

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Transportation and Economic Development Appropriations Committee

BILL: CS/CS/SB's 960 & 1010

INTRODUCER: Transportation and Economic Development Appropriations Committee, Ethics and Elections Committee, Senators Constantine and Ring

SUBJECT: Elections

DATE: April 24, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox/Kruse	Rubinas	EE	Fav/Combined CS
2.	Weaver	Noble	TA	Fav/CS
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Committee Substitute for Senate Bills 960 and 1010 is an omnibus elections package. The more significant issues addressed in the bill include:

- **Presidential Preference Primary:** moves the presidential preference primary to the last Tuesday in January (January 29, 2008).
- **Voting Systems:** requires most voters to cast an optical scan, marksense ballot instead of voting on touchscreen equipment.
- **Election Administration:** incorporates a number of changes contained in CS for Senate Bill 958, including moving the primary from 9 weeks prior to the general election to 10 weeks prior to the general election.
- **Other Significant Changes include:**
 - Changing the acceptable forms of photo identification required at the polls; and
 - Changing the requirements for complaints and the procedures for their disposition before the Florida Elections Commission.

The bill authorizes an expenditure of approximately \$27.86 million from the Grants and Donations Trust Fund [federal monies originally provided to the state pursuant to the "Help America Vote Act (HAVA) "] to be used for the purchase of optical scan voting equipment (\$22.86 million) and ballot-on-demand technology, including optical scan tabulators, (\$5 million) to replace touchscreen equipment.

Committee Substitute for Committee Substitute for Senate Bills 960 and 1010 takes effect on January 1, 2008, except as provided in the bill.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 97.021, 97.041, 97.053, 97.0575, 99.021, 99.061, 99.095, 99.096, 99.0965, 100.041, 100.051, 100.061, 100.111, 100.191, 100.371, 101.043, 101.048, 101.151, 101.51, 101.573, 101.75, 101.56075, 101.5612, 101.591, 101.6103, 101.62, 101.68, 102.112, 102.141, 102.166, 103.081, 103.091, 103.101, 103.141, 103.151, 103.161, 105.031, 106.021, 106.04, 106.055, 106.08, 106.09, 106.143, 106.17, 106.25, 106.35, 106.37, 112.51, 189.405, 191.005, 582.18, 876.05.

II. Present Situation:

Presidential Preference Primary Date

The Florida presidential preference primary is held on the second Tuesday in March in each presidential election year. s. 103.101(1), F.S. By the time Florida's presidential preference primary was held in the last two nominating cycles (2000 & 2004), the eventual Republican and Democratic nominees had already been determined and the leading candidates were running essentially unopposed.

In recent years, many states have moved up their presidential primary elections to take advantage of the national attention coveted by the early primary states. The 2008 primary schedule is still in flux. The National Association of Secretaries of State's 2008 Presidential Nominating Calendar¹ looked like this (as of April 9, 2007):

JANUARY 2008

- **January 8:** District of Columbia*
- **January 14:** Iowa (caucuses)
- **January 19:** Nevada (caucuses)
- **January 22:** New Hampshire (primary)*, *Wyoming (GOP caucuses)*
- **January 29:** *Florida, South Carolina (Dem. Primary)*

FEBRUARY 2008

- **February (Date TBD):** *Michigan, North Dakota (caucuses)*
- **February 2:** *South Carolina (GOP Primary)*
- **February 5:** Alabama, *Arizona*, Arkansas, California, *Colorado (caucuses)*, *Connecticut*, Delaware, *Georgia, Illinois, Kansas*, Missouri, *Montana*, New Jersey, *New Mexico*, New York, *North Carolina*, Oklahoma, *Oregon, Pennsylvania, Rhode Island, Tennessee, Texas*, Utah
- **February 9:** Louisiana

¹ <http://www.nass.org/releases/2008%20Presidential%20Primaries%20Calendar.pdf>. States in ***bold italics*** have dates that are under consideration but not yet finalized. States with an asterisk (*) beside their name have indicated that they could move to another undetermined date.

- **February 10:** Maine (Dem. Caucuses)
- **February 12:** *Maryland*, Virginia*
- **February 19:** Wisconsin
- **February 26:** Hawaii (Dem. Caucuses), Idaho (Dem. Caucuses)

If Florida were to wait until the second Tuesday in March to conduct its 2008 primary, likely more than half the states will have already conducted their election and all but certainly have determined the ultimate nominees.

Voting Systems

The genesis of the current bill can be traced to the 2000 presidential contest and subsequent Florida recount. The election highlighted numerous shortcomings in the voting systems in place at the time --- namely, the infamous punch-card systems and the error-prone, central-count optical scan systems.²

The Florida Legislature responded at the next session by enacting the Florida Election Reform Act of 2001.³ Along with numerous other reforms, a cornerstone of the Act was to replace problematic and antiquated voting systems with what were believed to be better, more reliable systems. The Act abolished the use of punch card, central-count optical scan, mechanical lever, and freehand paper⁴ voting systems, and authorized in their place either *precinct-count optical scan*⁵ or the yet-unproven, but cutting edge, *touchscreen voting system technology*.⁶

The State appropriated approximately \$12 million from the general revenue fund to help 41 counties upgrade their voting systems.⁷ The money was distributed to the counties by the Department of State in two separate installments pursuant to the following funding formula: smaller counties (population of 75,000 or less) received \$7500 per precinct; and, larger counties (population over 75,000) received half that amount, or \$3,750 per precinct. The rationale behind the funding scheme was to provide *half* of what it would cost the larger counties to purchase a

² Central-count optical scan systems are those where the voter designates selections on a marksense ballot and deposits it in a box for subsequent tabulation at a central facility like the supervisors' office. Because the voter is not present when the ballot is run through the tabulating equipment, errors cannot be corrected. Of the three most-widely-used voting systems in Florida at the time, central-count optical scan had by far the highest error rate at 5.69%, followed by punch cards at 3.83%: precinct-count optical scan, where ballots are placed into a tabulator at the precincts and do allow for the voter to make corrections, had the lowest error rate at 0.79%. The Florida Senate, Committee on Ethics and Elections, *Review of the Voting Irregularities of the 2000 Presidential Election*, p. 9 (March 2001) (Report No. 2001-201).

³ Ch. 2001-40, LAWS OF FLA.

⁴ Freehand paper systems, in use only in Union County back in 2000, required the voter to mark his or her ballot selections with a check mark. The election officials subsequently hand-counted the ballots to determine election results.

⁵ Beginning in the late 1980's, many counties in Florida moved to an optical scan voting system. These systems use a ballot card with names of candidates and descriptions of issues preprinted next to an empty circle, oval or incomplete arrow. A voter indicates his or her choice by filling in the empty circle or oval or by completing the arrow. Precinct-count optical scan systems, as opposed to central-count systems, require the voter to deposit his or her ballot into an automatic tabulating device at the polling place.

⁶ In 2001, touchscreen technology was in its infancy in this country. Although limited experience with the touchscreens indicated an undervote rate that was troublingly high --- about 3%, roughly the same as for the old punch-card systems --- many believed that this figure was the result of voter inexperience with the systems, and that voter education efforts would drastically reduce these error rates.

⁷ See 2001 General Appropriations Act, Specific Appropriation No. 2898B and Ch. 2001-40, ss. 71, 74, 76, LAWS OF FLA.

precinct-count optical scan system (a/k/a, the “state match”), and enough money for the smaller counties to fully fund an optical scan purchase.

There were no strings attached to the money. Every county was free to purchase either a precinct-count optical scan system or augment these funds with local money to purchase the expensive touchscreen systems. Ultimately, 15 Florida counties⁸ --- including some of the largest such as Broward, Hillsborough, Miami-Dade, and Palm Beach – decided to purchase primarily⁹ touchscreen systems (collectively, “the touchscreen counties”). Subsequently, a number of optical-scan counties have elected to employ touchscreen systems for early voting (collectively, “the hybrid counties”).¹⁰

Despite the efforts of election administrators, there continues to be public concern and distrust with respect to the accuracy and security of paperless touchscreen voting systems.

Third-Party Voter Registration Organizations

The Legislature created the third-party voter registration statute, Section 97.0575, Florida Statutes, in 2005.¹¹ The statute:

- a. Requires a third-party voter registration organization to register with the division, and submit quarterly reports to the division providing the date and location of any organized voter-registration drives conducted by the organization in the previous quarter.
- b. Provides that the failure of an organization to comply with the above requirements will not subject the organization to any civil or criminal penalties, nor will it serve as a basis for denying the organization with copies of voter-registration application forms.
- c. Creates a fiduciary duty in the organization for the voter registration applications to which it has been entrusted. The section places monetary penalties, jointly and severally, on an organization’s board of directors, president, vice president, managing partner, or other individuals engaged in similar duties or functions for not timely submitting voter registration applications that the organization has collected.
- d. Provides a \$250 fine for each application received by the state or a supervisor more than ten days after the applicant submitted the application to the organization; provides for a \$500 fine for each application submitted to the organization before book closing but received by the state or a supervisor after book closing; and provides for a \$5000 fine for each application collected by the organization which is not submitted to the state or supervisor.

⁸ Broward, Charlotte, Collier, Hillsborough, Indian River, Lake, Lee, Martin, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Sarasota, and Sumter counties.

⁹ Counties that use touchscreen equipment still needed optical scan equipment to process absentee voters.

¹⁰ Bay, Brevard, Clay, Escambia, Jackson, Levy, Marion, Okaloosa, Orange, Osceola, Santa Rosa, St. Johns, Taylor, and Washington counties.

¹¹ Ch. 2005-277, § 7, p. 2625, LAWS OF FLA.

- e. Provides that fines shall be reduced by three-fourths in cases in which the organization has registered with the state and filed quarterly reports.
- f. Authorizes alleged violations to be investigated by the division and that civil fines may be assessed by the division.
- g. Provides that the date on which an applicant signs a voter registration application is presumed to be the date on which the third-party voter registration organization received or collected the application.

Further, Section 97.021(36), F.S., defining “third-party voter registration organization,” specifically excludes a political party.

In 2006, several groups, including the League of Women Voters of Florida and Florida AFL-CIO, filed suit in federal district court seeking preliminary injunctive relief against implementation of the statute, claiming that it violated their First Amendment rights. The United States District Court for the Southern District of Florida issued a preliminary injunction, finding that the third-party voter registration law discriminates against the plaintiffs in favor of political parties and chills their exercise of free speech and association.¹²

Pre-Registration

An individual may register to vote in accordance with Florida law if they are at least eighteen years old, a United States citizen, a legal resident of Florida, and a legal resident of the county in which they seek to register. However, individuals who are otherwise qualified to register to vote but are not yet eighteen may pre-register to vote on or after the individual's 17th birthday.¹³

Voter Registration Applications

Current law provides that a voter registration official¹⁴ has 15 days after receiving a voter registration application to enter the registration into the statewide voter registration system.¹⁵ However, the Department of State is required to verify an applicant's driver's license number, Florida ID card number, or the last four digits of a social security number that the applicant provides on the voter registration application before accepting the application as valid. If the application is received by the book-closing deadline but the identifier provided by the applicant cannot be verified before the applicant attempts to vote, the applicant must vote a provisional ballot, which is counted only if the application is verified by either the end of the canvassing period, or evidence is presented by the applicant to the supervisor that is sufficient to verify the number on the application. The applicant has until 5 p.m. of the third day after the election within which to present this evidence.¹⁶

¹² League of Women Voters of Florida, et. al. v. Cobb, 447 F.Supp.2d 1314 (S.D. Fla. 2006). The case is currently on appeal to the U.S. 11th Circuit Court of Appeals.

¹³ § 97.041, F.S.

¹⁴ A “voter registration official” is defined as “any supervisor of elections or individual authorized by the Secretary of State to accept voter registration applications and execute updates to the statewide voter registration system.” §97.021(41), F.S.

¹⁵ § 97.053(7), F.S.

¹⁶ § 97.053(6), F.S. and §101.048, F.S.

Candidate Oath

Currently, every candidate¹⁷ must subscribe to an oath in order to qualify for office. The oath requires the candidate to state that he or she is a qualified elector of a specific county in Florida and that he or she is qualified under the Constitution and Laws of Florida to hold the office for which he or she is seeking nomination or election.¹⁸ Moreover, all candidates for public office, along with state employees or employees of any state department, agency, subdivision, county, city, school board and district of the free public school system, and all institutions of higher learning, are required to take an oath swearing that they are citizens of Florida and the United States and will support the federal and state constitutions.¹⁹ These oaths do not take into account that federal candidates do not have to be residents of Florida until they are elected.²⁰

Candidate Qualification

Any person, except a judicial or school board candidate, who wants to qualify for a federal, state, or multicounty district office must file his or her qualification papers and provide the filing fee to the Department of State, or a candidate can qualify by the petition process set forth in section 99.095, F.S. with the department by noon on the first day of qualifying. The qualification period for a federal office or the office of state attorney or public defender is between the 120th day and 116th day prior to the primary election.²¹ However, in reapportionment years, the federal office qualification period is between the 57th and 53rd day before the primary election.²² For candidates for state or multicounty district office, the qualification period is between the 50th day and the 46th day prior to the primary election.²³

Any person who wants to qualify for a county, district, or special district office not mentioned above must file his or her qualification papers and fee with the supervisor of elections of the county, or qualify by the petition process set forth in section 99.095, F.S., by noon of the first day of qualifying. The qualification period for these offices is between the 50th day and 46th day prior to the primary election or special district election, unless the special district election is held at the same time as the general election. If this occurs, the qualification period for special district offices is between 50th day and 46th day prior to the primary election. After the qualification period closes, the supervisor has 30 days to send each applicable candidate's filing fee to the secretary of the state executive committee of the political party to which the candidate belongs.²⁴

¹⁷ Judicial candidates must subscribe to the oath contained in § 105.031(4)(b), F.S., while other candidates must subscribe to the oath found in § 99.021, F.S.

¹⁸ § 99.021, F.S.

¹⁹ § 876.05, F.S.

²⁰ U.S. CONST. Art. I, § 2, § 3.

²¹ § 99.061(1), F.S.

²² § 99.061(9), F.S.

²³ *Id.* at note 21.

²⁴ § 99.061(2), F.S.

Qualifying by Petition

Persons seeking to qualify as candidates for any office can avoid the filing fee and assessment if they qualify by the petition method. A candidate must obtain signatures from voters in the area represented by the office that equals at least one percent of the total number of registered voters in that area as recorded by the department's compilation from the last general election. Before obtaining any signatures, the candidate must file the appointment of campaign treasurer and designation of depository form.²⁵ Petitions must be submitted to the supervisor of the county where they were circulated by noon of the 28th day before the first day of qualifying for the particular office sought. The supervisor must certify the number of valid signatures by the seventh day prior to the first day of qualifying. The supervisor must submit certifications to the division for federal, state, or multicounty district office candidates. The division then determines if the requisite number of signatures has been obtained and notifies the candidate. For all other county or district offices, the supervisor makes the signature determination and notifies the candidate. If the requisite number of signatures is obtained, the candidate may qualify for office.²⁶

If a person submits the required number of petitions by the required deadline and the candidate is notified more than 5 days after the day before the last day of qualifying that he or she obtained the required number of signatures, the person has five days within which to file qualifying papers and submit the candidate oath to qualify for office.²⁷

Special Districts

Persons wanting to qualify for a single-county or multi-county special district governing board must qualify by meeting requirements that are somewhat different than those mandated by the Florida Election Code, such as the number of petitions required to qualify and the filing fee, which must be 3 percent of office's salary or \$25, whichever is greater.²⁸ Persons wanting to qualify as a candidate for an independent special fire control district may either file a fee of \$25 or file 25 signed petitions with the filing officer.²⁹ Persons who want to qualify for the office of supervisor of a soil and water conservation district must qualify by a different petition method.³⁰

Political Parties

Minor Political Parties

A minor political party,³¹ rather than holding a primary election to nominate candidates, must file a list of federal, state, multicounty, and county candidates who the party has nominated for the

²⁵ See § 106.021, F.S.

²⁶ § 99.095, F.S.

²⁷ § 99.061(6), and § 105.031, F.S.

²⁸ § 189.405(2), (3), F.S.

²⁹ § 191.005(1), F.S.

³⁰ § 582.18 (1)(a), F.S.

³¹ Minor political parties may be formed when a group, whose membership totals less than 5 percent of the total registered electors of the state on January 1st before a primary election, files a certificate with the Department of State that states the name of the organization, the names of current officers, including members of its executive committee, along with a copy of its constitution or bylaws. § 97.021(17), F.S.

general election ballot with the Department of State. The designation of this list may be provided by the minor political party in any way it deems proper; however, the party must adopt a resolution for a procedure governing the selection of candidates which must be filed with the Department of State.³² This procedure differs from that of major political parties which must nominate candidates for the general election ballot through a primary election.³³

Protection of Political Party Name

Current law provides protections for the name, abbreviation, or symbol of a political party if that name, symbol, or abbreviation is filed with the Department of State. Persons are prohibited from using a filed name, symbol, or abbreviation of a political party for certain advertisements or publications unless written permission is first obtained from the chair of the party's state executive committee. Moreover, persons are also prohibited from using a filed name, symbol, or abbreviation of a political party in connection with any group's activities unless written permission is first obtained from the chair of the party's state executive committee. This law provides exemptions for a party's county executive committee, organizations chartered by the national party's executive committee, or organizations that have been in existence an organized statewide for a period of 10 years.³⁴

Political Party Executive Committees

Each political party in the state must be represented by a state executive committee. Other committees, such as a county executive committee, may be formed according to the state committee's rules. Unless a party's rules differ, each county executive committee must consist of at least a precinct committeeman and a precinct committeewoman. For counties that have at least 40 precincts, the party may adopt a district unit of representation for the county committee. Election districts must be divided so that each district has as nearly equal numbers of registered voters as possible. Every county committeeman and committeewoman must be a resident of the precinct from which he or she is elected.³⁵

Major political parties may adopt rules that allow its state or county executive committee membership to be elected for 4-year terms at the primary election in each year that a presidential election is held. Electors who want to qualify must do so between the 57th day and the 53rd day before the primary election.³⁶

State Executive Committee Membership

A political party's state executive committee must include the following as at-large committeemen and committeewomen:

- All members of the United States Congress representing Florida who are members of the party;

³² § 99.096, F.S.; § 99.0965, F.S.

³³ See § 97.021(27), F.S., § 100.061, F.S.

³⁴ § 103.081, F.S.

³⁵ § 103.091(1), F.S.

³⁶ § 103.091(4), F.S.

- All statewide elected officials who are members of the party;
- The President of the Senate or the Minority Leader in the Senate, whichever is a member of the party;
- The Speaker of the House of Representatives or the Minority Leader in the House of Representatives, whichever is a member of the party; and
- 20 Legislative members who are members of the party appointed with the concurrence of the party's state chair as follows: five appointed by the Senate President, five appointed by the Senate Minority Leader, five appointed by the House Speaker, and five appointed by the House Minority Leader.³⁷

However, the 20 appointed legislative members could be replaced with other specific members of the party if certain voting considerations are met as provided by statute.³⁸

Removal of County Member of a County Executive Committee for Violating Oath of Office

A county executive committee of a political party may remove a member of its committee for an offense involving a violation of the member's oath of office if two-thirds of the committee determines the member to be guilty of the offense. Notice of the meeting must be provided and a quorum of the committee must be present at the meeting. Upon the removal of the member from office, the office is deemed vacant. However, if a member is wrongfully removed, files suit in circuit court for the removal, and wins, the county executive committee must pay the member's costs associated with the suit, including attorney's fees, and must reinstate the member to office.³⁹

Furthermore, a state or county executive committee has the power to take judicial action in the circuit court against a county member for allegedly violating his or her oath of office. The state committee may only take action when the county committee refuses to take judicial action within ten days after a charge is made. If the court finds that the member did violate the oath of office, the court must file a decree removing the person from the county committee. If either the state or county committee brings a suit in circuit court and loses, the committee must pay the court costs incurred by the member, including reasonable attorney's fees.⁴⁰

Removal of State Member of State Executive Committee for Violating Oath of Office

A state executive committee has the power to take judicial action in circuit court to remove a member of the state committee from office for violating the oath of office. If the court finds that that the member violated the oath, it must enter a decree removing the member from the committee. If a charge of violating the oath of office is made and the state committee fails to act within 10 days after the charge, the county executive committee shall have the right to seek the member's removal in court. If either committee seeks removal in court and loses, the committee bringing the suit must pay the member's court costs, including reasonable attorney's fees.⁴¹

³⁷ § 103.091(6)(b), F.S.

³⁸ See § 103.091(c), F.S.

³⁹ § 103.141, F.S.

⁴⁰ *Id.*

⁴¹ § 103.151, F.S.

County Commissioners

County commissioners are constitutional officers. County commission boards may be composed of five or seven members that serve staggered terms of four years. There must be one commissioner residing in each district who shall be elected as provided by law.⁴²

Commissioners from odd numbered districts must be elected at the general election in years that are multiples of four. Commissioners from even numbered districts must be elected at the general election in even numbered years which are not a multiple of four. Terms commence on the second Tuesday following the election. Charter counties may choose by referendum a term beginning date later than the one provided above; however, it must be uniform for all commissioners and cannot be later than the first Tuesday after the first Monday in January following each commissioner's election.⁴³

Primary Election

The primary election is scheduled to be held 9 weeks prior to the general election.⁴⁴

Petitions

During previous elections, numerous stories have appeared in newspapers concerning fraud in the petition process to place constitutional amendments on the ballot. Two petition gatherers were arrested in Santa Rosa County for over 40 counts each of uttering a forged document.⁴⁵ Several other elections supervisors found petitions signed with the names of dead voters.⁴⁶

Petitions signed by the requisite number of voters may be used to place an issue⁴⁷ before the voters and for several other purposes.⁴⁸ Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Section 3, Art. XI, State Const., which authorizes citizen initiatives, states:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and 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

⁴² FLA. CONST., art. VIII, § 1.

⁴³ § 100.041(2), F.S.

⁴⁴ § 100.061, F.S.

⁴⁵ See "Two Pace Residents Accused in Voter Scam," Derek Pivnick, Pensacola News Journal, p. 1A, July 2, 2004.

⁴⁶ See "Names of the Dead Found on Petitions," Joni James and Lucy Morgan, St. Petersburg Times, September 28, 2004.

⁴⁷ Under s. 106.011(7), F.S., the term "'issue' means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election."

⁴⁸ Petitions may be used to place an issue before the voters, for a candidate to qualify for office, to recall a local elected official, to change the method of the selection of trial court judges. See s. 3, Art. XI, State Const.; ss. 99.095, 100.371, 105.035, and 100.361, F.S.

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.

Accordingly, signatures equal to 8 percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. "For the 2008 General Election Ballot, 611,009 signatures are required."⁴⁹

Citizen Initiative Petition Form

Rule 1S-2.009(2), F.A.C., provides that the format for a citizen initiative petition to propose a constitutional amendment must:

- a. [Be] printed on separate cards or individual sheets of paper. The minimum size of such forms shall be 3 inches by 5 inches and the maximum shall be 8 1/2 inches by 11 inches.
- b. [Be] clearly and conspicuously entitled at the top of the form "Constitutional Amendment Petition Form."
- c. Include[] adequate space for the signee's name, legal residential street address, city, county, date of birth, signature, and date of signature.
- d. Contain[] the ballot title that shall not exceed 15 words and the ballot summary of the proposed amendment or other public measure that shall not exceed 75 words in length as prescribed in subsection (4).
- e. Conspicuously contain[] the full text of the amendment being proposed including the article and section being created or amended, preceded by a ballot title and ballot summary. If the text must be printed on both sides of the form, it shall be clearly indicated that the text is continued or begins on the other side.
- f. Contain[] space for only one elector's signature. The Division [of Elections] will not approve petition forms providing for multiple signatures per page.
- g. [Be] marked, in accordance with s. 106.143, F.S., governing political disclaimers, with "paid political advertisement" or contain[] the abbreviation "pd. pol. adv." and identify[] the name of the sponsoring political committee, and the name of the entity paying for the advertisement if different from the name of the sponsoring political committee.
- h. Contain[] space, in accordance with s. 106.19(3), F.S., for the name and address of a paid petition circulator, in the event the petition form is gathered by a paid petition circulator.

To verify a signature on a petition, a supervisor of elections must compare the signature with the voter's signature in the registration books.⁵⁰ If the signee lists an address that is different than his or her registered address, the petition is treated as if the registered address was listed.⁵¹ Additionally, a supervisor must:

Ensure that each person signing [a] petition form is a registered elector in that county and that the date the elector signed the petition form is not more than four years prior to the date the Supervisor verified the petition. The Supervisor shall not verify a signature on an

⁴⁹ Florida Department of State, Division of Elections, Initiative Petition Process: Congressional District Requirements, available at <http://election.dos.state.fl.us/initiatives/congres.shtml>.

⁵⁰ Section 99.097(3)(a), F.S.

⁵¹ Section 99.097(3)(b), F.S.

initiative petition form unless all of the following information is contained on the petition form:

- (a) The signee's name,
- (b) The signee's residential street address (including city and county),
- (c) The signee's date of birth,
- (d) The signee's signature, and
- (e) The date the elector signed the petition.⁵²

Certification of Petitions

Upon completion of the verification . . . the Supervisors of Elections shall submit to the Division of Elections a certificate indicating the total number of signatures checked, the number of signatures verified, the number verified as registered electors and the distribution by congressional district. Each Supervisor of Elections shall promptly record each valid and verified petition in the statewide voter registration system no later than 5:00 p.m. on February 1 of the year in which the election is held.⁵³

Revocation of Petitions

There is currently no statutory mechanism for a signed petition to be revoked by the elector initially signing a petition.

Voter Identification at the Polls

In order to vote, a registered voter must present one of the following current and valid identifications:

- Florida driver's license.
- Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
- United State passport.
- Employee badge or identification.
- Buyer's club identification.
- Debit or credit card.
- Military identification.
- Student identification.
- Retirement center identification.
- Neighborhood association identification.
- Public assistance identification.⁵⁴

If the elector does not provide one of the forms of identification listed above, the elector may vote a provisional ballot.⁵⁵

⁵² Rule 1S-2.0091(2), F.A.C.

⁵³ Florida Department of State, *supra* note 49.

⁵⁴ § 101.043(1), F.S.

⁵⁵ § 101.043(2), F.S.

Provisional Ballots

Currently, persons voting provisional ballots have until 5 p.m. of the third day after the election to present sufficient written evidence to the supervisor of their eligibility to vote.⁵⁶ Provisional ballots are not included in the first set of unofficial returns.⁵⁷

Precinct Reporting

Current law provides that supervisors of elections must file with the Department of State precinct-level elections results for an election cycle within 75 days after a municipal election or runoff, a presidential preference primary, or a general election. The results must record for each precinct the returns of ballots cast at the precinct location, which include the absentee returns and early ballots cast by registered precinct voters.⁵⁸

Mail Ballot Election Procedure

The county canvassing board may begin canvassing mail ballots at 7 a.m. on the fourth day before the election, which includes processing the ballots through tabulation equipment. Results may not be released until after 7 p.m. on election day.⁵⁹

Absentee Ballots

Absentee ballots may be requested in person or in writing. One request for a ballot shall be good for all elections held within calendar year of the request, unless, at the time of the request, the elector or designee indicates the elections for which the elector wants an absentee ballot. A request will be deemed canceled if any first-class mail sent from the supervisor to the elector is returned as undeliverable.⁶⁰ However, receipt of a federal postcard application for an absentee ballot is an effective request for all elections through the next two regularly scheduled general elections.⁶¹ Currently, notwithstanding other means by which absentee ballots are delivered, absentee ballots may be delivered to an elector's designee up to four days prior to election day.⁶²

The supervisor must mail absentee ballots to qualified electors overseas that have made a request no later than 35 days prior to the primary or general election. In the early 1980s, the United States Government sued Florida arguing that Florida's three elections (first primary, second primary, and general election) in nine weeks violated federal law because it did not give sufficient time for supervisors to prepare absentee ballots, mail them overseas, and have voters return them by election day. Subsequently, the United States and Florida entered into a Consent Decree, which was meant to ensure that Americans overseas had a reasonable time within which to return their ballots for federal primary and general elections prior to the deadline for receipt of

⁵⁶ § 101.048, F.S.

⁵⁷ § 102.141(4), F.S.

⁵⁸ § 101.573, F.S.

⁵⁹ § 101.6103, F.S.

⁶⁰ § 101.62(1)(a), F.S.

⁶¹ § 101.694(1), F.S.

⁶² § 101.62(4)(b)4., F.S.

ballots.⁶³ Florida Administrative Code rule 1S-2.013⁶⁴ was adopted pursuant to the Consent Decree and provides that, with regard to the presidential preference primary and the general election, overseas absentee ballots for a federal office that are postmarked and signed no later than the date of the federal election must be counted if they are received within 10 days after the federal election and are otherwise valid.⁶⁵

Canvassing Returns

The county canvassing board may canvass absentee ballots four days before the election.⁶⁶

Returns must be filed by 5 p.m. on the 7th day after a primary election, and by 5 p.m. on the 11th day after the general election.⁶⁷

Unofficial returns for each federal, statewide, state, or multicounty office or ballot measure must be sent by the canvassing board to the Department of State no later than noon of the third day after a primary election and noon of the fifth day after any general election. The unofficial returns do not include provisional ballots.⁶⁸

All general election laws are applicable to special elections or special primary elections. However, county canvassing for a special election must be held on the day after the election and the certificate immediately forwarded to the Department of State.⁶⁹

If a recount occurs, the canvassing board must provide a second set of unofficial returns for each federal, statewide, state, or multicounty office or ballot measure by 3 p.m. on the fifth day after a primary election and by 3 p.m. on the eighth day after a general election in which a recount was conducted.⁷⁰

Campaign Treasurers

Current law requires that a campaign treasurer and deputy treasurer for a political committee or candidate be a registered voter of Florida.⁷¹

Committees of Continuous Existence (CCEs)

In order for a group, organization, association, or other entity to qualify as a CCE:

⁶³ *Increasing Participation by Florida's Overseas Voters*, Florida Senate Report 97-P-33, Executive Business, Ethics and Elections Committee (1997).

⁶⁴ This rule was originally Rule 1C-7.013, F.A.C.

⁶⁵ Rule 1S-2.013(7), F.A.C.

⁶⁶ § 101.68(2)(a), F.S.

⁶⁷ § 102.112(2), F.S.

⁶⁸ § 102.141(4), F.S.

⁶⁹ § 100.191, F.S.

⁷⁰ § 102.141, F.S.

⁷¹ § 106.021(1)(c), F.S.

- Its organization and operation must be by written charter or bylaws which provide a procedure for the election of officers and directors and which provides a definition for membership in the group; and
- 25% of the income of the group must be derived from membership dues that are payable on a regular basis as provided in the group's charter or bylaws.⁷²

To obtain certification from the Department of State as a CCE, the group must file an application with the division, along with other required documents as provided in statute.⁷³

A CCE is required to file regular reports of contributions, including membership dues, and expenditures at the same time that candidates are required to file campaign finance reports under §106.07(1) and (2), F.S. CCE reports must contain certain information, including:

The full name, address, and occupation of each person who has made one or more contributions, which *includes membership dues*, to the CCE during the reporting period along with the date and amount of the contribution. If the contribution is \$100 or less, the contributor's occupation or business type does not have to be listed. If contributions are made that represent the payment of membership dues that in a fixed amount in the aggregate are not in excess of \$250 per calendar year, only the aggregate amount must be listed, along with the number of members paying the dues and the amount of membership dues.⁷⁴

Valuation of Private Air Travel

According to the Florida Election Code, an in-kind contribution is valued at the fair market value of the contribution at the time the contribution is made.⁷⁵ However, for purposes of the gift law, the Florida Ethics Code values transportation in a private conveyance at the same value as travel in a comparable commercial conveyance.⁷⁶

Contribution Limits

No person or group may contribute more than \$500 to a *political committee* that supports or opposes one or more candidates.⁷⁷ A CCE may accept unlimited contributions from as many or as few donors as it wishes, provided at least 25% of its income is derived from member dues.

Cash Contributions

Persons may not make or accept cash contributions or a contribution in the form of a cashier's check in excess of \$100. If a person violates this law, he or she commits a first degree misdemeanor. However, if a person accepts or makes a cash contribution or a contribution in the form of a cashier's check which is over \$5,000, the person commits a third degree felony.⁷⁸

⁷² § 106.04(1), F.S.

⁷³ § 106.04(2), F.S.

⁷⁴ § 106.04(4)(c), F.S.

⁷⁵ § 106.055, F.S.

⁷⁶ § 112.3148(7)(d), F.S.

⁷⁷ § 106.08(1)(a), F.S.

⁷⁸ § 106.09, F.S.

Political Advertisements

Political advertisements that are circulated prior to or on the day of an election are required to meet specific disclosure requirements.

Advertisements Paid for by a Candidate

Advertisements that are paid for by a candidate and are published, displayed, or circulated prior to an election must state: "Political advertisement paid for and approved by (name of candidate), (party affiliation), for (office sought) ."⁷⁹

Any Other Political Advertisement

Any other political advertisement that is published, displayed, or circulated prior to or on the day of an election must meet the following requirements:

- It must indicate that it is a paid political advertisement,
- It must state the name and address of the persons sponsoring the advertisement, and
- Unless the source of sponsorship is patently clear from the advertisement, it must state whether the advertisement and its production cost was paid for or provided in kind by or at the expense of the entity publishing, displaying, broadcasting, or circulating the advertisement, or
- It must state who provided or paid for the advertisement and production cost if different from the sponsorship source.⁸⁰

Candidacy Polls and Surveys

Candidates, political committees, or the state or county executive committee of a political party may conduct or authorize political polls, surveys, indexes, or measurements relating to candidacy for public office as long as the candidate, political committee, or party maintains jurisdiction over all aspects of the poll.⁸¹

Florida Elections Commission

Alleging a Violation

The Florida Elections Commission (hereinafter, "FEC") has jurisdiction to investigate and determine if a violation of chapters 104 or 106 has occurred. In order to initiate an investigation of an alleged violation, a sworn complaint must be filed or the Division of Elections must report information to the commission. Any person, other than the division, who has information of a violation of chapters 104 or 106 must file a sworn complaint with the commission. The commission may only investigate the allegations contained in the complaint. If the complainant fails to allege every violation arising from the facts given in the complaint, the commission may

⁷⁹ § 106.143(1)(a), F.S.

⁸⁰ § 106.143(1)(b), F.S.

⁸¹ § 106.17, F.S.

not investigate a subsequent complaint from the same complainant alleging facts that could have been raised in the first complaint. Within 5 days of the receipt of a sworn complaint, the commission must provide the respondent with a copy of the complaint.⁸² The commission must conduct its proceedings in accordance with the Administrative Procedures Act, chapter 120, F.S.⁸³

Willfulness

A violation is defined as the willful performance of an act prohibited by chapters 104 or 106 or the willful failure to perform an act required by chapters 104 or 106.⁸⁴ A “willful violation” of chapter 106 is defined as someone committing an act while knowing that, or showing reckless disregard for whether, the act is prohibited under chapter 106, or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under chapter 106. A person knows that an act is prohibited or required if the person is aware of the provision of chapter 106 which prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. A person shows reckless disregard for whether an act is prohibited or required under chapter 106 if the person wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation of chapter 106.⁸⁵

Determining Probable Cause

The commission must perform a preliminary investigation to determine if the complaint alleges facts or if the division’s information amounts to probable cause to believe that a violation occurred. The respondent, complainant, and their counsels may attend the probable cause determination hearing. Notice of the hearing must be given to respondent and the complainant at least 14 days prior to the hearing. The respondent and his or her counsel are allowed to make a brief oral statement to the commission before the determination of probable cause is made. The probable cause determination must only be based on:

- the investigator’s report,
- the complaint,
- staff recommendations,
- any written statements submitted by the respondent, and
- any oral statements made at the hearing.

If probable cause is not found, the commission must dismiss the case. At that time, the case, written statement of the preliminary investigation findings, and a fact summary become public record. The commission must send a written statement of the preliminary investigation findings and a fact summary to the complainant and respondent.

If probable cause is found, the commission must notify the complainant and the respondent of this fact in writing. The commission must determine, at this point, whether to consider the matter

⁸² § 106.25(1), (2), F.S.

⁸³ § 106.26(1), F.S.

⁸⁴ § 106.25(3), F.S.

⁸⁵ § 106.37, F.S.

or refer it to the state attorney in the judicial circuit in which the violation occurred. All documents made or received in the disposition of the complaint must become public records when the commission makes a finding.⁸⁶

Hearings Before an Administrative Law Judge

When disputed issues of fact exist in a proceeding conducted under § 120.569, F.S., or § 120.57, F.S., the respondent may elect, within 30 days after the commission files its allegations, to have a hearing before an administrative law judge in the Division of Administrative Hearings.⁸⁷

Public Fund Disbursement

Current law provides for the distribution of funds from the Election Campaign Financing Trust Fund to candidates who meet certain requirements⁸⁸ for public financing. The division is required to distribute these funds to candidates who have been certified by the division to receive them. Distribution of the funds must be made within 7 days after qualifying closes and every seven days after the first distribution.⁸⁹

Municipal Officers

The Governor has the authority to suspend any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, a felony or misdemeanor arrest related to official duties, a federal or state felony charge, or a federal or state misdemeanor charge. When this occurs, a temporary vacancy is created for the office during the suspension that must be filled with a temporary appointment. This appointment is filled in the same manner and pursuant to the same authority by which a permanent vacancy in the office is filled. If there is no provision for filling a permanent vacancy for the office, the Governor must fill the vacancy by making a temporary appointment.⁹⁰ If the suspended official is convicted of charges that support the reason for suspension, the Governor must remove the official from office,⁹¹ creating a vacancy in that office.⁹² While the statute at issue currently provides for how a temporary replacement should be filled for an office when the official has been suspended, it does not provide for how to fill a permanent vacancy in that office if the official is subsequently removed from office.

III. Effect of Proposed Changes:

Presidential Preference Primary Date

The bill moves Florida's presidential preference primary from the second Tuesday in March to the last Tuesday in January of a presidential election year (January 29, 2008). Dates with respect

⁸⁶ § 106.25(4), F.S.

⁸⁷ § 106.25(5), F.S.

⁸⁸ See § 106.33, F.S., and § 106.34, F.S.

⁸⁹ § 106.35, F.S.

⁹⁰ § 112.51, F.S.

⁹¹ *Id.*

⁹² See § 114.01(1)(c), F.S.

to the selection of candidates or delegates of political parties whose names are to appear on the ballot are changed to conform. In addition, the dates for delegates to qualify are changed to conform.

The bill also authorizes municipalities, by ordinance, to move municipal elections currently scheduled for March 2008 and thereafter to coincide with the new presidential preference primary date. This should provide some relief for cities with a municipal election date governed by special law or charter provision, that seek to take advantage of the cost savings associated with scheduling the municipal election to coincide with the presidential preference primary.

Voting Systems

The bill requires all voters, except disabled voters, to cast a marksense ballot on an optical scan voting system. Disabled voters may continue to vote on the existing touchscreen equipment. Thus, the effect of the bill is to replace all touchscreen voting systems in the state with optical scan systems, with the exception of equipment necessary to allow disabled voters to cast an independent ballot. By 2012, disabled voters must be provided a means to cast an independent, marksense ballot.

Further, the bill allows the use of ballot-on-demand technology to produce early-voting and absentee marksense ballots, and authorizes the Secretary of State to permit counties to use ballot-on-demand for election-day ballot production (should the technology prove successful).

The bill also requires the Secretary of State/Department of State to negotiate the disposition of unnecessary touchscreen voting equipment and to purchase new optical scan and ballot-on-demand equipment, including optical scan tabulators, on behalf of counties electing to receive state funding.⁹³ Proceeds realized from the sale of a county's existing touchscreen equipment will be deposited to the HAVA Trust Fund, up to and including the amount of state funding that the county has received for the purchase of new equipment.

Finally, the bill replaces an unused audit provision in Florida law with a requirement that local canvassing boards complete a public, post-election audit of at least one percent but no more than two percent of the precincts in the highest ranking contest on the ballot. The board must: make the audit results public by the 7th day after the election, which allows time for the filing of an election contest;⁹⁴ and, file a report with the Department of State no later than 15 days after the audit is complete. It also authorizes the department to adopt an audit reporting form and detailed, uniform rules for audit procedures.

Various effective dates govern the voting systems provisions in the bill, all leading to implementation by the primary election in the fall of 2008.

⁹³ Counties that wish to dispose of their existing equipment and purchase new equipment on their own may choose to opt-out of the state funding provision by filing a letter to that effect with the Department of State by June 30, 2007.

⁹⁴ An election contest must be filed no later than 10 days after the election results are certified. s. 102.168, F.S.

Third-Party Voter Registration Organizations

The CS amends the definition of “third-party registration organization” to address some of the outstanding issues in the pending lawsuit challenging the constitutionality of the current statute.⁹⁵

It removes the exemption for political parties who engage in voter registration activities. It reduces the fines for inadvertent transgressions of the statute, but maintains many of the current fines for willful violations. The CS also makes the *organization* liable for violations, and removes the provisions in the current statute making numerous members of the organization “personally and jointly and severally” liable. Finally, it empowers the Secretary of State to waive fines upon a showing that failure to deliver the voter registration applications resulted from *force majeure* or impossibility of performance.

Pre-Registration

The CS expands the current under-18, voter *pre*-registration procedure --- from pre-registering only 17 year-olds to pre-registering individuals to vote when they reach their 17th birthday *or receive a valid Florida driver’s license*, whichever occurs first.

Voter Registration Applications

The CS requires a voter registration applicant to be notified that his or her application is incomplete if the applicant’s completed voter registration is received by the book closing deadline but the provided driver’s license number, identification card number, or the last four digits of the applicant’s social security number could not be verified. The notice must inform the voter that he or she must provide evidence to the supervisor that the number on the application is valid. If this evidence is provided, the supervisor must place the voter’s name on the registration rolls as an active voter. If the voter does not provide the necessary evidence, or the number is not verified prior to voting, the voter will be provided with a provisional ballot. The division believes that this will reduce the number of voters who must vote provisional ballots on election day.

The CS also changes the deadline for entering voter registration applications received into the statewide voter registration system from 15 days to 13 days. This change will require voter registration applications to be entered prior to the beginning of early voting, which should reduce the number of early voters who must vote provisional ballots because their applications are not yet entered into the statewide voter registration system.

Candidate Oath

The CS exempts candidates for federal office from the standard candidate oath. It creates a new federal candidate oath that does not require a federal candidate to give oath that he or she is a resident of Florida at the time of qualifying since the United States Constitution does not require a federal candidate to be a resident until he or she is elected.⁹⁶ The amended language also

⁹⁵ See *supra* fn. 12, and accompanying text.

⁹⁶ U.S. CONST. Art. I, § 2, § 3.

exempts federal office candidates from taking the oath required of public employees as provided in section 876.05, F.S., for the reason stated above. The CS also changes the qualification period for school board member offices by moving up this period by three weeks to the time between the 71st day and the 67th day before the primary election.

Candidate Qualification

The CS moves up the qualifying period by three weeks for all candidates except those seeking a federal office, judicial office, or the office of state attorney or public defender. However, the amended language moves up the qualifying period by two weeks for a federal office in any year of apportionment.

The CS makes qualification uniform for special district offices. It moves up the qualifying period by three weeks and adds that the filing fee for a special district candidate does not have to be drawn from the candidate's campaign account. Special district candidates must qualify by paying a filing fee of \$25.00 or qualify by petition under s. 99.095, F.S. The CS specifies that candidates for single county special districts must qualify with the supervisor of elections in the county where the district is located. However, candidates for multi-county districts must qualify with the Department of State. The CS does not require special district candidates to appoint a campaign treasurer or designate a primary campaign depository if they do not collect contributions and only expend money for the filing fee or signature verification fee.

The CS specifies that special district candidates qualifying by petition need only 25 voter signatures from the geographical area of the office sought. Also, the CS requires candidate certifications for a federal, state, multicounty district, or a multicounty special district office be submitted to the division seven days prior to the first day of the qualifying period for each specific office. The supervisor must determine if candidates for a county, district, or special district office have retained the required number of signatures.

Political Parties

The bill moves up the qualification period for the offices of the state or county executive committee membership of a major political party by two weeks to the time between the 71st day and the 67th day prior to the primary election. The CS also changes the way in which a minor political party's selects candidates for nomination to office. The CS removes the minor party's ability to nominate candidates for office through its own procedure and file that list with the Department of State.

The bill maintains the current procedure for allowing a county executive committee to make a determination with regard to one of its own members as to whether that member has violated his or her oath of office as set forth in § 103.141(1), F.S. However, the bill gives the chairman of the state executive committee of a political party complete authority to remove or suspend an officer, state committeeman, state committeewoman, county committeeman, county committeewoman, precinct committeeman, precinct committeewoman, or any other member of a state executive committee, county executive committee, political party club or any other

organization with authorization to use the political party name if one of the individuals mentioned above violates their oath of office or engages in other activities that injured or could have injured or interfered with the activities of the political party. Once the chairman makes a determination, within his or her sole discretion, that a violation has occurred, the chairman may remove or suspend the offending individual from office. If removal occurs, a vacancy is created upon the delivery of the chairman's written order of removal to the individual. The chairman may appoint a person to serve through the removed individual's term of office. Once a person is removed for violating the oath of office, that person may not serve on a state or county executive committee for at least four years from the date of the removal. If a suspension occurs, the length of the suspension is within the sole discretion of the chairman.

The CS allows political parties to file with the Department of State the names of any groups or committees that are associated with a party and restricts the use of those filed names without first obtaining written permission from the chair of the state executive committee of the party.

The CS requires that each state committeeman or committeewoman be a member in good standing of the county executive committee for the county in which that man or woman is a registered voter.

The CS provides for an additional 10 Florida registered voters to be appointed by the Governor to be at-large members of a political party's executive committee if the voters are members of the party to which they are appointed and if the Governor is also a member of that party.

County Commissioners

The CS provides that a county commissioner is "elected" on the date that the county canvassing board certifies the results of the election pursuant to § 102.151, F.S.

Primary Election

The bill moves the primary election to 10 weeks prior to the general election, rather than 9 weeks prior to the general election. This change prevents a primary election from occurring on the Tuesday after the Labor Day holiday.

Petitions

The requirements of s. 100.371, F.S., relating to initiative petitions are amended to:

- Provide that supervisors must verify signatures within 30 days of receiving the petition forms and payment of the signature fee⁹⁷;
- Provide that every signature on a petition must be dated by the elector when made;
- Require supervisors of elections to record the date each petition form was received by the supervisor and the date the signature on the form was verified and that the date on the

⁹⁷ Section 99.097(4), F.S., provides that the supervisor must be paid in advance the sum of 10 cents for each signature checked or the actual cost of checking such signature, whichever is less, by the person or organization submitting the petition.

- petition form is not more than 30 days before the date the form is received by the supervisor of elections;
- Include the original signature, and voter registration number or date of birth of the purported elector;
 - Include the name, street address, and county of the purported elector; and
 - Require the purported elector to be a duly qualified and registered elector authorized to vote in the county in which the signature is submitted.

Under the bill, an elector may submit a petition-revocation form to a supervisor of elections to revoke a signature on an initiative petition. The form must be adopted by rule of the Division of Elections. Petition-revocation forms are to be verified by a supervisor of elections in the same manner as initiative petition forms. Supervisors of elections must be paid in advance a fee of 10 cents or the actual cost of verifying the signature, whichever is less. The supervisor is required to record each valid and verified petition revocation form in the statewide voter registration system.

Voter Identification Required at the Polls

The CS removes the following forms of identification that may be presented at the polls:

- Employee badge or identification.
- Buyer's club identification.
- A debit or credit card.
- Student identification.
- Retirement center identification.

Provisional Ballots

The bill requires the inclusion of provisional ballots in the first set of unofficial returns which determines the necessity of a recount. This change shortens the time period in which provisional voters must submit evidence of their eligibility to vote from 3 days after the election to 2 days after the election.

Precinct Reporting

The bill requires precinct-level reporting from 35 days after a municipal election or runoff, a presidential preference primary, a primary election, a special election, or a general election. The bill provides that the information must be provided in an electronic format prescribed by the Department of State.

The bill requires precinct-level election results to separately record the following by precinct:

- All demographic data associated with each precinct at the book closing deadline for each election;
- Individual vote history;
- Returns of ballots cast at the precinct location;

- Returns of absentee ballots cast by registered precinct voters; and
- Returns of early ballots cast by registered precinct voters.

The bill requires the data to be cross-referenced by political party and other demographic information as defined by the Department of State. The Department of State must provide a uniform collection and reporting system for the election results and vote history.

Mail Ballot Election Procedure

The CS changes the day upon which county canvassing boards may begin to canvass mail ballots in a mail ballot election from the fourth day before the election to the sixth day before the election.

Absentee Ballots

The CS removes language that would require a voter to request an absentee ballot each calendar year. The CS allows an elector to request an absentee ballot which would be sufficient for all elections through the next two general elections. The CS allows for the delivery of ballots to designees to begin five days prior to the election rather than four days prior to the election. Also the CS replaces an existing reference to s. 101.657, F.S., with a reference to s. 101.043, F.S., to explain the types of identification required to be presented in order for an elector to pick up an absentee ballot, if requested, by 7 p.m. on election day.

The CS requires the supervisor to send absentee ballots overseas at least 45 days prior to the general election when requested by qualified absent electors, rather than 35 days prior to the general election. This change will allow the Department of State to petition the federal government to release Florida from the Consent Decree concerning overseas ballots.

Canvassing Returns

The CS conforms the canvassing of special elections to that of general elections by removing the requirement that the canvassing of special election returns begin the day following the election. The CS amends section 101.68, F.S., to allow county canvassing boards to begin canvassing absentee ballots on the sixth day prior to an election, rather than the fourth day. The CS provides a county canvassing board with an additional 19 hours to file returns following a general election. The CS requires canvassing boards to submit preliminary returns to the Department of State on election night in a format designated by the department. The bill also requires canvassing boards to submit unofficial returns for the general election, or any election other than a primary, to the Department by noon on the fourth day after the election rather than the fifth day. The CS also gives the canvassing board nine days after a general election in which a recount occurred to submit a second set of unofficial returns to the department, rather than eight days.

Campaign Treasurers

The CS removes the requirement that a campaign treasurer and deputy treasurer for a political committee or candidate be a registered voter of Florida.

Committees of Continuous Existence (CCEs)

The CS allows groups, organizations, associations, or any other entity to collect dues from its members and forward those dues to the CCE, which the CCE must report as if it had received those dues directly from its members.

Valuation of Private Air Travel

The CS provides that private air travel must be valued at the actual cost of what commercial air travel would cost for the same or a substantially similar route.

Contribution Limits

The bill authorizes contributions to *political committees* and *CCEs* through intermediary affiliated organizations, provided such contributions are specifically identified intended as a contribution to the political committee or CCE. The intermediary affiliated organization may commingle the contributions with its own funds and write a single check to the political committee or the CCE for the aggregate amount of the contributions (provided, for political committees, the aggregate amount does not exceed \$500 and for CCEs, the aggregate amount does not result in the CCEs income from membership dues falling below 25% of its total income).

Cash Contributions

The CS prohibits a person from making or accepting a cash contribution of more than \$50, rather than \$100.

Political Advertisements

The CS requires that three-pack ads made pursuant to § 106.021(3)(d), F.S, must be marked "paid political advertisement" or "pd. pol. adv." and include the following sponsorship disclaimer:

"Paid for and sponsored by (name of person paying for political advertisement).
Approved by (names of persons, party affiliation, and offices sought in the political advertisement)."

Candidacy Polls and Surveys

The CS provides that committees of continuous existence and electioneering communication organizations may authorize or conduct polls or surveys relating to candidacy; however, these groups must maintain complete jurisdiction over all aspects of the poll or survey.

Florida Elections Commission

Alleging a Violation

The CS provides the following:

- A sworn complaint filed with the commission must be based on personal knowledge. The complaint cannot contain any hearsay information.
- If a complaint is filed alleging violations regarding an expense item that was reimbursed, the commission may not investigate the allegations if the reimbursement was made before the complaint was filed.
- If the commission's executive director finds that a complaint is legally sufficient, the respondent must be given notice by letter, which must state the statutory provisions alleged to have been violated and the factual allegations that support the finding.
- A complaint may be withdrawn by the complainant before probable cause is determined if good cause is shown. Withdrawal must be requested in writing, signed by the complainant, witnessed by a notary public, and must state the facts supporting good cause. Good cause must be determined by considering the legal sufficiency or insufficiency of the complaint to allege a violation and the reasons given by the complainant for wanting to withdraw. If withdrawal is allowed, the commission must close the investigation and the case. The complaint becomes a public record at the time it is withdrawn.

Willfulness

The CS repeals the definition of "willful violation" found in § 106.37, F.S., and provides that willfulness is a determination of fact. The respondent may request for willfulness to be considered and determined in an informal hearing before the commission.

Determining Probable Cause

Once the preliminary investigation report is completed, the executive director must notify the respondent of that fact and send him or her a copy of the report. At that time, the investigatory file and main complaint file must be open for inspection by the respondent and his or her counsel. Copies may be obtained at no more than cost. The respondent must be given 14 days from the date of mailing of the report in order to file a written response to the report with the commission. The 14-day time period may be shortened upon the consent of respondent, or without consent if the passage of time could be expected to render the disposition of the issue moot; however, reasonable notice under the circumstances must be given.

The commission's counsel must review the preliminary investigation report and make a written recommendation to the commission regarding the complaint's disposition. If counsel recommends that the commission find probable cause, the recommendation must include what charges will be at issue. A copy of the recommendation must be given to respondent. The respondent will be given 14 days from the date of when the recommendation was mailed in order to file a response. The 14-day time period may be shortened upon the consent of respondent, or

without consent if the passage of time could be expected to render the disposition of the issue moot; however, reasonable notice under the circumstances must be given.

The respondent, complainant, and their counsels must be allowed to attend the probable cause determination hearing. Notice of the hearing must be sent to the respondent, each complainant, and counsel for the commission at least 14 days prior to the hearing. The 14-day time period may be shortened upon the consent of respondent, or without consent if the passage of time could be expected to render the disposition of the issue moot; however, reasonable notice under the circumstances must be given.

At the probable cause hearing, the respondent and counsel for the commission shall be allowed to make brief oral statements to the commission based on the investigator's report. The commission's probable cause determination must be based on the investigator's report, the recommendation of counsel for the commission, the complaint, staff recommendations, and any written statements made by respondent or oral statements given at the hearing.

The commission, at the probable cause hearing, may continue its determination to allow for more investigation, may order the issuance of a public report of its investigation if it finds no probable cause to believe that there has been a violation of chapters 104 or 106, or may order a final, public hearing if probable cause is found to believe that there has been a violation. The commission may take any other action it deems necessary to resolve the complaint consistent with due process of law. In making its determination, the commission may consider:

- The sufficiency of the evidence against respondent as contained in the investigator's report;
- The admissions and other stipulations of respondent, if any;
- The nature and circumstances of the respondent's actions;
- The expense of further proceedings; and
- Any other factors it deems material to its decision.

In addition to current law regarding a finding of no probable cause, the CS provides that this finding is a full adjudication of all such matters. The commission is prohibited from charging the respondent in a subsequent complaint alleging violations based upon the same actions, nonactions, or circumstances wherein the commission did not find probable cause.

If probable cause is found, the commission must determine what charges are at issue.

In addition to the notification requirements provided in current law, the CS provides that once probable cause is found, the commission's counsel must try to reach a consent agreement with the respondent. This agreement is not binding on any party until it is signed by both parties upon approval by the commission. The CS provides that the commission may reach a consent agreement with the respondent before finding probable cause if the respondent indicates in writing a willingness to negotiate a consent agreement. If a consent agreement is reached, counsel for the commission must send a copy of the signed agreement to both the complainant and the respondent.

The CS provides the commission with the authority to dismiss any complaint at any stage of disposition, if it determines that the public interest would not be served by proceeding further, in

which case the commission must issue a public report stating with particularity its reasons for the dismissal.

Hearings Before an Administrative Law Judge

Instead of allowing the respondent to elect to have a hearing before an administrative law judge when a disputed issues of material fact exist, the CS provides the respondent automatically with a hearing before an administrative law judge regardless of any disputed issues of fact unless the respondent elects, within 30 days after the commission files its allegations, to have a formal or informal hearing before the commission or resolve a complaint by consent order. The administrative law judge must enter a final order subject to appeal as provided in § 120.68, F.S.

Other Provisions

The CS requires the commission to maintain a searchable database of all final orders and agency actions, which shall be available to the public.

Public Fund Disbursement

The CS provides that distribution of funds from the Election Campaign Financing Trust Fund shall be made on the 32nd day prior to the primary and every seven days thereafter. This change takes into account the change in the primary date, and will allow distribution to begin on the same day it begins under current law.

Municipal Officers

The CS provides that a person selected to fill a temporary vacancy created by the suspension of a municipal official shall serve the remaining portion of the official's term of office if the official is subsequently removed. This new language will prevent a municipality from holding one election to fill a temporary vacancy due to an official's suspension and another subsequent election to fill a permanent vacancy due to the suspended official's removal from the same office.

Effective Date

Except where otherwise provided, the CS takes effect on January 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:*Voter Identification at the Polls*

Narrowing the forms of photo identification acceptable at the polls without the state providing an acceptable form of identification without charge raises possible constitutional questions.⁹⁸

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:*Petitions*

The bill requires the payment, in advance, to a supervisor of elections of the lesser of 10 cents or the actual cost to verify a petition-revocation form.

C. Government Sector Impact:*Voting Systems*

The bill authorizes an expenditure of approximately \$27.86 million from the Grants and Donations Trust Fund⁹⁹ (federal HAVA monies) to be used for the purchase of optical scan voting equipment (\$22.86 million) and ballot-on-demand technology, including optical scan tabulators, (\$5 million) to replace touchscreen equipment. Any money realized by the sale or other disposition of a county's existing touchscreen voting equipment will be deposited back to the Trust Fund up to and including the amount of state funding the county has accepted.

In addition, the requirement that disabled voters be able to cast an independent, marksense paper ballot by 2012 will require that the current touchscreen voting equipment in every polling place and early voting site be replaced with an AutoMark or similar voting device that marks an optical scan ballot for disabled voters. This will

⁹⁸ See Common Cause/Georgia League of Women Voters of Georgia, Inc. v. Billups, 439 F.Supp.2d 1294 (N.D. Ga. 2006); Indiana Democratic Party v. Rokita, 458 F.Supp.2d 775 (S.D. Ind. 2006) *aff'd by* Crawford v. Marion County Election Bd., 472 F.3d 949 (7th Cir. 2007).

⁹⁹ The Grants and Donations Trust Fund houses federal monies originally provided to the State pursuant to the Help America Vote Act ("HAVA").

require an additional expenditure of at least \$43 million for disabled voting systems in the next 5 years.¹⁰⁰

Finally, the voting systems portion of the bill requires the county canvassing boards to conduct post-certification audits of voting equipment, and report the results to the Department of State. The cost of these audits has not been determined.

Petitions

The Division of Elections of the Department of State will incur costs to adopt a petition-revocation form by rule. Supervisors of elections will incur costs to verify petition-revocation forms and to make petition-revocation forms available to the public.

Precinct Reporting

Supervisors of elections may incur costs associated with the reporting of data required in the bill. Since it is not clear, what effect, if any, this might have, the fiscal impact cannot be determined at this time.

Florida Elections Commission

Providing a respondent with the ability to have a hearing before an administrative law judge at the Division of Administrative Hearings even when there are no disputed issues of fact, unless the respondent elects to have a hearing before the commission or enter into a consent order, may affect the case load of administrative law judges. Since it is not clear what effect, if any, this might have, the fiscal impact cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Voting Systems

The fact that the proposed ballot-on-demand technology is relatively untested combined with the disastrous results experienced in Broward and Miami-Dade counties during the 2002 primary,¹⁰¹ when the State authorized the use of *new and unproven* touchscreen voting equipment with scarcely more than 12 months lead time, militate strongly for implementation of this act in the 2010, not the 2008, election cycle. Noteworthy, also, is the fact that the State of Maryland recently decided to abandon its statewide touchscreen voting system in favor of an optical scan system, *effective for the 2010 election cycle*.

¹⁰⁰ 2006 figures indicate 5,528 election-day polling places, 283 early voting sites, and a per-unit cost of about \$7,400 for an AutoMark machine equipped with privacy booth and carrying case.

¹⁰¹ Equipment problems in Broward and Miami-Dade prompted Governor Bush to issue an executive order extending the polling hours statewide by 2 hours during the 2002 primary election.

Presidential Preference Primary Date

While this bill may provide Floridians with a greater voice in the presidential nominating process, it has been widely reported that a compressed, front-loaded primary schedule will likely benefit better-known, better-funded candidates.

County Commissioners

The Florida Constitution provides that “[o]ne commissioner residing in each district shall be elected as provided by law.”¹⁰² The Florida Supreme Court has interpreted this provision to require residency at the time of election.¹⁰³ A trial court recently held that a person is not “elected” until certification of the election by the canvassing board.¹⁰⁴ This case is now pending before the 5th District Court of Appeal.¹⁰⁵

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁰² FLA. CONST., Art. 8, § 1.

¹⁰³ *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988).

¹⁰⁴ *Robinson v. Rocco*, Case No. H-27-CA-2006-1365, 5th Cir. (December 21, 2006).

¹⁰⁵ See Case Nos. 5D07-553 and 5d07-621.

VIII. Summary of Amendments:

None.

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