be made in an open and accessible room in the presence of witnesses and substituted for the damaged ballot. A duplicate may not include a vote if the voter's intent in such race or on such measure is not clear. Certain interested parties must be allowed to observe the duplication of ballots.<sup>12</sup>

In addition, certain interested parties are authorized to inspect and review ballot materials including duplicate ballots during the voting period.<sup>13</sup>

Any election official who releases the results of any election prior to the closing of the polls in that county on election day commits a felony of the third degree.<sup>14</sup> No similar penalty applies to unofficial observers of the duplication process or those inspecting or reviewing ballot materials.

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<sup>9</sup> House video archive of Feb. 9, 2021, committee meeting, found at <https://www.myfloridahouse.gov/VideoPlayer.aspx?eventID=6711> (last visited Feb. 3, 2022).

<sup>10</sup> <https://dos.myflorida.com/elections/contacts/elections-fraud-complaint/> (last visited Feb. 3, 2022).

<sup>11</sup> Black's Law Dictionary (11th ed. 2019). Irregularity in the context of the bill consists of omitting to do something that is necessary for the due and orderly conduct of a matter, or doing it in an improper manner. It would include violations of Department rules and other non-criminal official misfeasance and neglect of duty.

<sup>12</sup> S. 101.5614(4)(a), F.S.

<sup>13</sup> S. 101.572(2), F.S.

<sup>14</sup> S. 101.5614(8), F.S.

## *Effect of Proposed Changes*

The bill requires persons authorized to observe the duplication of ballots to sign an affidavit affirming his or her acknowledgement that disclosure of election results discerned from the observation process while the election is ongoing is a felony. The bill adds those observers, as well as non-officials authorized to review and inspect ballot materials, to the list of persons subject to criminal sanction for early release of voting results.

### Ballot Harvesting; Initiative Petition Violations

#### *Present Situation*

Presently, it is a misdemeanor of the first degree for any person to distribute, order, request, collect, deliver, or otherwise physically possess more than two VBM ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member. Exceptions include supervised voting at assisted living facilities and nursing home facilities.<sup>15</sup> “Immediate family” means a person’s spouse or the parent, child, grandparent, grandchild, or sibling of the person or the person’s spouse.<sup>16</sup>

Two forms of petition fraud are presently misdemeanors of the first degree: knowingly signing a petition or petitions for a candidate, a minor political party, or an issue more than one time; and signing another person’s name or a fictitious name to any petition to secure ballot position for a candidate, a minor political party, or an issue.<sup>17</sup>

It is also a misdemeanor of the first degree to compensate a petition circulator based on the number of petition forms gathered. Employment relationships that do not base payment on the number of signatures collected are not prohibited.<sup>18</sup>

#### *Effect of Proposed Changes*

CS/HB 7061 makes the act of distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two VBM ballots per election a felony of the third degree. The bill provides that such a violation is punishable as a level one violation on the offense severity ranking chart.<sup>19</sup>

The bill also makes the following acts felonies of the third degree:

- Knowingly signing more than one ballot or signing another person’s name on a ballot,
- Signing another person’s name or a fictitious name to a petition, and
- Compensating a petition circulator, other than employment relationships that do not base payment on the number of signatures collected.

### Registration Violations of Third-Party Voter Registration Organizations

#### *Present situation*

Third-party voter registration organizations (3PVROs) that collect voter registration applications are regulated by law and such organizations serve as a fiduciary to the applicant. They must ensure that any voter registration application entrusted to the organization, irrespective of party affiliation, race, ethnicity, or gender, is promptly delivered to the Division or the SOE in the county in which the applicant resides within 14 days after the application was completed by the applicant, but not after registration closes for the next ensuing election.<sup>20</sup>

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<sup>15</sup> S. 104.0616, F.S.

<sup>16</sup> S. 104.0616(2), F.S.

<sup>17</sup> S. 104.185, F.S.

<sup>18</sup> S. 104.186, F.S.

<sup>19</sup> S. 921.0022(3), F.S.

<sup>20</sup> S. 97.0575(3)(a), F.S.

3PVROs must notify applicants at the time the application is collected that the organization might not deliver the application to the Division or the SOE in the county in which the applicant resides in less than the specified time and must advise the applicant that he or she may deliver the application in person or by mail. The 3PVRO must also inform the applicant of how to register online with the Division and how to determine whether the application has been delivered. If a voter registration application collected by any 3PVRO is not promptly delivered to the Division or SOE in the county in which the applicant resides, the 3PVRO is subject to monetary fine.<sup>21</sup>

Current fines that may be levied against the 3PVRO include the following:

- A fine in the amount of \$50 for each application received by the Division or the SOE in the county in which the applicant resides more than 14 days after the applicant delivered the completed voter registration application to 3PVRO or any person, entity, or agent acting on its behalf. A fine in the amount of \$250 for each application received if the 3PVRO or person, entity, or agency acting on its behalf acted willfully.
- A fine in the amount of \$100 for each application collected by a 3PVRO or any person, entity, or agent acting on its behalf, before book closing for any given election for federal or state office and received by the Division or the SOE in the county in which the applicant resides after the book-closing deadline for such election. A fine in the amount of \$500 for each application received if the 3PVRO or person, entity, or agency acting on its behalf acted willfully.
- A fine in the amount of \$500 for each application collected by a 3PVRO or any person, entity, or agent acting on its behalf, which is not submitted to the Division or SOE in the county in which the applicant resides. A fine in the amount of \$1,000 for any application not submitted if the 3PVRO or person, entity, or agency acting on its behalf acted willfully.

The aggregate of all fines which may be assessed against a 3PVRO, including affiliated organizations, for all violations committed in a calendar year is limited to \$1,000.<sup>22</sup>

### *Effect of Proposed Changes*

CS/HB 7061 raises the aggregate fine for all violations that may be assessed against a 3PVRO and affiliated organization in a calendar year from \$1,000 to \$50,000. The bill leaves the penalty for each offense unchanged. To reach the cap, an organization would have to be responsible, for example, for filing 200 applications too late for the applicants to vote in an election.

The bill also creates a new fine of \$1,000 for a 3PVRO per altered application when a person collecting applications on behalf of the 3PVRO is convicted of altering voter registration application(s) without the applicant's knowledge and consent.<sup>23</sup>

## **Voter Registration List Maintenance**

### *Present Situation*

SOEs, the Department, and other public agencies have responsibilities relating to the maintenance of the integrity and accuracy of all voter registration information in the statewide voter registration system.<sup>24</sup> Each SOE must conduct a general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records in the statewide voter registration system. Voter list maintenance responsibilities are assigned by law to the various agencies and officers. All list maintenance activities must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at (3)(a)1, (3)(a)2, and (3)(a)3.

<sup>23</sup> S. 104.012(4), F.S., a third-degree felony.

<sup>24</sup> The statewide voter registration system is established in s. 98.035, F.S.

Registration Act of 1993, and the Help America Vote Act of 2002. The term “nondiscriminatory” applies to and includes persons with disabilities.<sup>25</sup>

In 2020, more than 80,000 VBM ballots were returned as undeliverable by the post office.<sup>26</sup> Over 1.1 million VBM ballots were provided but never returned by voters, representing more than 20 percent of all VBM ballots provided.<sup>27</sup> Given the unusually high voter turnout in 2020, a 20% non-use of requested VBM ballots is an indication that many of those ballots did not reach the requesting voter. A significant number of those 1 million unreturned ballots were likely accepted at addresses no longer inhabited by the voter addressed. Some number of those ballots were returned illegally by persons other than the requesting voter. Thus, maintaining accurate voter addresses is critical to many voters’ access to their ballots. Current legal residence addresses are critical to limiting votes cast in legislative and local districts by residents not entitled to vote in those elections.

The registration list maintenance program must be conducted by each SOE, at least each odd-numbered year, and must be completed no later than 90 days prior to the date of any federal election. All list maintenance actions associated with each voter must be entered, tracked, and maintained in the statewide voter registration system.<sup>28</sup>

The program must include one of the following methods of identifying residence changes of voters:

- National change-of-address information supplied by the United States Postal Service through its licensees and used to identify registered voters whose addresses might have changed (NCOA verification);
- Address change information as identified from returned nonforwardable, return-if-undeliverable mail sent to all registered voters in the county; or
- Address change as identified from returned nonforwardable, return-if-undeliverable address confirmation requests mailed to all registered voters who have not voted in the last 2 years and who did not make a written request that their registration records be updated during that time (Address Confirmation Request).<sup>29</sup>

In addition to the required biennial program, SOEs must also act on information received from sources indicating that a voter’s legal residency might have changed. If the SOE receives such information, the SOE must change the registration records to reflect the new address and send the voter an address change notice. If the changed address of the voter is out of state, then an address confirmation final notice to the voter must be sent. Voters who have been sent an address confirmation final notice and who have not returned it within 30 days are designated inactive by the SOE. An inactive voter status may be restored upon the voter updating his or her registration, or by voting in the second general election after being placed on the inactive list. If the voter has not restored his or her registration before then, he or she must be removed from the voter registration system. The voter may then restore their registration status only by reregistration.<sup>30</sup>

Finally, by July 31 and January 31 of each year, the SOE must certify to the Department the list of maintenance activities conducted during the first 6 months and the second 6 months of the year, respectively, including the number of voters designated as inactive and the number of voters removed from the statewide voter registration system. If the Department determines that a SOE has not conducted the list maintenance activities required, the Department must conduct the appropriate list maintenance activities for that county. Failure to conduct list maintenance activities constitutes a neglect of duty.<sup>31</sup>

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<sup>25</sup> Ss. 98.065(1) and 98.075(1), F.S.

<sup>26</sup> Supervisor Survey Responses available at the Public Integrity & Elections Committee Office.

<sup>27</sup> Division of Elections archived vote-by-mail statistics found at <https://fdoswebumbracoprod.blob.core.windows.net/media/703948/gen-2020.pdf> (last visited Feb. 3, 2022).

<sup>28</sup> S. 98.065, F.S.

<sup>29</sup> S. 98.065(2), F.S.

<sup>30</sup> S. 98.065(4), F.S.

<sup>31</sup> S. 98.065(6), F.S.

The Department must prescribe three registration list maintenance forms to be used by the SOE. First, an address confirmation request that must contain the voter's name and address of legal residence as shown on the voter registration record; and a request that the voter notify the SOE if either the voter's name or address of legal residence is incorrect. Second, an address change notice that must be sent to newly recorded voter addresses seeking confirmation or correction of an address change based on information from sources other than the voter. Finally, an address confirmation final notice that must be sent to voters believed to have moved out of state and are subject to classification as inactive and subsequent removal from the registration list.<sup>32</sup>

The Department supports the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records. The Department's responsibilities include identification of duplicate voter registrations, deceased persons, adjudication of mental incapacity, felony convictions, and other bases of ineligibility.<sup>33</sup>

The Department is a member of the Election Registration Information Center, a non-governmental entity whose sole purpose is to exchange and verify information in order to verify voter information. As of 2020, 29 states and the District of Columbia participated. Florida's participation with the center supplements its information gathering responsibilities.<sup>34</sup>

The Department identifies those registered voters who are deceased by comparing information received from either the Department of Health or the U.S. Social Security Administration, including, but not limited to, any master death file or index compiled by the Social Security Administration. Upon receipt of such information through the statewide voter registration system, or upon receipt of a copy of a death certificate issued by a governmental agency authorized to issue death certificates, the SOE must remove the name of the deceased registered voter from the statewide voter registration system within 7 days.<sup>35</sup>

The Department also identifies registered voters who have been convicted of a felony whose voting rights have not been restored by comparing information from a clerk of the circuit court, the Board of Executive Clemency, the Department of Corrections, FDLE, or a United States Attorney's Office. The Department must make the initial determination as to the credibility of the information. If the information is credible, the Department must notify the SOE, providing supporting documentation of the potential ineligibility of the voter. The SOE, upon assessing credibility, must adhere to the procedures for removal prior to removing a registered voter's name from the statewide voter registration system.<sup>36</sup>

State law requires the Department of Health and certain public safety agencies to furnish information to elections offices relating to deceased persons, persons adjudicated mentally incapacitated, and persons convicted of a felony. To the maximum extent feasible, state and local government agencies must provide certain information and access to data to the Department, including, but not limited to, databases that contain reliable criminal records and records of deceased persons. State and local government agencies that provide such data must do so without charge if the direct cost incurred by those agencies is not significant.<sup>37</sup>

The Department of Health furnishes monthly to the Department a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older. Each clerk of the circuit court furnishes monthly a list of those persons who have been adjudicated mentally incapacitated with respect to voting during the preceding calendar month, a list of those persons whose mental capacity with respect to voting has been restored during the preceding calendar month, and a list of those persons who have returned signed jury notices during the preceding months to the clerk of the circuit court indicating a change of address. Each list must include the name,

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<sup>32</sup> S. 98.0655(1), F.S.

<sup>33</sup> S. 98.075(1), F.S.

<sup>34</sup> Election Registration Information Center, *Statistics*, <https://ericstates.org/statistics/>.

<sup>35</sup> S. 98.075(3), F.S.

<sup>36</sup> S. 98.075(5), F.S.

<sup>37</sup> S. 98.093(1)-(2), F.S.

address, date of birth, race, sex, and, if available, the Florida driver license number, Florida identification card number, or social security number of each such person.<sup>38</sup>

Upon receipt of felony conviction information from a United States Attorney, the Department must identify registered voters or applicants for voter registration who may be potentially ineligible. The FDLE must timely identify persons who have been convicted of a felony who appear in the voter registration records supplied by the statewide voter registration system. The Florida Commission on Offender Review must furnish specified clemency information on individuals on at least a bimonthly basis. The Department of Corrections must timely identify those persons who have been convicted of a felony and committed to its custody or placed on community supervision.<sup>39</sup>

In addition to clemency proceedings, Florida law provides for the restoration of voting rights of most convicted felons once they have completed the terms of their sentence.<sup>40</sup>

The Department of Highway Safety and Motor Vehicles (DHSMV) must furnish a monthly list to the Department of those persons whose names have been removed from the driver license database because they have been licensed in another state. The list must contain the name, address, date of birth, sex, social security number, and driver license number of each such person.<sup>41</sup>

SOEs are not limited or restricted from removing other names of persons from the statewide voter registrations system based on information received from sources not specified in statute.<sup>42</sup>

DHSMV must provide the opportunity to register to vote or to update a voter registration record to each individual who comes to an office of that department to apply for or renew a driver license, apply for or renew an identification card, or change an address on an existing driver license or identification card.<sup>43</sup>

DHSMV must also assist the Department in regularly identifying changes in a residence address on the driver license or identification card of a voter. The Department must report each such change to the appropriate SOE who must, in turn, change the voter's registration records.<sup>44</sup>

In administering the Florida driver license and Florida identification card programs, DHSMV is authorized to issue licenses and identification cards to Florida residents who are not U.S. citizens who show a green card, a Consular Report of Birth Abroad, an unexpired employment authorization card issued by the U.S. Department of Homeland Security (USDHS), or proof of nonimmigrant classification provided by USDHS such as a notice of hearing from an immigration court.<sup>45</sup> Many of the licenses and identification cards issued on such documentation are valid for a year or less.<sup>46</sup>

When verifying the identity of a voter at a polling place a picture identification card must be presented and the voter's signature on the precinct register must be compared to the signature on the picture identification, or another identification that includes the individual's signature. The address appearing on the identification may not be used as a basis to confirm an elector's legal residence or otherwise challenge an elector's legal residence. If the address on the picture identification matches the voter's address in the registration records, the voter may not be asked to provide additional information or verify his or her home address.<sup>47</sup>

### *Effect of Proposed Changes*

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<sup>38</sup> S. 98.093(2), F.S.

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

<sup>40</sup> S. 98.0751, F.S., implementing s. 4(a) and (b), art. IV, Fl. Const.

<sup>41</sup> S. 98.093(2)(g), F.S.

<sup>42</sup> Ss. 98.075(6) and 98.093(3), F.S.

<sup>43</sup> S. 97.057(1), F.S.

<sup>44</sup> S. 97.057(13), F.S.

<sup>45</sup> Ss. 322.08(2)(c)5.-8. and 322.051(1)(a)3.f.-h., F.S.

<sup>46</sup> Ss. 322.08(2)(c) and 322.051(1)(a)3., F.S.

<sup>47</sup> S. 101.043(1), F.S.



CS/HB 7061 revises the list maintenance program provisions, effective January 1, 2023, to require the SOE to incorporate the following:

- Annually identify change of address information using either NCOA verification or nonforwardable mail directed to each voter in the county.
- In each odd-numbered year in which direct mail to all voters is not used, address confirmation requests must be mailed to all registered voters who have not voted in the preceding 2 general election cycles;

Effective January 1, 2023, address confirmation requests sent pursuant to the above requirements must be addressed to the voter's address of legal residence (not including voters temporarily residing outside the county and registered in the precinct designated by the supervisor<sup>48</sup>). If a request is returned as undeliverable, any other notification sent to the voter must be addressed to the voter's mailing address on file, if any.

Effective January 1, 2023, if a required address confirmation request or any other mail is returned undeliverable, without indication of an address change, the Supervisor must send an address confirmation request final notice to all addresses on file for the voter. If the return form accompanying the final notice is not returned, the voter's name must be designated as inactive in the statewide voter registration system. Confirmation of the voter's address of legal residence is required when an inactive voter updates his or her registration, requests a VBM ballot or appears to vote.<sup>49</sup>

CS/HB 7061 revises forms used in required list maintenance activities. An address confirmation request must include information about updating voter information through the online voter registration system. When an address confirmation request is required by statute, it must include a statement that if the voter has not changed his or her legal residence or has changed his or her legal residence within the state, the voter should return the form within 30 days after the date on which the notice was sent to the voter. Address confirmation final notices must be sent to a newly recorded address or to all addresses of record. It also must include notice that confirmation of residence address may be required prior to voting if a voter does not respond to the notice and is placed on the inactive list.

CS/HB 7061 adds DHSMV to the list of sources the Department can use to identify registered voters who are deceased. The bill also requires the clerk of the circuit court to provide monthly reports to the Department on the terms of sentences and financial obligations of all persons listed in the clerk's records who reside within this state and have been convicted of a felony. The information may be provided on the clerk's behalf through the Comprehensive Case Information System. The information must include:

- The full name, last know address, date of birth, race, sex, and if available, the Florida driver license number, Florida identification card number, and social security number of the person convicted;
- The amounts of all financial obligations, including restitution and court costs, fees, and fines, and, if known, the amount of financial obligations not yet satisfied;
- The County In which the conviction occurred;
- The statute number violated, statute table text, date of conviction, and case number.

In addition, DHSMV must provide a monthly report to the Department with a list of persons who presented evidence of non-United States citizenship upon being issued a new or renewed Florida driver license or Florida identification card. The list must contain the name, address, date of birth, social security number, if applicable; and Florida driver license number or Florida identification card number, as applicable, of each person.

### **Supervised Voting by Absent Electors Residing in Certain Facilities**

#### *Present Situation*

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<sup>48</sup> S. 101.045(1), F.S.

<sup>49</sup> 52 U.S.C. 20507(d)(2)(A) expressly authorizes affirmation or confirmation of address before an inactive voter is permitted to vote.

The Supervisor of Elections of a county must provide supervised voting for absent electors residing in any assisted living facility or nursing home within that county at the request of any administrator of such facility. Such requests must be made by submitting a written request to the supervisor of election no later than 21 days prior to the election for which that request is submitted. The request must specify the name and address of the facility and the name of the electors who wish to vote by mail in that election.<sup>50</sup>

### *Effect of Proposed Changes*

CS/HB 7061 changes the number of days assisted living facilities and nursing home must request supervised voting for absent electors prior to the election from 21 days to 28 days.

## **Vote by Mail Procedures**

### *Present Situation*

The SOE must enclose with each VBM ballot a mailing envelope which must be addressed to the SOE. The mailing envelope must also bear a certificate for the voter to sign under oath that they are a registered voter of the county in which they are voting and information regarding the penalty for fraud.<sup>51</sup> The ballot is placed in a secrecy envelope which is placed in the mailing envelope, which is sealed prior to the voter completing and signing the voter certificate.

A VBM ballot may only be counted if the signature on the certificate or cure affidavit matches the elector's signature in the registration books or precinct register. However, if a cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, the ballot may be counted if the elector has submitted a current and valid Tier 1 identification which confirms the identity of the elector.<sup>52</sup>

Tier 1 identification is any of the following current and valid identification that includes the voter's name and photograph: a Florida driver license; Florida identification card issued by DHSMV; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality.<sup>53</sup>

### *Effect of Proposed Changes*

CS/HB 7061 directs the Department to develop and report on a plan to prescribe the use of a Florida driver license number, Florida identification card number, social security The Department must review issues related to:

- Obtaining identification numbers for voters who do not have such numbers on file in the registration system;
- Populating those numbers into the voter registration records;
- Protecting the confidentiality of such numbers when used in voter certificates;
- Modifications needed to canvassing methods to verify identification numbers;
- Costs associated with such changes;
- Voter education advisable to implement such changes; and
- Adding residence address declarations to VBM requests.

The Department must make its report to the Legislature by January 1, 2023.

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<sup>50</sup> S. 101.655, F.S.

<sup>51</sup> S. 101.64(1), F.S.

<sup>52</sup> S. 101.68(2)(b), F.S.

<sup>53</sup> S. 101.68(4)(d)3a, F.S.

## Mail Ballot Election Act

### *Present Situation*

An election may be conducted by mail ballot if: the election is a referendum where all or a portion of the electors of counties, cities, school districts covering more than one county or special districts are the only electors eligible to vote; the governing body responsible for calling the election and the SOE authorize the use of mail ballots; and the Secretary approves a written plan for the conduct of the election, which shall include a written timetable for the conduct of the election, submitted by the SOE. In addition, an election may be conducted by mail for an annexation referendum which includes only qualified electors of one county.<sup>54</sup>

The SOE must mail all official ballots with a secrecy envelop, a return mailing envelope and instructions sufficient to describe the voting process, to each elector entitled to vote not sooner than the 20<sup>th</sup> day before the election and not later than the 10<sup>th</sup> day before the date of the election. They must be mailed by first class mail, and be addressed to each elector at the address appearing in the registration records and placed in an envelope clearly marked "Do Not Forward."

Upon receipt of the ballot, the elector shall mark the ballot and place it in the secrecy envelope, sign the return mailing envelope supplied with the ballot, and comply with the instructions provided with the ballot. The elector shall mail, deliver, or have delivered the marked ballot so that it reaches SOE no later than 7 p.m. on the day of the election. The ballot must be returned in the return mailing envelope.

If the ballot is destroyed, spoiled, lost, or not received by the elector, the elector may obtain a replacement ballot from the SOE. An elector seeking a replacement ballot shall sign a sworn statement that the ballot was destroyed, spoiled, lost, or not received and present such statement to the SOE prior to 7 p.m. on the day of the election. The SOE must keep a record of each replacement ballot.<sup>55</sup>

The SOE must verify the signature of each elector on the return mailing envelope with the signature on the elector's registration records. Such verification may commence at any time prior to the canvass of votes. The SOE shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. If the SOE determines that an elector to whom a replacement ballot has been issued has voted more than once, the canvassing board shall determine which ballot, if any, is to be counted.<sup>56</sup>

All laws that are applicable to general elections are applicable to mail ballot elections to the extent applicable.<sup>57</sup>

### *Effect of Proposed Changes*

CS/HB 7061 revises mail ballot procedures to conform to general election provisions regarding timeframes for distributing and canvassing mail ballots. The bill directs Supervisors to send ballots and instructions for mail ballot elections to all voters between 40 and 33 days before the date of the election. The bill authorizes canvassing boards to begin canvassing mail ballots upon completion of the public testing of tabulating equipment but no later than noon on the day following the election. A criminal penalty applies to the release of results before 7 p.m. on election day.

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<sup>54</sup> S. 101.6102, F.S.

<sup>55</sup> S. 101.6103(4), F.S.

<sup>56</sup> S. 101.6103(5), F.S.

<sup>57</sup> S. 101.6106, F.S.

## Miscellaneous Issues

### Private Funding Restrictions on Election Offices

#### *Present Situation*

After millions of dollars were donated to local election offices by politically motivated non-profit organizations during the 2020 election cycle, the Legislature enacted a prohibition in 2021. As a result, no agency, state, or local official responsible for conducting elections, including, but not limited to, a SOE, may solicit, accept, use, or dispose of any donation in the form of money, grants, property, personal services with the exception of the donation of space to be used for a polling room or an early voting site from an individual or a nongovernmental entity for the purpose of funding election-related expenses or voter education, voter outreach, or registration programs.<sup>58</sup>

#### *Effect of Proposed Changes*

CS/HB 7061 adds litigation costs related to election administration to the list of money, grants or personal services that cannot be solicited, accepted, or used by any agency, state or local official responsible for conducting elections.

### Initiatives

#### *Present Situation*

Proposed amendments to the Florida Constitution may be made by a joint resolution of the Florida Legislature, a citizen's initiative, a proposal from the Constitutional Revision Commission, or a proposal from the Taxation and Budget Reform Commission. A proposed amendment requires at least 3/5 (60%) approval from the voters to pass.

A revision or amendment proposed by initiative, except for those limiting the power of government to raise revenue, must embrace one subject matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively, and in the state as a whole in the last preceding election in which presidential electors were chosen.<sup>59</sup>

An initiative petition form circulated for signatures may not be bundled with or attached to any other petition. Each signature must be dated and be valid until the next February 1 occurring in an even-numbered year for the purpose of the amendment appearing on the ballot for the general election occurring in that same year, provided all other requirements of law are met.

The sponsor must submit signed and dated forms to the SOE for the county of residence listed by the person signing the form for verification of the number of valid signatures obtained. If a signature on a petition is from a registered voter in another county, the Supervisor shall notify the petition sponsor of the misfiled petition. The SOE must verify the signatures within 60 days after receipt of the petition forms along with a fee for the actual cost of signature verification incurred by the SOE. However, for petition forms submitted less than 60 days before February 1 of an even-numbered year, the SOE must verify the signatures within 30 days after receipt of the forms and fee. The SOE must promptly record, in the manner prescribed by the Secretary, the date each form is received by the SOE, and the date the signature on the form is verified as valid.<sup>60</sup>

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<sup>58</sup> S. 97.0291, F.S.

<sup>59</sup> Art. XI, Sec. 3.

<sup>60</sup> S. 100.371(11)(a), F.S.

The SOE must retain the petition forms for at least 1 year following the election in which the issue appeared on the ballot or until the division notifies the SOE that the committee that circulated the petition is no longer seeking to obtain ballot position.<sup>61</sup>

On the last day of each month, or on the last day of each week from December 1 of an odd-numbered year through February 1 of the following year, each SOE must post, on his or her website, the aggregate number of verified valid signatures and the distribution of such signatures by congressional district for each amendment proposed by initiative, along with the following information specific to the reporting period: the total number of signature forms received, the total number of signatures verified, the distribution of verified valid signatures by congressional district, and the total number of verified petition forms forwarded to the Secretary.

The Secretary must submit an initiative petition to the Attorney General if the sponsor has:

- Registered as a political committee;
- Submitted the ballot title, substance and text of the proposed revision or amendment to the Secretary; and
- Obtained a letter from the Division of Elections confirming that the sponsor has submitted to the appropriate supervisors for verification, and the supervisors have verified, forms signed and dated equal to 25 percent of the number of electors statewide in one-half of the congressional districts of the state.<sup>62</sup>

The Attorney General must, within 30 days after receipt an initiative petition from the Secretary, petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution,<sup>63</sup> whether the proposed amendment is facially invalid under the U.S. Constitution and the compliance of the proposed ballot title and ballot summary with Florida's ballot law.<sup>64</sup> The petition may enumerate any specific factual issues that the Attorney General believes would require a judicial determination. A copy of the petition to the court must be provided to the Secretary and the principle officer of the initiative sponsor, and any fiscal impact statement that the court finds not to be in accordance with current law must be remanded solely to the Financial Impact Estimating Conference for redrafting.<sup>65</sup>

At the same time the Secretary submits an initiative petition to the Attorney General, the Secretary must submit a copy of the initiative petition to the Financial Impact Estimating Conference (FIEC). Within 75 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary, the FIEC must complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments and the overall impact to the state budget resulting from the proposed initiative. The 75-day time limit is tolled when the Legislature is in session. The FIEC must submit the financial impact statement to the Attorney General and Secretary.<sup>66</sup>

### *Effect of Proposed Changes*

CS/HB 7061 amends the statute so that the SOE must retain all initiative petition signature forms, separating the valid and invalid ones, for at least 1 year following an election. The bill deletes authorization for the SOE to dispose of the signature forms if the Division gives notice that the committee circulating the petition is no longer seeking to obtain the ballot position. The bill requires that the SOE post the total number of signatures submitted, the total number of invalid signatures, and the total number of signatures processed along with the other information they are required to post on their website.

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<sup>61</sup> *Id.*

<sup>62</sup> S. 15.21, F.S.

<sup>63</sup> S. 3, Art. XI, Fl. Const. is the initiative provision and contains a single subject requirement.

<sup>64</sup> S. 101.161, F.S.

<sup>65</sup> S. 16.061, F.S.

<sup>66</sup> S. 100.371(13)(a), F.S.

The bill also requires that if the Secretary has submitted an initiative petition to the Attorney General but the validity of the signatures has expired before securing ballot placement, the Secretary must promptly notify the Attorney General. The Secretary may resubmit the initiative petition to the attorney general if the initiative petition is later circulated for placement on the ballot of a subsequent general election and the criteria is satisfied.

When the Attorney General is notified by the Secretary that an initiative petition no longer qualifies for ballot placement for an ensuing general election due to the invalid status of signatures, the Attorney General must withdraw his or her request for an advisory opinion if the Supreme Court has not yet fulfilled the request. If the Secretary subsequently resubmits the initiative petition if the criteria are again satisfied and the court has not issued its advisory opinion, the Attorney General must file a new petition seeking such advisory opinion.

If the initiative petition has also been submitted to the FIEC but the validity of the signatures has expired and the petition no longer qualifies for ballot placement at the ensuing general election, the Secretary must also notify the FIEC. The FIEC is not required to complete an analysis and financial impact statement for an initiative petition that fails to meet the requirements for placement on the ballot before the 75-day limit expires. The initiative petition may be resubmitted to the FIEC if the petition meets the requisite criterial for a subsequent general election cycle.

## Ranked-Choice Voting

### *Present Situation*

A ranked-choice voting system (RCV) is an electoral system in which voters rank candidates by preference on their ballots. If a candidate wins a majority of first-preference votes, he or she is declared the winner. If no candidate wins a majority of first-preference votes, the candidate with the fewest first-preference votes is eliminated. First-preference votes cast for the failed candidate are eliminated, lifting the second-preference choices indicated on those ballots. A new tally is conducted to determine whether any candidate has won a majority of the adjusted votes. The process is repeated until a candidate wins an outright majority.<sup>67</sup>

The City of Sarasota has passed an amendment allowing for RCV, called Instant Runoff Voting, allowing voters to rank the candidates in order of preferences. This amendment to their charter was passed in 2007, but the State of Florida has not authorized voting systems allowing for this process. Consequently, the Sarasota RCV proposal has not been implemented.<sup>68</sup>

### *Effect of Proposed Changes*

This bill prohibits RCV in Florida and invalidates all local ordinances authorizing such systems.

## Single Member County Commission Districts

### *Present Situation*

The Florida Constitution authorizes, except as otherwise provided by a county charter, for 5 or 7 county commissioners serving staggered terms of 4 years. Under the constitution, commissioners reside in separate districts and are elected as provided by law. After each decennial census, the county commission divides the county into districts of contiguous territory as nearly equal in population as practicable.<sup>69</sup>

Florida law provides for 5 districts in each county with commissioners elected by the qualified electors of the county.<sup>70</sup> Accordingly, 33 counties currently elect all commissioners at-large. An alternate

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<sup>67</sup> [https://ballotpedia.org/Ranked-choice\\_voting\\_\(RCV\)](https://ballotpedia.org/Ranked-choice_voting_(RCV)) (last accessed Jan. 20, 2022).

<sup>68</sup> Art. IX, Sec. 5(b) [Pending Regulation], Sarasota City. Charter

<sup>69</sup> S. 1(e), Art. VIII, Fla. Const.

<sup>70</sup> S. 124.01, F.S.

procedure for election of commissioners provides for single-member representation. Under that law, the county commission, or an initiative petition signed by 10% of voters, may submit a proposition to voters providing for either five single-member districts with commissioners elected by qualified electors of each district, or five single-member districts plus two at-large members elected by all county voters. That law also provides for the initiation of such single-member districts through an initial staggering of terms.<sup>71</sup>

Finally, charter counties authorized under the Florida Constitution may make various provisions for both single-member districts and at-large commissioners, some having residence districts. For example: Duval County currently has 19 commissioners including 14 from single-member districts and 5 representing separate districts elected at-large; Broward has 9 commissioners elected from single-member districts.

### *Effect of Proposed Changes*

CS/HB 7061 revises the single-member representation provision and a commissioner election law to provide that, after each decennial redistricting, each county commissioner elected in a single-member district must be elected with terms re-staggered. The bill makes exceptions for Miami-Dade County, for charter counties with redistricting, and for every county in which voters have not voted to impose term limits, regardless of any judicial nullification of such vote.

## B. SECTION DIRECTORY:

Section 1: Amends s. 15.21, F.S., directing the Secretary to notify the Attorney General when initiative petition signatures expire prior to the petition qualifying for ballot placement.

Section 2: Amends s. 16.061, F.S., directing the Attorney General to withdraw a request to the Supreme Court for an advisory opinion as to the validity of an initiative petition when the petition fails to qualify for ballot placement.

Section 3: Creates s. 97.022, F.S., establishing the Office of Election Crimes and Security.

Section 4: Amends s. 97.0291, F.S., prohibiting donations to election offices funding the cost of any litigation related to election administration.

Section 5: Amends s. 97.057, F.S., conforming the statute to other changes made in the bill.

Section 6: Amends s. 97.0575, F.S., increasing the aggregate fine third-party voter registration organizations can be assessed in a calendar year, and adding a fine for criminal alteration of an application.

Section 7: Amends s. 98.065, F.S., effective January 1, 2023, revising the requirements of SOEs relating to list maintenance programs.

Section 8: Amends s. 98.0655, F.S., revising required list maintenance forms.

Section 9: Amends s. 98.075, F.S., including DHSMV as a source of information identifying deceased voters.

Section 10: Amends s. 98.093, F.S., requiring court clerks to provide the Department with information regarding felon penalties and DHSMV to provide information regarding non-citizens with driver licenses.

Section 11: Amends s. 100.041, F.S., conforming the statute to other changes made in this bill relating to county commissioner elections following redistricting.

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<sup>71</sup> S. 124.011, F.S.  
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**DATE:** 2/28/2022

Section 12: Amends s. 100.371, F.S., specifying and updating requirements of Supervisors regarding initiative petition signature forms and revising the duties of the Financial Impact Estimating Conference.

Section 13: Creates s. 101.019, F.S., prohibiting ranked-choice voting in Florida.

Section 14: Amends 101.043, F.S., to allow the use of the address on presented identification by an elector to be used as a basis to confirm the elector's legal residence.

Section 15: Amends s. 101.5614, F.S., imposing criminal penalties on persons with access to certain information during election canvassing who release votes cast or other election results early.

Section 16 Amends s. 101.6103, F.S., to revise mail ballot elections to conform the timing of mailing ballots to that provided in 101.62(4), F.S. for other elections, conform the timing of canvassing to that provided in s. 101.68(2)(a), F.S., incorporating a criminal penalty for early release of results.

Section 17: Amends s. 101.655, F.S., to change the time for supervised voting in certain facilities from 21 days to 28 days prior to the election date.

Section 18: Amends s. 102.091, F.S., allowing the appointment of special officers employed by FDLE and detailing their responsibilities.

Section 19: Amends s. 102.101, F.S., conforming restriction on law enforcement officers in polling places to include special officers appointed under s. 102.091, F.S.

Section 20: Amends s. 104.0616, F.S., classifying illegal possession of VBM ballots as a third-degree felony.

Section 21: Amends s. 104.185, F.S., classifying the fraudulent signing of another person's name or a fictitious name to any petition to secure ballot position as a third-degree felony.

Section 22: Amends s. 104.186, F.S., classifying illegal compensation of petition circulators as a third-degree felony.

Section 23: Amends s. 124.011, F.S., requiring new elections and staggered terms in certain single-member district county commission districts following decennial redistricting.

Section 24: Amends s. 921.0022, F.S., relating to the Criminal Punishment Code to specify the lowest punishment level for the new felony possession of VBM ballots.

Section 25: Requires the Department to submit a report to the legislative leaders detailing a plan to obtain Florida voter's personal identification numbers.

Section 26: Provides an effective date of upon becoming a law, except as specifically provided above.

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

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

#### **1. Revenues:**

Indeterminate. The bill authorizes increased penalties from voter registration violations. Additional revenue could be collected as a result of these penalties but they cannot be quantified at this time and would likely be insignificant.

#### **2. Expenditures:**

The bill will require the Department and FDLE to support the new elections security office. HB 5001, the proposed House of Representatives General Appropriations Act for FY 2022-23, provides the



following General Revenue appropriations, contingent upon this legislation becoming law. The appropriations are based on estimates from both the Department and FDLE:

FTE	Recurring	Nonrecurring	Total	
<b>FDLE</b>				
10.0	962,904	503,140	1,466,044	Investigation Resources
<b>Dept. of State</b>				
15.0	1,025,301	67,380	1,092,681	Voter Registration Workload
15.0	1,092,541	67,380	1,159,921	Office of Elections Crimes and Security
30.0	2,117,842	134,760	2,252,602	
			-	
40.0	3,080,746	637,900	3,718,646	Grand Total

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

1. Revenues:

The bill does not appear to impact local revenues.

2. Expenditures:

Indeterminate. The bill will require some additional expenditures by Supervisors of Elections, mostly related to list maintenance responsibilities in 2023 and VBM procedures in 2024. These impacts cannot be quantified at this time.

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

The bill does not appear to impact the private sector economy.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The election law amendments contained in the bill are exempt from the mandate requirements of s 18, Art. VII, of the State Constitution.

2. Other:

The county commissioner redistricting provisions of the bill may cut some commissioner terms in half. The constitution provides both for four-year county commission terms and for commissioners' election as provided by law.<sup>72</sup> Existing provisions staggering initial terms of commissioners in single-member representation districts<sup>73</sup> and authorizing recall of commissioners in charter counties<sup>74</sup> do not appear to have been disapproved on judicial review.

**B. RULE-MAKING AUTHORITY:**

<sup>72</sup> S. 1(e), Art. VIII, Fl. Const.

<sup>73</sup> S. 124.011, F.S.

<sup>74</sup> S. 100.361, F.S.

The Department has rulemaking authority necessary to implement all provisions of the Florida Election Code. The changes to s. 98.0655, F.S., will require additional rulemaking revising the forms specified therein.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On February 28, 2022, the Appropriations Committee adopted one strike-all amendment and reported the bill favorably as a committee substitute.

The strike-all amendment deleted changes in VBM procedures, replacing them with the requirement that the Department review and develop a plan to increase security of VBM ballots by use of identification numbers on ballot certificates. The amendment also added revisions to timing of mail ballot election and supervised voting in certain facilities.

The amendment revised new list maintenance requirements, making the changes effective January 1, 2023. The new requirements include confirmation of voter residence when an inactive voter requests a registration change, requests a VBM ballot or appear in person to vote.

The bill analysis is drafted to the committee substitute as adopted by the Appropriations Committee.

Finally, the amendment altered requirements of the Attorney General and Fiscal Impact Estimating Conference when their initiative petition obligations have begun, but are incomplete when notified that an initiative fails to qualify for the ballot.

This analysis is drafted to the Committee Substitute.