

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDCA 09-08 Elections
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Economic Development & Community Affairs Policy Council, McDonald, Tinker. Rows 2-6 are numbered 1) through 5) with blank entries.

SUMMARY ANALYSIS

This bill is an omnibus elections measure that contains numerous changes to the Florida Elections Code. Some of the changes include:

- Clarification that state law preempts any county or local provisions as to those matters that are addressed in Chapters 97-105 of the Florida Election Code, except as otherwise specifically provided by law.
A substantial revision of requirements for third-party voter registration organizations.
Removal of the use of retirement center identification or neighborhood association identification for voter registration, for first time voters voting by mail, and for poll identification.
Provisions related to paid petition circulators, including restrictions and required registration, as well as provisions relating to invalidation of petitions not collected in compliance with the act and relating to offering voters an opportunity to sign a replacement petition.
Allowing an overseas voter to request, receive or return a voted absentee ballot by e-mail, fax or other electronic transmission if the Department of State can determine that the transmission is secure.
Creation of resignation requirements for any officer who qualifies for federal public office.
Requiring the supervisor of elections to designate early voting sites no later than 60 days prior to an election.
Requiring early voting sites for primary and general elections to be the same.
Providing for extension of early voting hours and days only upon execution by the Governor of an executive order declaring a state of emergency as authorized in chapter 252, F.S.
Specifying that the Elections Canvassing Commission must meet to certify the election results at 9:00 a.m. on the ninth day after a primary election and at 9:00 a.m. on the fourteenth day after a general election.
Prohibiting any person, political committee, committee of continuous existence, or other group or organization from soliciting any voter who is in line to vote at any polling place or early voting site.

The bill takes effect July 1, 2009.

The fiscal impact is indeterminate. See "Fiscal Comments."

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

State Preemption of Election Laws

Florida's election code consists of chapters 97-105, F.S., and chapter 106, F.S., relating to campaign financing. Throughout those chapters reference is made to state responsibility for ensuring the implementation of those laws uniformly throughout the state. One of the responsibilities of the Secretary of State as chief election officer is "to obtain and maintain uniformity in the interpretation and implementation of election laws." Currently, this state control of the election laws has been challenged by an amendment of a local charter making certain election practices inconsistent with state law. The issue is now pending before the Florida Supreme Court.

The bill clarifies that state law preempts any county or local provisions as to those matters that are addressed in Chapters 97-105 of the Florida Election Code, except as otherwise specifically provided by law. This provision is consistent with the Second District Court of Appeal's decision in Browning v. Sarasota Alliance for Fair Elections, Inc., 968 So. 2d 637 (Fla. 2d DCA 2007). That case is now on appeal before the Florida Supreme Court.

Responsibilities of Secretary of State as Chief Election Officer

The Secretary of State is the chief election officer of the state and is statutorily given a variety of responsibilities. Those responsibilities include such things as obtaining and maintaining uniformity in the interpretation and implementation of the election laws, providing uniform standards for the proper and equitable implementation of the registration laws; providing technical assistance to the supervisors of elections on voter education, election personnel training services, and voting systems; and creating and administering a statewide voter registration system as required by the Help America Vote Act of 2002.¹

The bill requires the Secretary of State to provide direction and opinions to the supervisor of elections on matters relating to their official duties with respect to Chapters 97-102 and 105, F.S.

Voter Registration

Under provisions of s. 97.052, F.S., if a voter registration applicant fails to provide any of the required information on the voter registration application form, the supervisor of election must notify the

¹ See s. 97.012, F.S., for a complete listing of responsibilities.

applicant of the failure by mail within 5 business days after the information is available on the voter registration system. Additionally, the applicant has an opportunity to complete the application form to vote in the next election up until the book closing time for the election.

Under s. 97.0535, F.S., forms of identification that are acceptable for voter registration, provided they contain the name and photograph of the applicant, are as follows: United States passport, debit or credit card, military identification, student identification, retirement center identification, neighborhood association identification, and public assistance identification.

The bill transfers to s. 97.073, F.S., the requirement for a supervisor of elections to notify a voter registration applicant of failure to provide all required information on the voter registration application form as provided in s. 97.052, F.S.

The bill deletes the use of retirement center or neighborhood association identification as valid identification for voter registration. The use of this form of identification at the polls also is deleted in s. 101.043, F.S., and is deleted for use by first time voters who vote by mail.

The change in s. 97.073, F.S., clarifies the notice of disposition and imposes timeframes for noticing applicants. The language further provides that an applicant who provides an incomplete application has one year to complete the application, otherwise a new application must be submitted. This allows the statewide voter registration system to close incomplete applications after a year. These incomplete applications currently are utilizing a great deal of space in the voter registration system.

Third-Party Voter Registration

Under s. 97.0575, F.S., before engaging in any voter registration activities, a third-party voter registration organization must name a registered agent in the state and submit certain required information to the Division of Elections. On or before the 15th day of each calendar quarter, the organization must submit a report providing date and location of any organized voter registration drives conducted in the prior calendar quarter. Penalties and fines are provided for specified acts of omission or commission.

The bill requires third-party voter registration organizations to register with the Division of Elections and provide certain information. Applications collected by these organizations must be turned into the Division or supervisor of elections within 5 days after it is collected or the next business day, if the office is closed on the fifth day. The bill allows for "Force Majeure" to be an affirmative defense to the requirement for the timeframe for turning in forms. All voter registration applications used by such organization must contain information identifying that organization. The bill also does the following:

- Removes automatic fines for failure to deliver registration applications on time as well as the aggregate fine cap of \$1,000.
- Removes the provision that fines will be reduced by three-fourths if the third party group complied with the registered agent and group information filings contained in s. 97.0575(1), F.S.
- Provides that a registration agent who intentionally violates this section is guilty of a first degree misdemeanor and his or her agent registration shall be revoked.
- Creates a civil fine of \$250 for each violation by a third-party voter registration organization, not to exceed in the aggregate \$10,000 for each calendar year.
- Requires the Secretary of State to refer any complaint to the Attorney General or the state attorney for enforcement. The Attorney General or the state attorney may institute a civil action for a violation or to prevent a violation. Action for relief may include a permanent or temporary injunction or any other appropriate order.
- Provides for enhanced rulemaking authority.
- Revises the definition of "third-party voter registration organization" and defines "registration agent" in s. 97.021, F.S.

Voter Registration List Maintenance

For the purpose of maintaining accurate voter registration records, supervisors of elections must conduct a general registration list maintenance program, which must be uniform, nondiscriminatory, and must comply with several federal voting acts, including the Help America Vote Act of 2002. At least every odd numbered year, a supervisor must incorporate certain specified procedures in his or her biennial registration list maintenance program.

Currently, supervisors of elections have the authority to remove deceased, registered voters from the statewide voter registration system when supervisors receive a copy of a death certificate issued by a governmental agency authorized to issue such certificate. However, the supervisor must notify the registered voter of the action by mail within 7 days after receipt of the death certificate, giving the voter an opportunity to establish that the death certificate is for another person with the same or a similar name.

The bill requires each supervisor of elections conduct a registration list maintenance program at least quarterly in each odd-numbered year and monthly during each even-numbered year. The program must be completed no later than 90 days before any federal election.

The bill also facilitates the use of the nationwide Social Security death index to identify Florida voters who may have passed away outside the State of Florida, which would otherwise not be known to the Department of State. This information is in addition to information received from the Department of Health which provides information on persons who have died within the state. In addition, the supervisors of elections must remove the name of a deceased voter upon receipt of a copy of a death certificate. This allows the supervisor to remove the name of a deceased voter when a relative provides a copy of a death certificate.

Overseas Voters

Current law provides for request of an absentee ballot by e-mail by someone who is overseas. Current law also authorizes the Department of State to adopt rules authorizing a supervisor of elections to accept from an overseas voter a request for an absentee ballot or a voted ballot by secure facsimile machine transmission or other secure electronic means provided certain things can be verified.

The bill amends s. 101.6952, F.S., to allow overseas voters to get prompt notification from the supervisor of elections regarding their absentee ballot request and the fact that their voted ballot has been received by the supervisor. Currently many overseas voters have no way of knowing whether their absentee request was received or whether their voted ballot has been received.

This change in s. 101.697, F.S., will allow an overseas voter to request, receive or return a voted absentee ballot by e-mail, fax or other electronic transmission if the Department determines that the transmission is secure. The Department of State is required to adopt rules to provide the process for accepting voted absentee ballots by fax, e-mail or other secure electronic means. Many overseas voters do not have access to fax machines; however, they do have computers with e-mail access and scanning machines, which will facilitate the receipt and return of overseas ballots.

Candidate Oaths; Disclosures; Information Required

In s. 99.021, F.S., a printed copy of the oath or affirmation must be provided to the candidate by the officer before whom the candidate seeks to qualify. The oath requires the candidate to affirm that he or she has taken the oath required in ss. 876.05-876.10, F.S., which in essence has the candidate swearing to a public employee oath which is not applicable to a candidate. The language for the nonpartisan oath in chapter 105, F.S., contains the same requirements. The oath in s. 876.05, F.S., relating to public employees, is specifically required for all candidates for public office, excluding federal office.

Currently, financial disclosures are not required to be notarized pursuant to s. 117.05, F.S.

Finally, information regarding the appointment of a campaign treasurer and designation of campaign depository is not explicit in law as to what is to be included in such information.

Under the changes in the bill, the qualifying officer is no longer required to provide a printed copy of the candidate's oath to every candidate, but makes the oath available for downloading. Making the oath form available for downloading avoids unnecessary expense since the qualifying officer will not know beforehand which oath the person needs--party, no party, or write-in. The requirement for swearing to language like in the public employees' oath is deleted and the candidate swears to uphold the Constitution of the United States and the State of Florida.

Financial disclosures must to be notarized pursuant to s. 117.05, F.S. Information to be provided regarding the campaign treasurer and designation of campaign depository are delineated.

Resign to Run

Current law prohibits any person from qualifying as a candidate for more than one public office, whether state, district, county, or municipal, if any part of the terms runs concurrently with each other.²

An officer may not qualify as a candidate for another state, district, county, or municipal public office if any part of the terms run concurrently with each other, unless resigning from his or her current office.³ The written resignation is irrevocable and must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.⁴ Resignation is effective no later than the date the officer takes office, if elected, or the date the officer's successor is required to take office, whichever is earlier.⁵ Resignation requirements do not apply to any person holding a federal office.⁶

The bill requires any officer who qualifies for federal public office to resign from the office he or she presently holds if any part of the terms of office runs concurrently. The resignation is irrevocable and must be submitted in writing no later than the date upon which the officer qualifies for office. The written resignation is effective on the date the officer would take office, if elected, or the date the officer's successor is required to take office, whichever is earlier. Failure by an officer to meet the resignation requirements results in an automatic irrevocable resignation effective immediately.

Initiative Petitions

Currently under s. 100.371, F.S., each signature is dated when made and is valid for a period of 4 years following the date. The sponsor must submit dated forms to the appropriate supervisor of elections for verification. The supervisor must verify the signature within 30 days of receipt of the petition forms and the payment of the fee required by s. 99.097, F.S. The supervisor can verify that a signature is valid only if it meets certain requirements. Signature forms must be retained for 1 year or until notified by the Division of Elections. An elector's signature on a petition form may be revoked within 150 days of the date on which he or she signed the petition form by submitting a signed petition-revocation form.

The bill changes the validity of the signature from 4 years to 2 years, requires initiative petitions be delivered to the supervisor of elections within 45 days of the date the petition is signed, and removes the 150 day petition revocation window.

² Section 99.012(2), F.S.

³ Section 99.012(3)(a), F.S.

⁴ Section 99.012(3)(b) and (c), F.S.

⁵ Section 99.012(3)(d), F.S.

⁶ Section 99.012(7), F.S.

Paid Petition Circulators

Ballot Initiative Process⁷

The Florida Constitution has more methods of amendment than any other state constitution.⁸ Article XI of the Florida Constitution allows voters to approve state constitutional amendments proposed via the following methods:⁹

- Proposed by joint resolution passed by a three-fifths vote of each house of the legislature;
- Proposal by the Constitution Revision Commission;
- Proposal by the Taxation and Budget Reform Commission; or
- Proposal by the citizen initiative petition.

Florida adopted the citizen initiative process in 1968.¹⁰ Originally created to enable citizens to amend their constitution,¹¹ the process has evolved into an expensive undertaking dominated by special interest groups that pay professional signature gatherers to collect petition signatures.¹² Current Florida law does not address compensation for signature gatherers.

Procedure for Placing Initiative on Ballot

The procedure for placing an initiative on the ballot is provided in s. 100.371, F.S. To obtain ballot position:

- The sponsor of an amendment must register as a political committee pursuant to s. 106.03, F.S., and submit the text of the amendment with the form on which the signatures will be obtained;
- The Secretary of State must approve the submitted form before signatures are obtained;
- After signatures are obtained, the Secretary of State must determine the total number of valid signatures and the distribution from congressional districts;
- The certification of ballot position must be completed by February 1 of the year the general election is held; and
- The Supreme Court must approve the validity of the proposal.

Signature Verification

The responsibility for signature verification belongs to supervisors of elections, pursuant to s. 99.097, F.S. This statute covers signatures gathered on behalf of a candidate seeking placement on a ballot and signatures gathered in support of ballot initiatives. For ballot initiatives, Art. XI, s. 3 of the Florida Constitution, requires "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."

Requirements for Initiative Petition Circulators in Other States - NCSL Review

According to the National Conference of State Legislatures, of the 24 initiatives and referendum states surveyed regarding residency and age requirements Florida, Massachusetts, Oregon, and Washington do not have any requirements. Oregon, however, has now modified its requirements that were declared unconstitutional and has passed legislation with modifications included.¹³ Of the 24 states,

⁷ Information obtained from HB 7009 analysis by the House Policy and Budget Council, April 24, 2007.

⁸ Representative Talbot "Sandy" D'Alemberte, *The Florida State Constitution - A Reference Guide*; cited in P.K. Jameson & Marsha Hosack, *Citizen Initiative in Florida: An Analysis of Florida's Constitutional Initiative Process, Issues, and Statutory Initiative Alternatives*, 23 FLA. St. U. L. Rev. 417(1995)(hereinafter "Jameson & Hosack.")

⁹ Art. XI, s. 1, Fla. Const. (Legislature); Art. XI, s. 2, Fla. Const. (Revision Commission); Art. XI, s. 3, Fla. Const. (citizen initiative); Art. XI, s. 4, Fla. Const. (constitutional convention); Art. XI, s. 6, Fla. Const. (Taxation and Budget Reform Commission).

¹⁰ Art. XI, s. 3, Fla. Const.

¹¹ The citizen initiative process often is referred to as 'direct democracy,' as opposed to the more traditional representative democracy. "Initiatives generally allow the public to bypass the Legislature and reserve direct lawmaking power in the voters of the state." Jameson & Hosack.

¹² "Professional signature gatherers, carrying most or all of the nine [forms from rival signature-gathering firms], first ask people to sign the one paying the most." David S. Broder, "Collecting Signatures for a Price," *Washington Post*, April 12, 1998.

¹³ "Residency and Age Requirements Chart", Requirements for Initiative Petition Circulators, National Conference of State Legislatures, Updated May 28, 2008.

Florida, Massachusetts, and Montana are the only states that do not have state laws specifically regarding prohibitions against unethical behavior by petition circulators.¹⁴ Additionally, Montana, Nebraska, North Dakota, Oregon, South Dakota, and Wyoming have laws which ban initiative sponsors from paying petition circulators per signature. These laws have been challenged in the courts with mixed results. The provisions of the laws in North Dakota and Oregon have been upheld by the U.S. 9th and 8th Circuit Courts, respectively. Similar provisions in the laws of Idaho, Maine, Mississippi, Ohio, and Washington were held unconstitutional by federal district courts. The U.S. 6th Circuit Court of Appeals upheld the Ohio ruling in March 2008.¹⁵

Definitions

The bill creates s. 100.372, F.S., to provide for the following definitions:

- "Initiative sponsor" means the political committee registered pursuant to s. 106.03, F.S., that has submitted the text of a proposed amendment to the Secretary of State.
- "Department" means the Department of State.
- "Petition circulator" means any person who, in the context of a direct face-to-face interaction, presents to another person for his or her possible signature an initiative petition form.
- "Paid petition circulator" means a petition circulator who receives any compensation or other valuable consideration as a direct or indirect consequence of the activities described in the paragraph above, other than for the reimbursement of legitimate out-of-pocket expenses incurred by the petition circulator in the ordinary course of these activities, as specified by Department rule.
- "Registrant" means a person who is registered with the Department as a paid petition circulator.

Prohibited Acts

The bill prohibits:

- A paid petition circulator from collecting petitions in Florida without first registering with the Department.
- Anyone from paying or providing other valuable consideration to a petition circulator who is not registered with the Department.
- A paid petition circulator from continuing to perform any duties permitted under the bill if any of the requirements for registration can no longer be satisfied.
- Registrants from circulating petition forms until the forms have been registered with the Department.

The bill's provisions presumably would be enforced by county supervisors of elections (supervisors) who would have to determine if a petition circulator had registered with the Department and satisfied all the requirements. It appears that some type of database would have to be developed by the Department to register and track paid petition circulators. This information would then have to be made available to supervisors.

Registration Requirements for Paid Petition Circulators

A person cannot engage in the activities as a paid petition circulator nor be registered with the Department as a paid petition circulator unless the person:

- Has registered with the Department as prescribed in law and rule;
- Certifies under penalty of perjury that he or she has not been convicted of a criminal offense in Florida or any other state or under federal law involving fraud, deceit, forgery, perjury, or identity theft within 5 years preceding the date of application; and
- Does not receive compensation based upon the number of initiative petition signatures obtained.

The bill provides that if a person no longer satisfies one or more of the above requirements, the registration is immediately rendered invalid by operation of law, the person is required to immediately notify the Department, and the person is required to immediately cease all petition gathering activities.

¹⁴ "Prohibitions against Unethical Behavior by Petition Circulators Chart", National Conference of State Legislatures, June 2007.

¹⁵ Banning Payment-per-Signature for Initiative Petition Circulators, National Conference of State Legislatures, Updated May 28, 2008.

The bill does not specifically address how the Department might verify a person's registration information or whether it is required to do so. The Department could simply treat verification as a ministerial duty and accept each person's registration information as being true and accurate. Alternatively, the Department might conduct a background check of each applicant. It is expected that the registration requirements will be "self-policing" in that firms employing paid petition circulators and opponents of initiatives will be checking for compliance with the bill's requirements.

The bill imposes a number of registration requirements on paid petition circulators. An applicant is required to provide the following information to the Department:

- His or her full name and any assumed name;
- The residential street address of the applicant;
- An example of the applicant's signature;
- Identification of the initiative petitions that the applicant will be circulating;
- Two 2-inch by 2-inch passport-style photographs of the applicant;
- The name, street address, and telephone number of the person or entity from which the person will receive compensation as a direct or indirect consequence of his or her activities;
- A signed statement acknowledging having read and understanding certain state and federal laws;
- Evidence that the applicant has completed the required training; and
- Any other information required by Department rule.

As a condition of registration, the registrant must notify the Department of any change in the information submitted within five business day after the change.

Petition Form

The bill requires that the petition form circulated by the registrant:

- Be registered with the Department.
- Include the paid petition circulator's registration number.

Verification Requirements

The bill provides that petitions may not be verified by the supervisor of elections, and may not be counted toward the number of valid signatures required for ballot placement if such signature was not gathered in full compliance with the new s. 100.372, F.S. However, the bill provides for a process whereby the supervisor of elections returns the petition, at the expense of the sponsor, within 30 days of the invalidation. The sponsor must then, within 30 days of receipt, provide written notice to the elector whose signature was invalidated. The bill provides what must be specifically disclosed to the elector, and also gives the elector an opportunity to sign a replacement petition form. This bill exempts an elector who utilizes this process from s. 104.185(1), F.S.¹⁶

Any signature gathered on a previously approved initiative petition form that is submitted for verification before October 1, 2009, may be verified and counted if otherwise valid. However, any initiative petition form submitted for verification on or after that date may be verified and counted only if it complies with new s. 100.372, F.S.

Ballots; Voting Methods

Provisional Ballot

The bill amends s. 101.045, F.S., to require that an elector must vote a provisional ballot if he or she changes his or her residence address less than 29 days before an election.

Printing by Precinct

The bill amends s. 101.151, F.S., to require ballots to be printed by precinct, rather than by ballot style. This will assure that all ballots are easily accounted for in the manual audit and will facilitate the timely release of precinct-level results. The removal of the various headings on the ballot will simplify the

¹⁶ Which makes it a crime to knowingly sign a petition more than once.

ballot and create much needed space on the ballots, which over the years have increased in length and cost. Additionally, the bill corrects the wording that names are placed on the ballot in order that the candidate qualified. There is no certification.

Testing of Ballots

Currently, many counties order separate "test decks" from their printers for the logic and accuracy test. This does not allow the supervisor of elections to detect any potential problems that may arise with the actual election ballots. The bill requires the supervisor of elections to employ test ballots created by the supervisor using actual ballots that have been printed for the election. If ballot-on-demand ballots will be used in the election, the supervisor must create test ballots for those. The same paper stock used for the ballots is required for the test ballots. This change assures that the same ballots used in the election will be used in the logic and accuracy test, thereby increasing the exposure for potential problems with the ballots.

Absentee Ballots

The bill amends s. 101.62, F.S., to require that absentee ballot request information be made available beginning 45 days prior to a primary election and updated through general election day. It provides specific dates by which a supervisor of elections must begin mailing absentee ballots. The bill requires that absentee ballots be mailed by the supervisor of elections within 48 hours after receiving a request for such a ballot.

The bill amends s. 101.64, F.S., to provide that the supervisors of elections may not include any information indicating a voter's party affiliation or no-party-affiliation status on the absentee ballot mailing envelope. The bill also requires that each supervisor of elections establish and fund an account with the U.S. Postal Service to pay additional postage on absentee ballots mailed with insufficient postage.

Voting Methods

The bill extends by 4 years the requirement for persons with disabilities to vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under s. 301 of the federal Help America Vote Act (HAVA) of 2002 and s. 101.56062, F.S.

Early Voting

Currently, early voting sites must be designated no later than 30 days prior to an election. Early voting sites may be in the main or branch office of the supervisor or the supervisor also may designate any city hall or permanent public library as an early voting site. Sites designated must be geographically located in order to provide all voters in the county an equal opportunity to cast a ballot. Sites must be open on the same days for the same amount of time and allow persons in line at the time of close to vote. Early voting begins on the 15th day before an election and ends on the 2nd day before an election; however, for special elections, early voting begins on the 8th day before an election. Sites must be open for 8 hours each weekday and 8 hours in the aggregate each weekend.

The bill requires that early voting sites be designated by the supervisor of elections no later than 60 days prior to an election. The bill provides that early voting sites for primary and general elections must be the same. The bill also provides that early voting hours and days may be extended only upon execution by the Governor of an executive order declaring a state of emergency as authorized in s. 252.36, F.S. Results or tabulation of votes cast during early voting may not be made before the close of the polls on election day. Results must be reported by precinct.

Poll Watchers

The bill amends s. 101.131, F.S., to require the Division of Elections to promulgate a form to designate poll watchers. The amendment also provides a noon deadline 14 days before early voting begins for designation of poll watchers. This aligns the noon timeframe of early voting with the noon timeframe of election day. Poll watcher designations must be signed by the chairman of the county political executive committee, the chairman of a political committee, or the candidate. All poll watchers are at-

large poll watchers. Additionally, the supervisor of elections must provide poll watcher identification badges and the poll watchers must wear the badges when present at the polls.

Audits; Recounts

Post certification manual audit

The substantial rewording of s. 101.591, F.S., provides significant changes to the manual audit procedures. It increases the number of races and precincts required to be audited and provides specific timelines for randomly selecting the races and precincts and for conducting the audit. It allows any candidate who was entitled to a manual recount of overvotes and undervotes to request a manual audit for that race. This change will provide greater transparency and increase public confidence that the voting equipment has correctly counted all votes.

County Canvassing; Recounts

The bill amends s. 102.141, F.S., to allow the Secretary of State to order automatic machine recounts for federal, state and multicounty offices, when the results warrant it. This will eliminate the need for the Elections Canvassing Commission to meet on short notice and on weekends to order recounts. The county canvassing board is responsible for ordering recounts for all other races.

Manual Recounts of Overvotes and Undervotes

This amendment to s. 102.166, F.S., clarifies that a manual recount of all ballots is not being undertaken, but only a recount of the overvotes and undervotes.

Definitions in Chapter 106

The definition of "political committee" in s. 106.011(1)(a), F.S., provides for entities that are not considered political committees under chapter 106, F.S. Those entities include the following:

- Committees of continuous existence, national political parties, and the state and county executive committees of political parties regulated by chapter 103;
- Corporations regulated by chapters 607 or 608, F.S., or other business entities formed for purposes other than to oppose issues or candidates, if their political activities are limited to contributions, political parties, political committees or expenditures in support of or opposition to an issue from specified funds and under specified restrictions; and
- Electioneering communications organizations.

The bill adds organizations registered as political committees or other such similar entities with another state.

The bill clarifies the definition of "candidate" to ensure that expenditures made by state or county party executive committees for potential candidate polls are not contributions or expenditures for the purposes of determining whether a person is a "candidate."

Candidates

The bill does the following related to candidates:

- Removes the 28-day timeframe restriction on when contributions from a political party may be accepted by a candidate.
- Revises the list of non-allocable expenses to include office costs associated with staff and communications media.
- Provides that the qualifying officer must notify unopposed candidates of any amount owed for unpaid election assessments or petition verification fees.
- Provides that if a person is elected in an open primary to a state legislative or county office, the person is deemed elected at that time.
- Provides that a vacancy in nomination is not created if a legal nomination was not in place.

The bill changes the deadline for filing an elections contest to accommodate the change to the audit procedures in s. 101.591, F.S. The audit must be completed by the 21st day following the election.

The other changes clarify that the county canvassing board is not an indispensable party unless it was the board that canvassed the local election and that the Elections Canvassing Commission is an indispensable party in all judicial elections, except elections for county court judges.

Political Parties

Polls and Surveys Relating to Candidacies

The bill amends s. 106.17, F.S., to provide that a state or county executive committee of a political party may authorize and conduct political polls for determining viability of a potential candidate. The results of the poll may be shared with the potential candidate under certain circumstances. The bill provides that expenditures incurred by the committees do not constitute contributions to such potential candidates.

Reports by Political Parties; Restrictions on Contributions and Expenditures

Under s. 106.29, F.S., the state executive committee and each county executive committee of each political party regulated by chapter 103, F.S., is required to file reports of all contributions received and expenditures made by the committees. The reports must contain the same information as reports required of candidates by s. 106.07, F.S.

The bill provides that expenditures for salaries may be reported in the aggregate.

Political Advertisements

The bill provides a disclaimer for non-allocable in-kind political advertisements paid for by a political party. The bill also provides that names and abbreviations filed with the Division of Elections may be used in the disclaimer of political advertisements paid for by political parties.

Executive Committees

The bill provides that a political party, other than a minor political party, may adopt any additional requirements for qualifying for the office of state or county executive committee in addition to any other requirements imposed by law.

The bill revises the membership appointments for state party executive committees in s. 103.091(6)(b), F.S., allows for proxy voting only if permitted by rule of the party, and provides that each member of a state executive committee must be considered a full member with all rights and privileges of that office.

The bill provides that the venue for any action involving a political party's constitution, rules, or bylaws shall be in the Circuit Court of Leon County.

Leadership Fund

Current law prohibits leadership funds in the state and the acceptance of any leadership funds. The prohibition applied to leadership funds in existence on or after January 1, 1990.

The bill removes the prohibition of a leadership fund in the state and the acceptance of such funds.

Florida Elections Commission

The Florida Elections Commission enforces the campaign finance laws. In addition, the Commission investigates alleged violations upon receipt of a legally sufficient, sworn complaint.¹⁷ The Commission is created as a separate budget entity within the Department of Legal Affairs, Office of the Attorney General. Currently, the Florida Elections Commission appoints its executive director. No term limit is provided in law for the appointment. The duties of the executive director are provided in s. 106.24, F.S. The executive director serves at the pleasure of the commission.

¹⁷ For more information, see the Commission's website, <http://www.fec.state.fl.us/>

The bill requires that the appointment of the executive director is subject to Senate confirmation. The bill also limits the executive director's term to 2 years with a maximum service of four consecutive 2-year terms.

Election Results

Current law requires supervisors of elections to collect and submit to the Department of State precinct-level election results within 45 days after the date of a presidential preference primary election, special election, or general election.¹⁸ The results must be submitted in a uniform electronic format and must be compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results must include, for each precinct, the aggregate total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment.

The bill revises the reporting requirements for election results. The results specifically must include, for each precinct, the total of all ballots cast subtotaled by ballot type for each candidate or nominee. In precincts where three or fewer total ballots were cast, the supervisors of elections must report only the aggregate total of all ballots cast.

Elections Canvassing Commission

The Elections Canvassing Commission consists of the Governor and two members of the Cabinet selected by the Governor. If a member of the Commission is unable to serve for any reason, the Governor appoints a remaining member of the Cabinet, and if there is a further vacancy, the remaining members of the Commission must agree on another elected official to fill the vacancy.

Current law requires the Commission to certify the returns of the election and determine and declare who has been elected for each federal, state, and multicounty office as soon as the official results are compiled from all counties.¹⁹

The bill specifies that the members of the Commission serve ex officio. In addition, it specifies a time certain for the Commission to certify the election returns. The Commission must meet at 9:00 a.m. on the ninth day after a primary election and at 9:00 a.m. on the fourteenth day after a general election to certify the returns of an election.

Soliciting

Current law provides that each election board possesses full authority to maintain order at the polls and to enforce obedience to its lawful commands during an election and the canvass of the votes.²⁰ The sheriff must deputize a deputy sheriff for each polling place and each early voting site who must be present during the time the polls or early voting site are open and until the election is completed.²¹

Current law prohibits any person from entering a polling room or polling place where the polling place is also is a polling room or any early voting area during voting hours except for certain persons.²² In addition, no person, political committee, committee of continuous existence, or other group or organization may solicit voters inside the polling place or polling room or within 100 feet of the entrance to such place or room. The supervisor must designate the no-solicitation zone and mark the boundaries prior to the opening of the polling place or early voting site.²³

The bill prohibits any person, political committee, committee of continuous existence, or other group or organization from soliciting any voter who is in line to vote at any polling place or early voting site. It

¹⁸ Section 98.0981(2), F.S.

¹⁹ Section 102.111(1), F.S.

²⁰ Section 102.031(1), F.S.

²¹ Section 102.031(2), F.S.

²² Section 102.031(3)(a), F.S.

²³ Section 102.031(4)(a), F.S.

amends the definition of “solicit” or “solicitation” to include offering or purporting to offer advice of any kind.

B. SECTION DIRECTORY:

Section 1 creates s. 97.0115, F.S., providing for the preemption of certain matters to the state.

Section 2 amends s. 97.012, F.S., relating to Secretary of State as chief election officer.

Section 3 amends s. 97.021, F.S., relating to definitions.

Section 4 repeals s. 97.052(6), F.S., relating to notification and correction subsequent to the failure of a voter registration applicant to provide required information on a voter registration application form.

Section 5 amends s. 97.053, F.S., relating to acceptance of voter registration applications.

Section 6 amends s. 97.0535, F.S., relating to special requirements for certain applicants.

Section 7 amends s. 97.0575, F.S., relating to third-party voter registrations.

Section 8 amends s. 97.073, F.S., relating to disposition of voter registration applications; cancellation notice.

Section 9 amends s. 98.065, F.S., relating to registration list maintenance programs.

Section 10 amends s. 98.075, F.S., relating to registration records maintenance activities; ineligibility determinations.

Section 11 amends s. 98.0981, F.S., relating to reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics.

Section 12 amends s. 99.012, F.S., relating to restrictions on individuals qualifying for public office.

Section 13 amends s. 99.021, F.S., relating to form of candidate oath.

Section 14 amends s. 99.061, F.S., relating to method of qualifying for nomination or election to federal, state, county, or district office.

Section 15 amends s. 99.063, F.S., relating to candidates for Governor and Lieutenant Governor.

Section 16 amends s. 100.111, F.S., relating to filling vacancy.

Section 17 amends s. 100.371, F.S., relating to initiatives; procedure for placement on ballot.

Section 18 creates s. 100.372, F.S., relating to paid petition circulators.

Section 19 amends s. 101.043 F.S., relating to identification required at polls.

Section 20 amends s. 101.045, F.S., relating to electors must be registered in precinct; provisions for change of residence or name.

Section 21 amends s. 101.131, F.S., relating to watchers at polls.

Section 22 amends s. 101.151, F.S., relating to specifications for ballots.

Section 23 amends s. 101.56075, F.S., relating to voting methods.

Section 24 amends s. 101.5612, F.S., relating to testing of tabulating equipment.

Section 25 amends s. 101.591, F.S., relating to postcertification manual audit.

Section 26 repeals s. 101.5911, F.S., relating to rulemaking authority for voting system audit procedures.

Section 27 amends s. 101.62, F.S., relating to request for absentee ballots.

Section 28 amends s. 101.64, F.S., relating to delivery of absentee ballots; envelopes; form.

Section 29 amends s. 101.657, F.S., relating to early voting.

Section 30 amends s. 101.6923, F.S., relating to special absentee ballot instructions for certain first-time voters.

Section 31 amends s. 101.6952, F.S., relating to absentee ballots for overseas voters.

Section 32 amends s. 101.697, F.S., relating to electronic transmission of election materials.

Section 33 amends s. 102.031, F.S., relating to maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters.

Section 34 amends s. 102.111, F.S., relating to Elections Canvassing Commission.

Section 35 amends s. 102.112, F.S., conforming a cross-reference.

Section 36 amends s. 102.141, F.S., relating to county canvassing board; duties.

Section 37 amends s. 102.166, F.S., relating to manual recounts.

Section 38 amends s. 102.168, F.S., relating to contest of election.

Section 39 amends s. 103.091, F.S., relating to political parties.

Section 40 amends s. 103.121, F.S., relating to powers and duties of executive committees.

Section 41 amends s. 105.031, F.S., relating to qualification; filing fee; candidate's oath; items required to be filed.

Section 42 amends s. 106.011, F.S., relating to definitions.

Section 43 amends s. 106.08, F.S., relating to contributions; limitations on.

Section 44 amends s. 106.141, F.S., relating to disposition of surplus funds by candidates.

Section 45 amends s. 106.143, F.S., relating to political advertisements circulated prior to election; requirements.

Section 46 amends s. 106.17, F.S., relating to polls and surveys relating to candidacies.

Section 47 amends s. 106.24, F.S., relating to Florida Elections Commission; membership; powers; duties.

Section 48 amends s. 106.29, F.S., relating to reports by political parties; restrictions on contributions and expenditures; penalties.

Section 49 amends s. 106.295, F.S., relating to leadership fund.

Section 50 amends s. 876.05, F.S., relating to public employees; oath.

Section 51 repeals s. 876.07, F.S., relating to oath as prerequisite to qualification for public office.

Section 52 provides that certain signatures gathered before a specified date may be verified and counted if otherwise valid; provides that signatures gathered on or after such date may be verified and counted only if gathered in compliance with the act.

Section 53 provides for severability.

Section 54 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides for the creation of a fee by administrative rule to be charged to those registering as paid petition circulators to offset the cost of training, registration, and regulation. Fees collected must be deposited in the Grants and Donations Trust Fund of the Department of State.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate.

2. Expenditures:

Indeterminate. See "Fiscal Comments".

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State states the costs related to the bill are indeterminate at this time. The Department, however, will incur costs related to providing a training program, for the registration of individuals as paid petition circulators, and for regulation of the activities related to paid petition circulators. According to the Department, there is a possible need for an FTE to develop and administer the registration program.²⁴

Supervisors of elections would be required to use staff time to verify that paid petition circulators meet the requirements of the law before verifying each petition. It is not known how much time would be involved or the cost to the supervisors of elections.²⁵

Supervisors of elections are required to pay for postage needed for absentee ballots that are returned with insufficient postage.

²⁴ Department of State analysis of HB 497, dated February 16, 2009, p. 2.

²⁵ Analysis of HB 903, prepared by the Ethics and Elections Committee, March 20, 2008.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:

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.²⁶

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of Elections and the Department of State to adopt rules.

The Division must adopt rules:

- To administer s. 97.0575, F.S., relating to third-party voter registration. The rules include the types of information identifying third-party voter registration organizations that must be included on voter registration applications.
- Prescribing the style and requirements for poll watcher forms required in s. 101.131(2), F.S.

The Department must adopt rules:

- To administer s. 100.372, F.S., relating to paid petition circulators. Specifically, the Department must adopt rules:
 - Prescribing the written affirmation form used by an authorized representative of a political committee sponsoring an initiative petition. The form must identify the potential criminal and civil penalties for submitting a false affirmation.
 - Designating the form of the evidence of registration that will include the photograph and registration number of a person who is registered as a paid petition circulator.
 - Establishing a registration fee necessary to cover the Department's costs associated with registration, training, and regulation of paid petition circulators.
- To administer s. 101.591, F.S., relating to postcertification manual audits. Specifically, the Department must prescribe a standard format for a county canvassing board or other local board to report the results of its manual audit of the voting system used in the election.
- To authorize the electronic transmission of election materials, if the Department can establish the security of such transmissions. At a minimum, the rules must provide for verification of the voter's identity, secrecy of the ballot, unless explicitly waived by the voter, security of the transmission, and the recording of each ballot received by the supervisor of elections.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.

²⁶ 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 R.Supp.2d 775 (S.D. Ind. 2006) *aff'd by* Crawford v. Marion County Election Bd., 472 F.3d 949 (7th Cir. 2007).