

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7067 PCB SAC 23-01 Elections

**SPONSOR(S):** State Affairs Committee, McClure

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 7050

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	12 Y, 6 N	Skinner	Williamson

### SUMMARY ANALYSIS

The Florida Election Code provides for the state's election laws. The bill revises the Florida Election Code to:

- Revise notice requirements that inform voters on updating their voter signature.
- Specify signature matching training is mandatory for supervisors of elections (supervisors) and county canvassing board (CCB) members and require additional persons to undergo such training.
- Modernize certain notice requirements by authorizing notice to be made on specified websites as an alternative to publication in a newspaper.
- Specify there must be at least two alternate CCB members, revise the filing deadline for election returns, and require election conduct reports be submitted by supervisors and include vote-by-mail (VBM) ballot mailing errors.
- Revise and create additional requirements for third-party voter registration organizations (3PVROs).
- Require additional information to be included on voter information cards.
- Maintain a public record exemption for certain voter registration information received from other states or the District of Columbia.
- Revise processes to be used by supervisors and DOS in voter registration list maintenance programs and maintenance activities and enhance information other governmental entities must provide.
- Require supervisors to coordinate with local clerks of court to receive updates on persons convicted of felonies and require supervisors to have direct access to the Department of Highway Safety and Motor Vehicles driver information system.
- Require a provisional ballot to be voted if a voter has been issued a notice of potential ineligibility.
- Update and enhance requirements for post-election reports and modernize precinct boundary data supervisors maintain.
- Create a new candidate disclosure requirement for outstanding fines exceeding \$250 related to ethics and campaign finance violations.
- Create methods for candidates to use nicknames on the ballot and prescribe requirements for the candidate's name.
- Revise certain VBM ballot provisions and require DOS to adopt a uniform statewide application for written VBM ballot requests.
- Modify timeframes for certification of presidential electors.
- Permit state committeemen and state committeewomen to submit qualifying papers 14 days prior to the qualifying period.
- Clarify an existing felony for casting more than one ballot, clarify a certain situation where a voter has not voted a fraudulent ballot, and require supervisors to report certain findings to the Office of Election Crimes and Security.
- Revise required frequency of campaign finance reporting and preempt local governments from enacting different reporting schedules and provide that text messages do not constitute contributions toward specified contribution limits.
- Create a new framework regulating use of voter guides and require a certain disclaimer.
- Increase fines that may be imposed for specified election law violations and attaches fines against a political committee jointly and severally to persons with control over the political committee in certain circumstances.

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

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

STORAGE NAME: h7067.SAC

DATE: 4/25/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Voter Signature**

##### Background

##### *Voter Signature*

Applicants registering to vote in Florida must provide their signature as part of their voter registration application, which then becomes part of the voter registration record.<sup>1</sup> Thereafter, voters can update their signature by using a voter registration application and submitting it to a voter registration official.<sup>2</sup>

The Department of State (DOS) and supervisors of elections (supervisors) generally must include in any voter correspondence information regarding how to update the voter's signature.<sup>3</sup> At least once during each general election year, supervisors must publish in a newspaper of general circulation a notice informing voters how to update their signature.<sup>4</sup>

The signature in a voter's registration record is used to verify the voter's identity when casting a ballot in certain circumstances, such as vote-by-mail (VBM) ballots,<sup>5</sup> mail ballot elections,<sup>6</sup> and provisional ballots.<sup>7</sup> The signature is also used to verify a voter's signature on a petition.<sup>8</sup> Supervisors and county canvassing boards (CCB) are responsible for verifying signatures.<sup>9</sup> In these circumstances, such ballot or petition signatures may only be counted if the signature is verified as the voter's signature in his or her voter registration record.

All signature updates for use in verifying VBM and provisional ballots must be received by the supervisor before the voter's ballot is received by the supervisor or, in the case of a provisional ballot, before the voter's ballot is cast.<sup>10</sup> The signature that is on file at such times is the signature that will be used for verifying the voter's signature.<sup>11</sup>

##### *Signature Matching Training*

Current law requires the Secretary of State (Secretary) to provide formal signature matching training to supervisors and CCB members.<sup>12</sup>

##### Effect of the Bill

The bill no longer requires DOS to include in correspondence the information informing a voter how to update his or her signature, but maintains the requirement for supervisors. The bill requires the notice supervisors must publish informing voters how to update their signatures each general election year to occur before the presidential preference primary or the primary election, whichever occurs first. The bill

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<sup>1</sup> Section 97.052(2)(q), F.S.

<sup>2</sup> Section 98.077(1), F.S. The term "voter registration official" means supervisors of elections or individuals authorized by the Secretary of State to accept voter registration applications and execute updates to the statewide voter registration system. *See s. 97.021(45)*, F.S.

<sup>3</sup> Section 98.077(2), F.S.

<sup>4</sup> Section 98.077(3), F.S.

<sup>5</sup> Sections 101.65 and 101.6923(2)5.c., F.S.

<sup>6</sup> Mail ballot elections are elections conducted by supervisors mailing official ballots to qualified voters, which may only occur in certain circumstances and procedures. *See ss. 101.6102 and 101.6103*, F.S.

<sup>7</sup> Section 101.048(2)(b), F.S. A voter claiming to be properly registered in the state and eligible to vote at the precinct but whose eligibility cannot be determined, a person whom an election official asserts is not eligible, and other certain persons are entitled to vote a provisional ballot. *See s. 101.048(1)*, F.S.

<sup>8</sup> Section 99.097(3)(a), F.S.

<sup>9</sup> *See ss. 101.68, 101.6103(5)(c), and 101.048*, F.S.

<sup>10</sup> Section 98.077(4)(a), F.S.

<sup>11</sup> Section 98.077(4)(b), F.S.

<sup>12</sup> Section 97.012(17), F.S.

authorizes supervisors to publish this information on the county's website or on the supervisor's website in lieu of the newspaper.

The bill requires all signature updates for verifying petitions be received by the supervisor before the petition is submitted for signature verification and that the signature on file at the time the petition is reviewed is the signature that must be used in verifying the signature on the petition. For signatures on VBM ballots, provisional ballots, or petitions that require secondary or tertiary review, the bill permits older signatures from previous registration updates to be used.

The bill specifies formal signature matching training is mandatory for supervisors and CCB members and requires any person who verifies signatures to undergo signature matching training. The bill requires DOS to adopt rules governing signature matching procedures and training.

## **County Canvassing Boards**

### Background

The CCB is the body that tabulates and canvasses the vote for an election in that county. The CCB is composed of the supervisor, the chair of the board of county commissioners, and a county court judge, who serves as chair.<sup>13</sup> If a member of the CCB is unable to serve, he or she can be replaced in one of two ways, either permanently, through the appointment of a substitute member, or temporarily, through the appointment and selection of an alternate member.<sup>14</sup> Alternate members must be appointed pursuant to a statutory process; however, current law does not specify how many alternate members may be appointed.<sup>15</sup>

CCBs are also responsible for filing the county returns for the election of a federal or state officer with DOS immediately after certification of the election results.<sup>16</sup> The CCB must provide a certification that the board has compared the number of persons who voted with the number of ballots counted and that the certification includes all valid votes cast in the election.<sup>17</sup> The CCB must file the returns with DOS by 5 p.m. on the seventh day following a primary election and by noon on the 12<sup>th</sup> day following the general election.<sup>18</sup>

Additionally, at the same time that the official results of an election are certified to DOS, the CCB must file a report with the Division of Elections (division) within DOS on the conduct of the election.<sup>19</sup> The report must include certain information, including all ballot printing errors or ballot supply problems, as well as the steps that were taken to address the errors or problems.<sup>20</sup>

The division must then utilize these reports to determine what problems may be likely to occur in other elections and provide such information and possible solutions to supervisors.<sup>21</sup>

### Effect of the Bill

The bill specifies that at least two alternate CCB members must be appointed.

The bill revises the deadline for returns to be filed with DOS from 5 p.m. on the seventh day following a primary election to noon on the eighth day following the primary election. For returns following a general election, the bill revises the submission deadline from noon on the 12<sup>th</sup> day following the general election to noon on the 13<sup>th</sup> day.

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<sup>13</sup> Section 102.141(1), F.S.

<sup>14</sup> Section 102.141(1)(e), F.S.

<sup>15</sup> See s. 102.141 for the process of appointing alternate members.

<sup>16</sup> Section 102.112(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 102.112(2), F.S.

<sup>19</sup> Section 102.141(10)(a), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 102.141(10)(c), F.S.

The bill provides that supervisors, rather than CCBs, file the report on the conduct of the election and provides that such report must be filed no later than 20 business days after the Elections Canvassing Commission certifies the election instead of at the same time the official election results are certified to DOS. The bill also requires the report to address VBM ballot mailing errors and requires the division to specifically review the conduct of election reports and provide training to the supervisors based on such reports. The division must submit the analysis of these reports for the general election to the Governor and Legislature by February 15 of each year following the general election.

## Special Requirements for Certain First-Time Voters

### Background

Current law requires applicants who register by mail who have never voted in Florida and have been verified by DOS as not having been issued a current and valid Florida driver license, Florida identification card, or social security number to provide a copy of current and valid identification<sup>22</sup> or indicate an exemption<sup>23</sup> from such identification requirements prior to voting.<sup>24</sup> Such identification or exemption may be provided at the time of registering or at any time prior to voting for the first time in Florida.<sup>25</sup>

Current law also provides a process for delivery of special VBM ballots for such first-time voters who have not provided the required identification or certification by the time the VBM ballot is mailed.<sup>26</sup> Supervisors must enclose with such VBM ballot three envelopes: a secrecy envelope, an envelope containing a Voter's Certificate, and a mailing envelope in which the absent elector<sup>27</sup> must place the envelope containing the Voter's Certificate and copy of the identification the voter is required to provide if the voter does not meet one of the statutorily authorized exemptions from the identification requirements.<sup>28</sup> When the supervisor receives the voted special VBM ballot, he or she must determine if the voter has enclosed the identification required or has indicated on the Voter's Certificate an exemption from the identification requirements.<sup>29</sup> If the identification is enclosed or an exemption is indicated, the supervisor must proceed to canvass the VBM ballot.<sup>30</sup> If the identification is not enclosed and no exemption is indicated, the supervisor must check the voter registration records to determine if the voter's identification was previously received or the voter had previously provided notification of exemption.<sup>31</sup> If not, the ballot must be treated as a provisional ballot until 7 p.m. on election day and may not be canvassed unless the supervisor has received the voter's identification or written indication of exemption by 7 p.m. on election day.<sup>32</sup>

### Effect of the Bill

If a special VBM ballot has been received and identification is not received and no exemption is indicated, the bill provides that the absent elector has until 5 p.m. local time on the second day following the election, rather than 7 p.m. on election day, to provide the required identification or written indication of an exemption in order to have his or her ballot canvassed. The bill also requires the instructions that accompany such ballots to inform the voter that he or she has until 5 p.m. local time on the second day after the election to cure signature deficiencies.

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<sup>22</sup> See s. 97.0535(3), F.S., for identification that is current and valid for such purposes.

<sup>23</sup> See s. 97.0535(4), F.S., for persons which are exempt from such identification requirements.

<sup>24</sup> Section 97.0535(1), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 101.6921, F.S.

<sup>27</sup> "Absent elector" means any registered and qualified voter who casts a VBM ballot. Section 97.021(1), F.S.

<sup>28</sup> Sections 101.6921(2) and (3), F.S.

<sup>29</sup> Section 101.6925(1), F.S.

<sup>30</sup> Section 101.6925(2), F.S.

<sup>31</sup> Section 101.6925(3), F.S.

<sup>32</sup> *Id.*

## Third-Party Voter Registration Organizations

### Background

A third-party voter registration organization (3PVRO) is any person, entity, or organization soliciting or collecting voter registration applications.<sup>33</sup> 3PVROs must register with and electronically provide to the division certain information<sup>34</sup> before engaging in voter registration activities.<sup>35</sup> Current law does not provide for the expiration of a 3PVRO.

The division or supervisors must make voter registration forms available to 3PVROs, which must contain information identifying the organization to which the forms are provided.<sup>36</sup> Current law requires the division to maintain a database<sup>37</sup> of all 3PVROs and the voter registration forms assigned to each respective 3PVRO.<sup>38</sup> Supervisors must provide to the division information on voter registration forms assigned to and received from 3PVROs.<sup>39</sup> The division must update 3PVRO information daily and make such information publicly available.<sup>40</sup>

3PVROs serve as a fiduciary<sup>41</sup> to voter registration applicants when collecting<sup>42</sup> voter registration applications.<sup>43</sup> 3PVROs must ensure that any voter registration application entrusted to the organization, irrespective of party affiliation, race, ethnicity, or gender, is promptly delivered to the division or the supervisor in the county in which the applicant resides within 14 days, but not after registration closes for the next ensuing election.<sup>44</sup> If it fails to promptly deliver the application, the 3PVRO is liable for the following fines:

- \$50 for each application received by the division or the supervisor in the county in which the applicant resides *more* than 14 days after the applicant delivered the completed voter registration application to the 3PVRO or any person, entity, or agent acting on its behalf. If the 3PVRO or one of its agents acted willfully in failing to promptly deliver the application, the fine is increased to \$250 for each application.
- \$100 for each application collected by a 3PVRO or any person, entity, or agent acting on its behalf, before book closing for any given election for federal or state office and received by the division or the supervisor after the book closing deadline<sup>45</sup> for such election. If the 3PVRO or

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<sup>33</sup> Section 97.021(40), F.S. This term does not include a person who seeks to only register to vote or collect voter registration applications from that person's spouse, child, or parent or a person engaged in registering to vote or collecting voter registration applications as an employee or agent of the division, supervisor, Department of Highway Safety and Motor Vehicles, or a voter registration agency.

<sup>34</sup> The following information must be provided to the division: the names of the officers of the organization and the name and permanent address of the organization; the name and address of the organization's registered agent in Florida; and the names, permanent addresses, and temporary addresses, if any, of each registration agent registering persons to vote in Florida on behalf of the organization. *See* s. 97.0575(1), F.S.; *see also* r. 1S 2.042, F.A.C. incorporating by reference form DS-DE 119.

<sup>35</sup> Section 97.0575(1), F.S.

<sup>36</sup> Section 97.0575(2), F.S.

<sup>37</sup> *See* Florida Division of Elections, *Third Party Voter Registration Organizations (3PVROs), Voter Registration Applications Received and/or Provided*, <https://tpvr.elections.myflorida.com/Applications.aspx> (last visited April 17, 2023).

<sup>38</sup> Section 97.0575(2), F.S.

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

<sup>40</sup> *Id.*

<sup>41</sup> A "fiduciary" is "[s]omeone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, loyalty, due care, and disclosure." *Black's Law Dictionary* (11th ed. 2019)

<sup>42</sup> The date on which an applicant signs a voter registration application is presumed to be the date on which the 3PVRO received or collected the voter registration application. *See* s. 97.0575(7), F.S.

<sup>43</sup> Section 97.0575(3)(a), F.S.

<sup>44</sup> *Id.*; In *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042 (2022), the United States District Court for the Northern District of Florida enjoined the enforcement of the county delivery and registration disclaimer provisions described in s. 97.0575(3)(a), F.S. However, the 11th Circuit Court of Appeals stayed the injunction pending appeal, and as of the time of writing has yet to issue its final ruling on the merits.

<sup>45</sup> The registration books must be closed on the 29<sup>th</sup> day before each election and must remain closed until after that election. If an election is called and there are fewer than 29 days before that election, the registration books must be closed immediately. *See* s. 97.055(1)(a), F.S.

one of its agents acted willfully in failing to deliver the application before book closing, the fine is increased to \$500 for each application.

- \$500 for each application collected by a 3PVRO or any person, entity, or agent acting on its behalf, which is not submitted to the division or the supervisor in the county in which the applicant resides. If the 3PVRO or one of its agents acted willfully in failing to submit the application, the fine is increased to \$1,000 for any application not submitted.<sup>46</sup>

The aggregate fine that may be assessed against a 3PVRO, including affiliate organizations, for such violations in a calendar year is \$50,000.<sup>47</sup>

A showing by a 3PVRO that the failure to deliver a voter registration application within the required timeframe is based upon force majeure<sup>48</sup> or impossibility of performance<sup>49</sup> is an affirmative defense to any such violations and the Secretary may waive any assessed fines in those circumstances.<sup>50</sup>

Further, if a person collecting voter registration applications on behalf of a 3PVRO is convicted of altering the application of any other person, without the other person's knowledge and consent, the 3PVRO is liable for a \$1,000 fine for each application altered.<sup>51</sup>

### Effect of the Bill

Beginning January 1, 2025, the bill requires 3PVROs to register for each specific general election<sup>52</sup> cycle for which the 3PVRO is registering persons to vote, as well as provides that the registration of a 3PVRO automatically expires at the conclusion of such general election cycle.

The bill requires 3PVROs to submit certain affirmations at the time of registration. 3PVROs must affirm that each person *collecting* or *handling* voter applications has not been convicted of a felony violation of the Florida Election Code, criminal use of personal identifying information,<sup>53</sup> or unlawfully possessing the personal identification of another person.<sup>54</sup> 3PVROs must also affirm that each person *collecting* or *handling* voter applications is a citizen of the United States. A 3PVRO that violates either of these prohibitions is liable for a \$50,000 fine for each occurrence.

The bill requires, upon accepting an applicant's voter registration application, a 3PVRO to provide a receipt to each applicant. The division must adopt by rule a uniform format for the receipt by October 1, 2023, and the bill requires the format to include, at a minimum, the name of the applicant, the date received, the name of the 3PVRO, the name of the registration agent, the applicant's political party affiliation, and the county where the applicant resides.

The bill reduces the number of days a 3PVRO has to deliver a voter registration application to the division or supervisor of the county where the applicant resides from 14 days to 10 days. The bill also updates a required statement in the uniform statewide voter registration application to reflect this change.<sup>55</sup>

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<sup>46</sup> Section 97.0575(3)(a), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> The term "force majeure" means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel. Rule 1S-2.042(2)(c), F.A.C.

<sup>49</sup> The term "impossibility of performance" means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the 3PVRO did not create and could not reasonably have anticipated. Rule 1S-2.042(2)(d), F.A.C.

<sup>50</sup> Section 97.0575(3)(b), F.S.

<sup>51</sup> Section 97.0575(4), F.S.

<sup>52</sup> The term "general election" means an election held on the first Tuesday after the first Monday in November in the even-numbered years, for the purpose of filling national, state, county, and district offices and for voting on constitutional amendments not otherwise provided for by law. Section 97.021(17), F.S.; *see also* Art. VI, s. 5(a), FLA. CONST.

<sup>53</sup> *See* s. 817.568, F.S.

<sup>54</sup> *See* s. 817.5685, F.S.

<sup>55</sup> *See* s. 97.052(3)(g), F.S.

The bill increases the fines for which a 3PVRO may be liable if an application is delivered late:

- Applications delivered more than 10 days after it was submitted – \$50 per each day late, up to a maximum of \$2,500 per application, and \$2,500 per application received by the division or supervisor if the organization or person acting on its behalf acted willfully.
- Applications delivered after the book-closing deadline – \$100 per each day late, up to a maximum of \$5,000 per application, and \$5,000 per application collected by the 3PVRO if the organization or person acting on its behalf acted willfully.
- Applications not delivered at all – \$5,000 if the organization or person acting on its behalf acted willfully.

The bill increases the aggregate fine that may be assessed against a 3PVRO, including affiliate organizations,<sup>56</sup> for violations committed in a calendar year to \$250,000.

The bill provides that it is a third-degree felony<sup>57</sup> for a person collecting voter registration applications on behalf of a 3PVRO to copy the application or retain personal information for any reason other than to provide such application or information to the 3PVRO.

The bill prohibits a 3PVRO from mailing or otherwise providing a voter registration application where any information about an applicant has been filled in before it is provided to the applicant and provides that a 3PVRO that violates this prohibition is liable for a \$50 fine for each application.

## **Voter Information Cards**

### Background

Supervisors must provide registered voters with a voter information card,<sup>58</sup> which constitutes notice of approval of registration.<sup>59</sup> The card must contain the voter's registration number, date of registration, full name, party affiliation, date of birth, address of legal residence, precinct number, polling place address, name and contact information of the supervisor, and other information deemed necessary by the supervisor.<sup>60</sup> Voters may request a replacement card in writing<sup>61</sup> and supervisors must issue a new card if the voter's name, address of legal residence, polling place address, or party affiliation changes.<sup>62</sup>

### Effect of the Bill

The bill requires voter information cards to include a website link to the supervisor's website that provides that most current polling place locations. The bill also requires voter information cards to contain a specified statement that the card is proof of registration but is not legal verification of eligibility to vote. The bill clarifies that a supervisor does not have to issue a new card if a temporary change is made to a polling location due to a state of emergency.<sup>63</sup>

The bill provides that these changes only apply to new and replacement voter information cards issued on or after July 1, 2023.

## **Address List Maintenance**

### Background

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<sup>56</sup> An "affiliate organization" means any person any person, as defined in s. 1.01(3), F.S., that is associated with the 3PVRO as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control. Rule 1S-2.042(2)(a), F.A.C.

<sup>57</sup> A third-degree felony is punishable by up to five years in prison, or a fine of up to \$5,000. See ss. 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>58</sup> Section 97.071(1), F.S.

<sup>59</sup> Section 97.073(1), F.S.

<sup>60</sup> Section 97.071(1), F.S.

<sup>61</sup> Section 97.071(2), F.S.

<sup>62</sup> Section 97.071(3), F.S.

<sup>63</sup> See ss. 101.71(3) and 101.74, F.S., allowing supervisors, when an emergency exists, to designate new polling places.

Current law requires each supervisor to conduct an address registration list maintenance program (address list maintenance) to ensure accurate and current voter registration records.<sup>64</sup> Address list maintenance must be conducted at least once each year and must be completed no later than 90 days prior to the date of any federal election,<sup>65</sup> as required by the National Voter Registration Act.<sup>66</sup>

A supervisor must incorporate one or more of the following procedures in an annual address list maintenance program:

- Use change-of-address information supplied by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed. Additionally, in odd-numbered years (unless using the second option below), the supervisor must identify change-of-address information from returned nonforwardable return-if-undeliverable address confirmation requests mailed to all registered voters who have not voted in the preceding two election cycles<sup>67</sup> and who have not requested a registration update during that time.<sup>68</sup>
- Identify change-of-address information from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county.<sup>69</sup>

Current law requires supervisors to send the following three forms<sup>70</sup> to voters as part of address list maintenance:

- *Address change notice (ACN)*: ACNs are only sent in the event a supervisor receives change-of-address information indicating that a voter's legal residence might have changed to another location within the state. Upon receipt of such information, the supervisor must send an ACN and update the registration records to reflect the new address.<sup>71</sup>
- *Address confirmation request (ACR)*: ACRs are sent when a supervisor receives change-of-address information indicating that a voter's residence may have changed within the state, but requires additional confirmation to confirm a voter's change in residence.<sup>72</sup> ACRs must contain:
  - The voter's name and address of legal residence as shown on the voter registration record.
  - A request that the voter notify the supervisor if either the voter's name or address of legal residence is incorrect.
  - A statement that if the voter has not changed his or her legal residence or has changed his or her legal residence within the state, the voter should return the form within 30 days after the date on which the notice was sent to the voter.
  - Information about updating voter information through the online voter registration system.<sup>73</sup>
- *Address confirmation final notice (ACFN)*: ACFNs are sent if an ACR is returned as undeliverable, a voter does not respond to an ACR within 30 days, or a supervisor receives change-of-address information indicating that a voter may have moved out of the state.<sup>74</sup> The ACFN must notify the voter that, if his or her legal residence has not changed, or has changed elsewhere within the state, he or she should notify the supervisor by returning the form within 30 days.<sup>75</sup> If an ACFN is not returned within 30 days, or if the notice is returned as undeliverable,

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<sup>64</sup> Section 98.065(1), F.S.

<sup>65</sup> Section 98.065(4), F.S.

<sup>66</sup> See 52 U.S.C. § 20507(c)(2) (2023).

<sup>67</sup> In *Husted v. Philip Randolph Institute*, 138 S.Ct. 1833 (2018), the United States Supreme Court held that the National Voter Registration Act does not prohibit a state from using the failure to vote as a trigger for implementing list maintenance activities so long as the nonvoting is not the sole criterion for removing a registrant.

<sup>68</sup> Section 98.065(2)(a), F.S.

<sup>69</sup> Section 98.065(2)(b), F.S.

<sup>70</sup> The forms are created by the individual supervisors, but they must contain content mandated by s. 98.0655, F.S. and Rule 1S-2.041, F.A.C.

<sup>71</sup> See s. 98.065(5)(a), F.S., providing that “[i]f the supervisor receives change-of-address information...which indicates that a registered voter's legal residence might have changed to another location *within the state*, the supervisor must change the registration records to reflect the new address and must send the voter an address change notice...”

<sup>72</sup> See r. 1S-2.041(3)(b), F.A.C.

<sup>73</sup> Section 98.0655(1), F.S.

<sup>74</sup> Section 98.0655, F.S.

<sup>75</sup> *Id.*



supervisors must designate the voter as inactive.<sup>76</sup> After being designated inactive, if the voter does not update his or her registration information, request a VBM ballot, or vote by the second general election after being placed on the inactive list, the voter is removed from the statewide voter registration system and required to reregister.<sup>77</sup>

If DOS determines that a supervisor has not satisfactorily conducted address list maintenance, then DOS must satisfy the requirements for that county.<sup>78</sup>

### Effect of the Bill

The bill requires supervisors to conduct, at least on an annual basis, a review of voter registration records to identify registration records where a voter may be registered at an address that may not be the voter's address of legal residence. For those registration records that have addresses the supervisor has reasonable belief are not legal residential addresses, the supervisor must initiate address list maintenance removal procedures.

The bill requires registration list maintenance programs to begin no later than April 1.

The bill removes the mandate that when a voter does not respond to an ACR within 30 days, an ACFN is automatically sent to all of the voter's addresses on file, and, thereafter, if a response is not received to the ACFN within 30 days, the voter is placed on the inactive list.

## **Registration Records Maintenance Activities and Ineligibility Determinations**

### Background

Current law requires DOS to engage in eligibility list maintenance activities (eligibility list maintenance) to ensure the maintenance of accurate and current voter registration records in the statewide voter registration system.<sup>79</sup> Eligibility list maintenance activities must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.<sup>80</sup> In order to fulfill this requirement, DOS receives information from certain entities.<sup>81</sup>

### *Duplicate Registration*

DOS must identify voters who are registered more than once or applicants whose registration applications within the state would result in duplicate registrations.<sup>82</sup> Current law authorizes DOS to become a member of a nongovernmental entity whose membership is composed solely of election officials of state governments and the District of Columbia for the purpose of sharing and exchanging information to maintain the statewide voter registration system.<sup>83</sup>

Current law also provides a public record exemption for voter registration information received by DOS, pursuant to its membership in a nongovernmental entity from another state or the District of Columbia, that is confidential or exempt in its jurisdiction of origin.<sup>84</sup> The exemption requires DOS to share the protected information with supervisors to conduct voter registration list maintenance.<sup>85</sup> The public record exemption is scheduled to repeal on October 2, 2023, unless reenacted by the Legislature.<sup>86</sup>

### *Deceased Persons*

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<sup>76</sup> Section 98.065(5)(d), F.S.

<sup>77</sup> *Id.*

<sup>78</sup> Section 98.065(7)(b), F.S.

<sup>79</sup> Section 98.075(1), F.S.

<sup>80</sup> *Id.*

<sup>81</sup> Section 98.075, F.S.

<sup>82</sup> Section 98.075(2)(a), F.S.

<sup>83</sup> Section 98.075(2)(b)1., F.S.

<sup>84</sup> Section 98.075(2)(c), F.S.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

Current law requires DOS to identify registered voters who are deceased by comparing information received from the Department of Health (DOH), the United States Social Security Administration, and the Department of Highway Safety and Motor Vehicles (DHSMV).<sup>87</sup> Once supervisors receive such information through the statewide voter registration system, the supervisor must remove the name of the registered voter within seven days.<sup>88</sup> Additionally, supervisors must remove the name of a deceased registered voter upon the receipt of a copy of a death certificate issued by a governmental agency authorized to issue death certificates.<sup>89</sup>

#### *Adjudication of Mental Incapacity*

DOS must identify registered voters who have been adjudicated mentally incapacitated with respect to voting without voting rights restored by examining information received from clerks of the circuit court.<sup>90</sup> DOS must make an initial determination as to the credibility of such information and if determined to be credible, provide a copy of the supporting documentation to the appropriate supervisor, who must then initiate the procedures for removing the registered voter from the statewide voter registration system.<sup>91</sup>

#### *Felony Conviction*

DOS must identify registered voters who have been convicted of a felony and whose voting rights have not been restored by comparing information received from clerks of the circuit court, the Board of Executive Clemency, the Department of Corrections, the Florida Department of Law Enforcement (FDLE), or a United States Attorney's Office.<sup>92</sup> DOS then makes an initial determination as to the credibility of such information and if determined to be credible, provides a copy of the supporting documentation to the appropriate supervisor, who must then initiate the procedures for removing the registered voter from the statewide voter registration system.<sup>93</sup>

#### *Other Bases for Ineligibility*

Current law permits DOS and supervisors to act upon information received from sources other than those listed above, including information received from other sources concerning a registered voter not being of legal age to vote, not being a United States citizen, being a fictitious person, or having listed a residence that is not his or her legal residence.<sup>94</sup>

#### *Procedures for Removal*

Before a registered voter who has been identified as potentially ineligible due to an adjudication of mental incapacity, a felony conviction, or another basis of ineligibility, can be removed from the statewide voter registration system, supervisors must adhere to certain procedures that notify the affected voter and gives him or her a chance to respond before removal.<sup>95</sup> Any notice must be sent to the registered voter by certified mail, return receipt requested, or other means that provide verification of receipt or must be published in a newspaper of general circulation where the voter was last registered, whichever is applicable.<sup>96</sup>

Upon receiving information that indicates a voter is potentially ineligible, the supervisor must:

- Notify the voter of the potential ineligibility within seven days after receiving such information. The notice must contain certain statements, including the basis of the potential ineligibility, any supporting documentation, information concerning the process, and a statement that failure to respond within 30 days after receipt of the notice may result in a determination of ineligibility and removal from the statewide voter registration system.

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<sup>87</sup> Section 98.075(3), F.S.

<sup>88</sup> Section 98.075(3)(a)2., F.S.

<sup>89</sup> Section 98.075(3)(b), F.S.

<sup>90</sup> Section 98.075(4), F.S. Clerks of the circuit court submit certain related information monthly to DOS. *See s. 98.093(2)(b)*, F.S.

<sup>91</sup> Section 98.075(4), F.S.

<sup>92</sup> Section 98.075(5), F.S.

<sup>93</sup> *Id.*

<sup>94</sup> Section 98.075(6), F.S.

<sup>95</sup> Section 98.075(7), F.S.

<sup>96</sup> Section 98.075(7)(b), F.S.

- If the mailed notice is returned as undeliverable, publish notice once in a newspaper of general circulation in the county where the voter was last registered. This notice must include the same information as the mailed notice. The voter has 30 days after the notice is published to respond.
- If the voter does not respond to either notice, make a final determination of the voter's eligibility.
  - If the supervisor determines the voter is ineligible, the voter's name must be removed from the statewide vote registration system and the supervisor must provide notification to the individual.
- If the voter responds to either one of the notices and admits the potential ineligibility, make a final determination of ineligibility and remove the voter's name from the statewide voter registration system. The supervisor must notify the individual of the removal.
- If the voter responds to either one of the notices and denies the potential ineligibility but does not request a hearing, review the evidence and make a final determination of eligibility.
- If the voter responds to either one of the notices and requests a hearing, send notice to the voter of the hearing time and place. After hearing all evidence at the hearing, the supervisor must make a final determination of eligibility. If the supervisor determines the voter is ineligible, the supervisor must remove the voter's name from the statewide voter registration system and notify the individual of the removal.<sup>97</sup>

### *Completion Certification*

No later than July 31 and January 31 of each year, the supervisor must certify to DOS these eligibility list maintenance activities have been conducted.<sup>98</sup> If DOS determines that a supervisor has not satisfactorily conducted these eligibility list maintenance activities, then DOS must conduct eligibility list maintenance for that county.<sup>99</sup>

### *Provisional Ballots*

Current law entitles<sup>100</sup> the following persons to vote a provisional ballot:

- A voter claiming to be properly registered in the state and eligible to vote at the precinct in the election but whose eligibility cannot be determined.
- A person whom an election official asserts is not eligible.
- Other persons as specified in the Election Code.<sup>101</sup>

### Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption for voter registration information received by DOS pursuant to its membership in a nongovernmental entity from another member state or the District of Columbia, thereby maintaining the public record exemption.

The bill requires supervisors to remove the name of a deceased voter from the statewide voter registration system within seven days following receipt of a copy of a death certificate issued by a government entity authorized to issue death certificates. The bill also requires supervisors to remove the name of a deceased voter from the statewide voter registration system within seven days if the supervisor has received information on the death of such voter from DHSMV.

The bill requires supervisors to coordinate with their respective clerks of the court to identify registered voters within their jurisdictions who have been convicted of a felony during the preceding week without the right to vote being restored. The bill specifies that supervisors must adhere to the removal procedures before removing a registered voter's name from the statewide voter registration system. The bill specifies that in this instance, a supervisor must begin the procedures for removal within seven days after his or her determination that the information received from the clerk is credible and reliable, instead of within seven days of receiving the information.

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<sup>97</sup> Section 98.075(7)(a), F.S.

<sup>98</sup> Section 98.075(8), F.S.

<sup>99</sup> *Id.*

<sup>100</sup> See 52 U.S.C. § 21082 (2023).

<sup>101</sup> Section 101.048(1), F.S.

The bill requires the notice mailed to the registered voter notifying him or her of the potential ineligibility to vote to include a statement informing the voter that he or she will be required to vote a provisional ballot until a final determination of eligibility has been made. If the notice is returned as undeliverable, the bill creates a deadline of 14 days after receiving the returned notice for a supervisor to publish public notice and allows for publication of the notice on the county's or the supervisor's website as an alternative to publication in a newspaper. The bill requires the published notice to include the same statement in the mailed notice about voting if no final determination of eligibility has been made.

The bill creates additional deadlines for the removal process, requiring that if the registered voter fails to respond to such notices, the supervisor must make a final determination of the voter's eligibility *within seven days* after expiration of the voter's timeframe to respond and if determined to be ineligible, the registered voter's name must be removed from the statewide voter registration system *within seven days*. If the registered voter responds admitting the information underlying the potential ineligibility, the bill requires the supervisor to make a final determination of ineligibility *as soon as practicable* and remove the voter's name from the statewide voter registration system.

However, if the registered voter denies the ineligibility but does not request a hearing, the bill requires the supervisor to make a determination of eligibility no later than 30 days after receiving the voter's response.

However, if after receiving such notices, the registered voter requests a hearing, the bill requires the supervisor to notice and schedule a hearing within seven days after receiving the voter's hearing request and the hearing must be held no later than 30 days after issuing the notice of the hearing. The bill permits the voter to request an extension upon showing good cause by affidavit as to why he or she is unable to attend the scheduled hearing. Following the hearing, the bill requires the supervisor to make a final determination of eligibility within seven days.

The bill provides that a person who has received notice of potential ineligibility but a final determination has not been made is entitled to vote a provisional ballot. The bill also requires supervisors to notify a removed voter that he or she has a right to appeal a determination of ineligibility.<sup>102</sup>

The bill removes the requirement that DOS complete these eligibility list maintenance activities if DOS determines a supervisor has not done so satisfactorily and instead requires DOS to coordinate with the supervisor to ensure compliance with these activities.

## **Driver and Vehicle Information Database**

### Background

The Driver and Vehicle Information Database (DAVID), which is maintained by DHSMV, is a multifaceted database that affords immediate retrieval of driver and motor vehicle information.<sup>103</sup> The federal Driver's Privacy Protection Act prohibits state departments of motor vehicles from knowingly disclosing or making available any personal information<sup>104</sup> or highly restricted personal information,<sup>105</sup> including driver license photographs, with certain exceptions, including for "use by any governmental agency, including any court or law enforcement agency, in carrying out its functions."<sup>106</sup>

Current law clarifies these restrictions for driver license images and signatures of the licensees. While reproductions from the file or digital record of the license are exempt from public record requirements,

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<sup>102</sup> See s. 98.0755, F.S.

<sup>103</sup> Florida Department of Highway Safety and Motor Vehicles, Driver and Vehicle Information Database, <https://www.flhsmv.gov/courts-enforcement/david/> (last visited April 17, 2023).

<sup>104</sup> 18 U.S.C. § 2725(3) (2023) defines "personal information" as any information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status.

<sup>105</sup> 18 U.S.C. § 2725(4) (2023) defines "highly restricted personal information" as an individual's photograph or image, social security number, medical or disability information.

<sup>106</sup> 18 U.S.C. § 2721(b) (2023).

reproductions may be made and issued only to specified entities.<sup>107</sup> One such entity that is granted access is DOS pursuant to an interagency agreement to facilitate determinations of eligibility of voter registration applicants and registered voters.

Although the law provides access to various governmental entities that are expressly provided for in the above list, supervisors currently do not have access to DHSMV records because they are not expressly authorized to have such access.

### Effect of the Bill

The bill authorizes supervisors to have access to DAVID pursuant to an interagency agreement, for the same purposes as DOS, to facilitate determinations of eligibility of voter registration applicants and registered voters.

## **Duty of Governmental Entities to Provide Information to DOS and Supervisors**

### Background

Current law requires specified governmental entities to provide information to DOS on persons who may not be included in the statewide voter registration system due to death, adjudication of mental incapacity, felony conviction, or lack of United States citizenship.<sup>108</sup> The law requires, in part:

- DOH to furnish monthly to DOS a list containing the name, address, date of birth, date of death, social security number, race, and sex of each deceased person 17 years of age or older.<sup>109</sup>
- Each clerk of court to furnish monthly to DOS specified information on persons adjudicated mentally incapacitated with respect to voting, persons whose mental capacity with respect to voting has been restored, persons who have returned signed jury notices indicating a change of address, and terms of sentence and personal information of persons convicted of a felony.<sup>110</sup>
- FDLE to identify persons who have been convicted of a felony who appear in the voter registration records supplied by the statewide voter registration system, in a time and manner that enables DOS to meet its obligations under state and federal law.<sup>111</sup>
- The Florida Commission on Offender Review to furnish at least bimonthly to DOS specified data on persons granted clemency or any updates to prior records.<sup>112</sup>
- The Department of Corrections to identify persons convicted of a felony and committed to its custody or placed on community supervision and provide such information to DOS in a time and manner that enables DOS to identify registered voters who are convicted felons and to meet its obligations under state and federal law.<sup>113</sup>
- DHSMV to furnish monthly to DOS a list of persons who have been licensed in another state and a list of, and specified information related to, persons who presented evidence of non-United States citizenship upon being issued a new or renewed Florida driver license or identification card.<sup>114</sup>

### Effect of the Bill

The bill makes the following changes to information reporting requirements for specified governmental entities:

- Standardizes frequency of reporting to weekly for DOH, clerks of court, FDLE, Florida Commission on Offender Review, Department of Corrections, and DHSMV.
- Where current law requires provisions of a person's social security number, clarifies that only the last four digits of the social security number are required.
- Requires clerks of court to report certain information to the supervisors, in addition to DOS, and specifies the required information clerks must report for each person adjudicated mentally

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<sup>107</sup> See s. 322.142(4), F.S., for a complete list of entities granted access.

<sup>108</sup> Section 98.093, F.S.

<sup>109</sup> Section 98.093(2)(a), F.S.

<sup>110</sup> Section 98.093(2)(b), F.S.

<sup>111</sup> Section 98.093(2)(d), F.S.

<sup>112</sup> Section 98.093(2)(e), F.S.

<sup>113</sup> Section 98.093(2)(f), F.S.

<sup>114</sup> Section 98.093(2)(g), F.S.

incapacitated, as well as no longer requires the jury notices that indicate a change of address to be returned and signed.

- Requires DHSMV to provide additional information to DOS identifying persons who have been licensed in another state and persons who have presented evidence of non-United States citizenship and creates a new requirement for DHSMV to identify persons for which it has received official information that such persons are deceased.

## **Precinct Boundary Data**

### Background

Current law requires supervisors to maintain specified data related to precincts and districts. In part, supervisors, must maintain a suitable map drawn to scale that clearly delineates all major observable features, such as roads, streams, and railway lines and the district boundaries in the county.<sup>115</sup> Supervisors must report to DOS data on all precincts in the county associated with the most recent decennial census blocks within each precinct.<sup>116</sup>

Within 10 days after any change in the division, number, or boundaries of the precincts, or the location of the polling places, a supervisor must write an accurate description of any new or altered precincts and identify the location of each new or altered polling place.<sup>117</sup>

Data maintained by supervisors is used in each redistricting cycle.

### Effect of the Bill

The bill specifies that supervisors may coordinate with other governmental agencies in order to maintain this specified data related to precincts and districts. The bill requires the maps supervisors must maintain to be geographical information system compatible maps. The bill adds a change in the name of the precincts to the types of changes that require a supervisor to write a description of the precincts.

## **Elections Canvassing Commission**

### Background

The Elections Canvassing Commission (ECC) is a body that certifies election results for federal, state, and multicounty offices.<sup>118</sup> The ECC consists of the Governor and two members of the Cabinet selected by the Governor.<sup>119</sup> The ECC meets at 9 a.m. on the ninth day following a primary election and at 9 a.m. on the 14<sup>th</sup> day following a general election to certify the returns of the election for each federal, state, and multicounty office.<sup>120</sup>

### Effect of the Bill

The bill changes the ECC meeting time from 9 a.m. on the respective day to 8 a.m.

## **Election Reports**

### Background

Current law requires DOS and supervisors to submit specified post-election reports, which include, but are not limited to:

- *Voting history and statewide voter registration information* – Within 30 days after certification of election results by the ECC, supervisors must submit to DOS updated voting history information for each qualified voter who voted.<sup>121</sup> DOS must then compile and submit required information

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<sup>115</sup> Section 101.001(3)(a), F.S.

<sup>116</sup> Section 101.001(3)(b), F.S.

<sup>117</sup> Section 101.001(4)(a), F.S.

<sup>118</sup> Section 102.111, F.S.

<sup>119</sup> Section 102.111(1).

<sup>120</sup> Section 102.111(2), F.S.

<sup>121</sup> Section 98.0981(1)(a), F.S.

from such updated voting history information to the Legislature no later than 45 days after the certification of the election results.<sup>122</sup> Current law provides for file specifications for the report.<sup>123</sup>

- *Precinct-level election results* – Within 30 days after certification of election results by the ECC, supervisors must submit to DOS precinct-level election results.<sup>124</sup> DOS must then make the reported information available on a searchable database.<sup>125</sup>
- *Precinct-level book closing statistics* – For specified elections, after the date of book closing but before the date of the election, DOS must compile the following precinct-level statistical data for each county: precinct numbers and the total number of active registered voters by party for each precinct.<sup>126</sup>

### Effect of the Bill

The bill revises reporting requirements for the voting history and statewide voter registration information supervisors submit to DOS by:

- Revising the reconciliation report that reconciles the aggregate total ballots cast in each precinct to the aggregate number of voters with voter history and the precinct-level election results by specifically referencing the elections to which it applies.
- Requiring the voting history reporting requirements to specifically apply to special primary elections.
- Requiring the submitted voter history to include the unique identifier assigned to each qualified voter in the statewide voter registration system, each qualified voter's unique precinct identifier at the time of voting, and specifics of voting history.
- Removing the current file specifications in law and requiring the information to be submitted pursuant to file specifications adopted by DOS rule.
- Creating a new report for the geographical information system map of precinct boundaries.
- Requiring each supervisor to submit the above-specified reports to DOS no later than 20 days after the ECC certifies the election results.

The bill revises information DOS must report to the Legislature by:

- Requiring the new precinct boundaries report by supervisors to be submitted along with the voting history information.
- Specifying that county commission and school board districts must be included for each voter.
- Extending the deadline by which the report must be submitted to 60 days after the ECC certifies the election results, rather than 45 days after the certification of election results.

The bill revises reporting requirements for precinct-level election results by:

- Requiring supervisors to report the required information to DOS within 10 business days after the ECC certifies the elections results, instead of 30 days.
- Requiring supervisors to research and address any questions or issues identified by DOS pertaining to the results. If the originally submitted information is changed or corrected, the supervisor must provide an amended report no later than 10 business days after the request from DOS.
- Creating a deadline of 60 days after the ECC certifies the election results for DOS to make the information publicly available on a website rather than in a database.
- Removing the complete file specifications for the precinct-level election results in statute, requiring DOS to adopt a rule for such purpose, and providing minimum requirements for the rule.

The bill revises the precinct-level book closing statistics report by revising the deadline from after the date of book closing, but before the date of an election, to no later than 10 days after book closing.

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<sup>122</sup> Section 98.0981(1)(c), F.S.

<sup>123</sup> Section 98.0981(1)(d), F.S.

<sup>124</sup> Section 98.0981(2)(a), F.S.

<sup>125</sup> Section 98.0981(2)(b), F.S.

<sup>126</sup> Section 98.0981(3), F.S.

The bill defines “unique precinct identifier” as it pertains to those election reports in which it is included to mean an alphanumeric code containing no more than six characters representing the precinct name or number.

## Candidate Oath

### Background

Current law requires each candidate<sup>127</sup> for an elected office in Florida to take and subscribe to an oath or affirmation in writing in order to qualify for nomination or election.<sup>128</sup> Current law also specifies the format, including information that must be included, for the oath or affirmation a candidate for state and local office,<sup>129</sup> federal office,<sup>130</sup> or state judicial office,<sup>131</sup> must take.

The oath or affirmation candidates for state or local elected office must take requires the candidate to:

- Provide his or her name as he or she wishes it to appear on the ballot.
- Provide the name of the office for which he or she is running.
- Affirm that he or she is a qualified elector of his or her county.
- Affirm that he or she is qualified under the Constitution and laws of Florida to hold the office for which he or she is running.
- Affirm that he or she has not qualified for any other public office in the state for which the term, or any part thereof, runs concurrently with the term of the office he or she seeks.<sup>132</sup>
- Affirm that he or she has resigned from any office from which he or she is required to resign from before qualifying as a candidate for another public office.<sup>133</sup>
- Affirm that he or she will support the United States Constitution and the Florida Constitution.<sup>134</sup>

The oath or affirmation candidates for judicial office must take requires the candidate to:

- Provide his or her name as he or she wishes it to appear on the ballot.
- State which judicial office he or she is a candidate for.
- Provide the county that is his or her legal residence.
- Affirm that he or she is a qualified elector of the state and of the territorial jurisdiction of the court to which he or she seeks election.
- Affirm that he or she is qualified under the Constitution and laws of Florida to hold the judicial office to which he or she desires to be elected or retained.
- Affirm that he or she has not qualified for any other public office in the state for which the term, or any part thereof, runs concurrently with the term of the office he or she seeks.<sup>135</sup>
- Affirm that he or she has resigned from any public office from which he or she is required to resign from before qualifying as a candidate for another public office.<sup>136</sup>
- Affirm that he or she will support the United States Constitution and the Florida Constitution.<sup>137</sup>

### Effect of the Bill

The bill requires candidates for state, local, or judicial office to state in writing at the time of subscribing to the oath or affirmation whether he or she owes any outstanding fines, fees, or penalties that cumulatively exceed \$250 for any violations of:

- Section 8, Art. II of the state constitution, relating to ethics in government;
- The Code of Ethics for Public Officers and Employees;<sup>138</sup>

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<sup>127</sup> “Candidate” is defined in s. 97.021(7), F.S.

<sup>128</sup> Sections 99.021 and 105.031(4)(b), F.S.

<sup>129</sup> Section 99.021(1)(a)1., F.S.

<sup>130</sup> See s. 99.021(1)(a)2., F.S.

<sup>131</sup> See s. 105.031(4)(b), F.S.

<sup>132</sup> See s. 99.012(2), F.S.

<sup>133</sup> See s. 99.012(3)(a), F.S.

<sup>134</sup> Section 99.021(1)(a)1., F.S.

<sup>135</sup> See s. 99.012(2), F.S.

<sup>136</sup> See s. 99.012(3)(a), F.S.

<sup>137</sup> Section 105.031(4)(b), F.S.

<sup>138</sup> See part III, chapter 112, F.S.



- Any local ethics ordinance governing standards of conduct and disclosure requirements; or
- Chapter 106, F.S., relating to campaign finance.

If this applies to the candidate, he or she must also specify the amount owed and each entity that levied such fine, fee, or penalty. The bill specifies that any such fines, fees, or penalties that have been paid in full at the time of subscribing to the oath or affirmation are not outstanding for these purposes.

## **Candidate Names on Ballots**

### Background

Current law requires each candidate to provide in the written oath or affirmation his or her name as he or she wishes it to appear on the ballot.<sup>139</sup> Current law also provides that when two or more candidates running for the same office on a primary election ballot have the same or a similar surname, the word “incumbent” must appear next to the incumbent’s name.<sup>140</sup>

### Effect of the Bill

The bill specifies the types of names a candidate may use when designating in the oath or affirmation the name that he or she wishes to have appear on the ballot. The bill provides that such designation must include the candidate’s legal given name or names, a shortened form of the candidate’s legal given name or names, an initial or initials of the candidate’s legal given name or names, or a bona fide nickname customarily related to the candidate and which the candidate is commonly known, immediately followed by the candidate’s legal surname. The bill permits the candidate, if applicable, to place certain designations after the legal surname (“Sr.,” “Jr.,” or a numerical designation such as “III.”).

However, if a candidate wishes to designate a nickname, the bill requires a candidate to file an affidavit with the oath or affirmation attesting that such nickname complies with these requirements. The bill prohibits a nickname from being used to mislead voters, to imply the candidate is some other person, that constitutes a political slogan<sup>141</sup> or otherwise associate the candidate with a cause or issue, or that is obscene or profane.

The bill prohibits a candidate from including an educational or professional title or degree in his or her name designation, unless a candidate has the same name as, or a name similar to, one or more candidates for the same office.

The bill also specifies that “incumbent” must appear next to the incumbent’s name in any election in which two or more candidates running for the same office have the same or a similar surname.

## **Notices**

### Background

Throughout the Florida Election Code, there are requirements that certain notices be published at various intervals in newspapers of general circulation.

### Effect of the Bill

The bill permits these required notices<sup>142</sup> to be published on a website as an alternative to publication in a newspaper.<sup>143</sup> Those notices may be published on the division’s website, county’s website, or the supervisor’s website, as applicable.

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<sup>139</sup> Section 99.021(1)(a), F.S.

<sup>140</sup> Section 101.151(4)(b), F.S.

<sup>141</sup> The bill provides that, for these purposes, “political slogan” means any word or words expressing or connoting a position, opinion, or belief that the candidate may espouse, including, but not limited to, any word or words conveying any meaning other than that of the general identify of the candidate.

<sup>142</sup> See ss. 98.075(7)(a)2., 98.075(7)(b)3., 98.077(3), 100.021, 100.141(3), 100.342, 101.5612, 101.71(2), 101.733(2), and 102.141(2)(b), F.S.

<sup>143</sup> See s. 50.0311, F.S.

## Vote-by-Mail

### Background

#### *Requests*

Registered voters are permitted to VBM<sup>144</sup> in Florida in lieu of voting at the polls on Election Day or at an early voting site during the early voting period. In order to do so, a voter must request a VBM ballot.<sup>145</sup>

A voter can request a VBM ballot in person, in writing,<sup>146</sup> or by telephone.<sup>147</sup> Current law does not require a voter to provide a reason for a VBM ballot request.<sup>148</sup> In addition, if directly instructed by the voter, a request for a VBM ballot can be made by a member of the voter's immediate family<sup>149</sup> or the voter's legal guardian.<sup>150</sup> The person making the request must disclose:

- The name of the voter for whom the ballot is requested.
- The voter's address and date of birth.
- The voter's Florida driver license number, the voter's Florida identification card number, or the last four digits of the voter's social security number, whichever may be verified in the supervisor's records.
- The requester's name and address.
- The requester's driver license number, identification number, or the last four digits of the requester's social security number, if available.
- The requester's relationship to the voter.
- The requester's signature, if the request is made in writing.<sup>151</sup>

If a voter requests a VBM ballot to be sent to an address that is not on file in the state voter registration system, the request must be made in writing and signed by the voter, unless the voter is an absent uniformed services voter or overseas voter.<sup>152</sup> Such written request must include the voter's Florida driver license number, the voter's Florida identification card number, or the last four digits of the voter's social security number.<sup>153</sup>

A request for a VBM ballot may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable.<sup>154</sup>

A request for a VBM ballot to be mailed to a voter must be received by the supervisor no later than 5 p.m. on the 10<sup>th</sup> day before the election.<sup>155</sup> The supervisor must mail VBM ballots to voters requesting such ballots no later than eight days before the election.<sup>156</sup>

Generally, VBM ballots must be mailed by nonforwardable, return if-undeliverable mail;<sup>157</sup> however, overseas and military voters are permitted to receive VBM ballots by forwardable mail.<sup>158</sup>

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<sup>144</sup> Prior to 2016, VBM ballots were known as "absentee ballots." In 2016, the Legislature passed SB 112, which replaced the phrase "absentee ballot" with "vote-by-mail ballot" in the Florida Election Code. *See* ch. 2016-37, L.O.F. However, a voter voting a VBM ballot is still termed an "absent elector" for purposes of the Florida Election Code. *See* s. 97.021(1), F.S.

<sup>145</sup> Section 101.62, F.S.

<sup>146</sup> The term "writing" includes handwriting, printing, typewriting, and all other methods and means of forming letters and characters upon paper, stone, wood, or other materials. It also includes information which is created or stored in any electronic medium and is retrievable in perceivable form. *See* s. 1.01(4), F.S.

<sup>147</sup> Sections 101.62(1)(a) and (b), F.S.

<sup>148</sup> Prior to 2001, a voter was required to show cause to vote using an absentee ballot, the previous statutory term for what is now a VBM ballot. The Election Reform Act of 2001 eliminated the requirement, allowing any voter to vote using an absentee ballot. *See* ch. 2001-40, s. 53, L.O.F.

<sup>149</sup> "Immediate family" is defined to mean a spouse, parent, child, grandparent, grandchild, or sibling. *See* s. 101.62(4)(c)4., F.S.

<sup>150</sup> Section 101.62(1)(b), F.S.

<sup>151</sup> Section 101.62(1)(b), F.S.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Section 101.62(1)(a), F.S.

<sup>155</sup> Section 101.62(2), F.S.

<sup>156</sup> *Id.*

### *Picking Up a VBM Ballot in Person*

Current law authorizes a supervisor to provide a VBM ballot in-person to the following persons:

- To the requesting voter, upon presentation of identification, up to 7 p.m. on Election Day.<sup>159</sup>
- To the designee of the requesting voter, if specified requirements are met, on Election Day or up to nine days before the day of the election.<sup>160</sup>

A VBM ballot may be provided in person on Election Day only if there is an emergency to the extent that the voter will be unable to go to his or her assigned polling place, in which case the voter or his or her designee must execute an affidavit affirming to the facts that allow for provision of the VBM ballot.<sup>161</sup>

### *Safe-keeping and Canvassing of VBM Ballots*

Supervisors must safely keep in their office any VBM ballots received and must deliver the ballots to the CCB,<sup>162</sup> which is responsible for counting the ballots.<sup>163</sup> Generally, the CCB decides how to handle outlier situations in which, for example, VBM ballots are returned in the wrong envelope or multiple ballots are returned in one envelope.

### Effect of the Bill

The bill specifies that a request for a VBM ballot may be made through the supervisor's website.

The bill requires the division to prescribe by rule a uniform statewide application for a written request for a VBM ballot by October 1, 2023.

The bill requires, instead of only authorizing, a supervisor to cancel a VBM ballot request when any first-class mail sent by the supervisor to the voter is returned as undeliverable, as well as requires this when any such nonforwardable mail is returned as undeliverable. If the voter requests a VBM ballot thereafter, the bill requires the voter to provide or confirm his or her current residential address.

The bill revises the deadlines for requesting and mailing a VBM ballot, requiring a voter to request the VBM ballot no later than the 12<sup>th</sup> day before an election and requiring the supervisor to mail the VBM ballot no later than the 10<sup>th</sup> day before the election. The bill also requires VBM ballot mailing envelopes to be clearly marked "Do Not Forward."

The bill allows in-person provision of a VBM ballot to a voter or a voter's designee after VBM ballots have begun to be mailed and up to 7 p.m. on Election Day. However, the bill requires that once the mandatory early voting period has begun, VBM ballots may only be delivered if there is an emergency and the voter is unable to go to an early voting site or to his or her assigned polling place on Election Day, and the voter must complete an emergency affidavit affirming the facts necessitating the personal delivery of the VBM ballot.

The bill requires supervisors, as feasible, to segregate VBM ballots received from persons who have been notified by a supervisor of potential, but not final, ineligibility to vote and treat these ballots as provisional ballots. Supervisors must attempt to contact each voter whose ballot has been set aside for this reason just as they are required to do so for voters who have voted a provisional ballot.

The bill provides that if two or more VBM ballots are returned in one mailing envelope for the same election, neither ballot will be counted.

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<sup>157</sup> Section 101.62(4)(c)1., F.S.

<sup>158</sup> Section 101.62(4)(c)2., F.S. In addition, absent uniformed services voters and overseas voters may receive VBM ballots by e-mail or facsimile machine transmission.

<sup>159</sup> Section 101.62(4)(c)3., F.S.

<sup>160</sup> Section 101.62(4)(c)4., F.S.

<sup>161</sup> Section 101.62(4)(c)5., F.S.

<sup>162</sup> Section 101.67(1), F.S.

<sup>163</sup> Section 101.68, F.S.

## Presidential Electors and Write-in Candidates for President

### Background

The Governor nominates the presidential electors of each political party.<sup>164</sup> The state executive committee of each political party must recommend candidates for presidential electors and deliver a certified copy to the Governor before September 1 of each presidential election year.<sup>165</sup> The Governor may only nominate electors recommended by the state executive committee of the respective political party.<sup>166</sup> Such electors must be a qualified elector of the party he or she represents who has taken an oath that he or she will vote for the candidates of the party that he or she is nominated to represent.<sup>167</sup> On or before September 1 in each presidential election year, the Governor must certify to DOS the names of the presidential electors for each political party.<sup>168</sup>

For minor political parties, the process for the nomination of presidential electors differs. A minor political party that is affiliated with a national party holding a national convention to nominate candidates for President and Vice President may have its candidates' names printed on the general election ballot by filing a certificate naming the candidates with DOS by September 1 of that year and listing the required number of persons to serve as electors.<sup>169</sup> A minor political party that is not affiliated with a national party holding a national convention for this purpose may have the names of its candidates for President and Vice President printed on the general election ballot if a petition is signed by 1 percent of the registered voters of Florida.<sup>170</sup> A separate petition from each county for which signatures are solicited must be submitted to supervisors no later than July 15 of each presidential election year.<sup>171</sup>

Additionally, persons seeking to qualify for election as write-in candidates for President and Vice President of the United States may have a blank space provided on the general election ballot for their names to be written in by filing an oath with DOS at any time after the 57<sup>th</sup> day, but before noon of the 49<sup>th</sup> day, prior to the date of the primary election in the year in which the presidential election is held.<sup>172</sup> The write-in candidates must file with DOS a certificate naming the required number of persons to serve as electors.<sup>173</sup>

### Effect of the Bill

The bill revises the certification deadlines, requiring political party state executive committees to recommend their candidates for presidential electors and deliver the certified copy to the Governor no later than noon on August 24. The bill then requires the Governor to certify the names of the presidential electors to DOS no later than 5 p.m. on August 24.

The bill requires state executive committees of each political party to submit each presidential elector's Florida voter registration number and contact information. The bill also requires write-in candidates to submit the Florida voter registration number and contact information for each presidential elector and requires each presidential elector to be a qualified registered voter of Florida.

The bill revises the deadline by which a minor political party that is affiliated with a national party holding a national convention to nominate candidates for President and Vice President must file its certificate with DOS, requiring it be filed no later than 5 p.m. on August 24, rather than by September 1.

For a minor political party that it is not affiliated with a national party holding a national convention for such purpose, the bill specifies that the separate petition from each county for which signatures are

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<sup>164</sup> Section 103.021(1), F.S.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> Section 103.021(4)(a), F.S.

<sup>170</sup> Section 103.021(4)(b), F.S.

<sup>171</sup> *Id.*

<sup>172</sup> Section 103.022, F.S.

<sup>173</sup> *Id.*

solicited must be submitted to the respective supervisor no later than noon on July 15 of each presidential election year.

## **Replacement of Electors**

### Background

Current law provides that when a person nominated or elected as a presidential elector is unable to serve, the Governor may appoint a person to fill the vacancy who possesses the qualifications required for the elector to have been nominated in the first instance.<sup>174</sup> The replacement elector must file an oath with the Governor that he or she will support the same candidates for President and Vice President that the person who is unable to serve was committed to support.<sup>175</sup>

Some states have laws that require their presidential electors to take a pledge to vote for the nominee of the party they were nominated to represent, some states impose sanctions for failing to do so, and some states remove such electors.<sup>176</sup> In 2020, the United States Supreme Court upheld a provision of Washington state law that penalized electors who fail to vote for the candidate that won the popular vote in that state.<sup>177</sup>

### Effect of the Bill

The bill provides that a presidential elector's refusal to vote for the candidates for President and Vice President of the party the presidential elector was nominated to represent constitutes resignation of the position. The bill prohibits his or her vote from being recorded and requires the Governor to fill the vacancy by appointment.

## **Prequalifying of State Committeemen and Committeewomen**

### Background

Political parties, other than minor political parties, may provide by rule for its state or county executive committee membership to be elected for four-year terms at the primary election in each year a presidential election is held.<sup>178</sup> Electors seeking to qualify for such office must qualify with DOS or the supervisor no earlier than noon of the 71<sup>st</sup> day, but no later than noon of the 67<sup>th</sup> day, preceding the primary election.<sup>179</sup>

While candidates for federal, state, and local office also have qualifying periods, such candidates may submit their qualifying papers 14 days prior to the beginning of the qualifying period, to be processed and filed during the qualifying period.<sup>180</sup>

### Effect of the Bill

The bill permits state committeemen and state committeewomen to submit qualifying papers during the 14 days prior to the qualifying period.

## **Election Crimes**

### Background

The Legislature created the Office of Election Crimes and Security (Office) within DOS in 2022.<sup>181</sup> The Secretary appoints a director to lead the Office<sup>182</sup> and the Office aids the Secretary with certain duties, such as maintaining a voter fraud hotline and providing election fraud education to the public.<sup>183</sup> The

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<sup>174</sup> Section 103.021(5), F.S.

<sup>175</sup> *Id.*

<sup>176</sup> *Chiafalo v. Washington*, 140 S. Ct. 2316 (2020).

<sup>177</sup> *Id.*

<sup>178</sup> Section 103.091(4), F.S.

<sup>179</sup> *Id.*

<sup>180</sup> Section 99.061(8), F.S.

<sup>181</sup> Chapter 2022-73, L.O.F., codified as s. 97.022, F.S.

<sup>182</sup> Section 97.022(3), F.S.

<sup>183</sup> Sections 97.022(1) and 97.012(12), F.S.

Office also assists the Secretary by conducting preliminary investigations into any irregularities or fraud involving voter registration, voting, candidate petition, or issue petition activities and reports such findings to the statewide prosecutor<sup>184</sup> or the state attorney<sup>185</sup> for the judicial circuit in which the alleged violation occurred for prosecution, if warranted.<sup>186</sup> The Office may refer allegations to a special officer, which is a sworn special agent within FDLE appointed to investigate alleged violations of election laws.<sup>187</sup> The Office employs non-sworn investigators to review notices and reports generated by government officials or other persons, review complaints, initiate independent inquiries, and conduct preliminary investigations into alleged violations of the Florida Election Code<sup>188</sup> and any election irregularities.<sup>189</sup>

Additionally, supervisors are authorized to investigate fraudulent registrations and illegal voting and to report the findings to the local state attorney and the Florida Elections Commission.<sup>190</sup>

Current law provides that it is a third-degree felony<sup>191</sup> to willfully vote more than one ballot at any election.<sup>192</sup> Current law also provides that it is a third-degree felony for a voter to knowingly vote or attempt to vote a fraudulent ballot, or knowingly solicit, or attempt, to vote a fraudulent ballot.<sup>193</sup>

### Effect of the Bill

The bill provides that in any prosecution for casting more than one ballot at any election, the prosecution may proceed in any jurisdiction in which one of the ballots was willfully cast. The bill also provides that it is not necessary to provide which one of the ballots was cast first.

The bill defines “votes more than one ballot at any election” as an occurrence of any of the following:

- Voting more than once in the same election within a county within Florida.
- Voting more than once in the same election by voting in two or more counties located in Florida.
- Voting more than once in the same election by voting in Florida and in one or more other states or territories of the United States.

The bill also provides that a voter who has been notified by a supervisor of potential, but not final, ineligibility to vote and votes a provisional or VBM ballot that is not counted and is later found ineligible to vote is not guilty of voting a fraudulent ballot.

Additionally, the bill requires supervisors to report findings of fraudulent registrations and illegal voting investigations to the Office in lieu of the Florida Elections Commission.

## **Campaign Finance**

### Background

#### *Campaign Finance Reports*

Current law requires submission of the following reports by statewide candidates and political committees<sup>194</sup> that file campaign finance reports with the division:

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<sup>184</sup> The Florida Constitution establishes the position of statewide prosecutor within the Office of the Attorney General and specifies the authority of the statewide prosecutor. The authority of the statewide prosecutor is further defined in statute, which creates an Office of Statewide Prosecution in the Department of Legal Affairs. See Art. IV, s. 4(b), FLA. CONST. and s. 16.56(1), F.S.

<sup>185</sup> State attorneys prosecute on behalf of the state all suits, applications, or motions, civil or criminal, within their judicial circuit, in which the state is a party; see s. 27.02, F.S., for additional information.

<sup>186</sup> Section 97.012(15), F.S.

<sup>187</sup> Sections 97.022(7) and 102.091(2), F.S.

<sup>188</sup> Chapters 97-106, F.S., are cited as “The Florida Election Code.” See s. 97.011, F.S.

<sup>189</sup> Section 97.022(1) and (2), F.S.

<sup>190</sup> Section 104.42(1), F.S.

<sup>191</sup> Third-degree felonies are punishable by up to five years in prison, or a fine of up to \$5,000. See ss. 775.082(3)(e) and 775.083(1)(c), F.S. In addition, habitual felony offenders may be subject to heightened sentences. See s. 775.084, F.S.

<sup>192</sup> Section 104.18, F.S.

<sup>193</sup> Section 104.16, F.S.

<sup>194</sup> See s. 106.011(16)(a), F.S., for the definition of “political committee.”

- Monthly contribution and expenditure reports until the 60<sup>th</sup> day before the primary (seven days after qualifying ends).
- Weekly contribution and expenditure reports beginning on the 60<sup>th</sup> day before the primary, with the last weekly report due on the fourth day before the general election.
- Daily contribution reports beginning on the 10<sup>th</sup> day before the general election, with the last report due on the fifth day before the general election.<sup>195</sup>

Current law requires submission of the following reports by electioneering communications organizations (ECOs)<sup>196</sup> that file campaign finance reports with the division:

- Monthly contribution and expenditure reports until the 60<sup>th</sup> day before the primary (seven days after qualifying ends).
- Weekly contribution and expenditure reports beginning on the 60<sup>th</sup> day before the primary, with the last weekly report due on the fourth day before the general election.
- Daily contribution reports beginning on the 10<sup>th</sup> day before the general election through the fifth day before the general election, and the third day before the general election with the last report due on the day before the general election.<sup>197</sup>

All of the above daily reports must contain contributions received, but not expenditures made.<sup>198</sup>

Current law requires submission of the following reports by all non-statewide candidates, regardless of the candidate's filing officer, and political committees or ECOs that file reports with a supervisor or a municipal clerk:

- Monthly contributions and expenditure reports until the 60<sup>th</sup> day before the primary (seven days after qualifying ends).
- Biweekly contribution and expenditure reports during the 60<sup>th</sup>-32<sup>nd</sup> days before the primary, and the 74<sup>th</sup>-32<sup>nd</sup> days before the general election.
- Weekly contribution and expenditure reports beginning on the 32<sup>nd</sup> day before the primary and general elections, with the last weekly report due on the fourth day before the primary and general elections.<sup>199</sup>

### *Campaign Contributions*

Current law provides that a candidate may not accept contributions from a county executive committee of a political party whose contributions in the aggregate exceed \$50,000, or from the national or state executive committees of a political party, including any subordinate committee of such political party or affiliated party committees, whose contributions in the aggregate exceed \$50,000.<sup>200</sup> A candidate for statewide office may not accept contributions from national, state, or county executive committees of a political party, including any subordinate committee of the political party, or affiliated party committees, which contributions in the aggregate exceed \$250,000.<sup>201</sup>

Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions to be counted toward the above contribution limits.<sup>202</sup>

### *Political Advertisements and Electioneering Communications*

A political advertisement is a paid expression in a communications medium<sup>203</sup> that expressly advocates<sup>204</sup> the election or defeat of a candidate or the approval or rejection of an issue.<sup>205</sup>

<sup>195</sup> Section 106.07(1)(a), F.S.

<sup>196</sup> See s. 106.011(9), F.S., for the definition of "electioneering communications organization."

<sup>197</sup> Section 106.0703(1)(a)-(b), F.S.

<sup>198</sup> Sections 106.07(2)(a)1. and 106.0703(2)(a), F.S.

<sup>199</sup> Sections 106.07(1)(b) and 106.0703(1)(c), F.S.

<sup>200</sup> Section 106.08(2)(a), F.S.

<sup>201</sup> Section 106.08(2)(b), F.S.

<sup>202</sup> *Id.*

<sup>203</sup> "Communications media" means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies. See s. 106.011(4), F.S.

<sup>204</sup> Expressly advocates" or any variation of this term is not defined in the Florida Election Code. The division has "repeatedly drawn on the meaning" of this term given in a United States Supreme Court decision, "where it was noted that certain 'magic words'

Political advertisements must have certain disclaimers, such as disclosing who is paying for the political advertisement, address of persons paying for such advertisement, name of candidate, candidate's party affiliation, and office sought, as required by law.<sup>206</sup>

Electioneering communications are text messages or communications publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone that:

- Refers to or depicts a clearly identified candidate for office without expressly advocating<sup>207</sup> the election or defeat of a candidate, but that is susceptible for no reasonable interpretation other than an appeal to vote for or against a specific candidate;
- Is made within 30 days before a primary or special general election or for 60 days before any other election for the office sought by the candidate; and
- Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.<sup>208</sup>

Any electioneering communication, other than a text message or a telephone call, must prominently state:

Paid electioneering communication paid for by (name and address of person paying for the communication).<sup>209</sup>

#### Effect of the Bill

For campaign finance reports, the bill reduces the required frequency for filing such reports from monthly to quarterly until qualifying, at which time the current reporting requirements resume. The bill also preempts local governments from enacting a reporting schedule that differs from that provided in statute.<sup>210</sup>

Regarding campaign contributions, the bill adds text messages to the list of services and costs that do not constitute contributions that count toward the specified contribution limits.

The bill creates a definition for "voter guides"<sup>211</sup> and prohibits a person from directly or indirectly representing that a voter guide is an official publication of a political party unless given written permission.<sup>212</sup> The bill requires a voter guide circulated before or on the day of an election to prominently display the required disclaimer, a political advertisement disclaimer or electioneering communication disclaimer as applicable, in bold font with a font size of at least 12 point. The voter guide must also be marked "Voter Guide" with such text appearing immediately below the political advertisement or electioneering communication disclaimer. The bill also provides penalties for violations, making such violation a misdemeanor of the first degree, punishable as provided in s.

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constitute 'express advocacy.'" As such, the division has determined this term to mean any communication which uses phrases including, but not limited to: "vote for", "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "oppose," and "reject." See Division of Elections Advisory Opinion 16-12 and *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>205</sup> Section 106.011(15), F.S. However, a political advertisement does not include a statement by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or issue, in that organization's newsletter, which is distributed only to the organization's members, or editorial endorsements made by a newspaper, a radio or television station, or any other recognized news medium. See ss. 106.011(15)(a) and (b), F.S.

<sup>206</sup> See s. 106.143, F.S., for which disclaimers are required for certain political advertisements.

<sup>207</sup> Section 106.011(8)(a), F.S.

<sup>208</sup> *Id.*

<sup>209</sup> Section 106.1439(1), F.S.

<sup>210</sup> The Florida Election Code provides that chapters 97-105, F.S., are preempted to the state, except as otherwise specifically authorized by state or federal law. Campaign financing is located in chapter 106, F.S. See s. 97.0115, F.S.

<sup>211</sup> The bill defines "voter guide" as a direct mail that is either an electioneering communication or a political advertisement sent for the purpose of advocating for or endorsing particular issues or candidates by recommending specific electoral choices to the voter or by indicating issue or candidate selections on an unofficial ballot. The term does not apply to direct mail or publications made by governmental entities or government officials in their official capacity.

<sup>212</sup> See s. 103.081, F.S., for how a person may obtain written permission.

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775.082, F.S.,<sup>213</sup> or by a fine of not less than \$25 for each individual voter guide distributed. The bill prohibits any such fine from exceeding \$2,500 in the aggregate in any calendar month.

## Fines for Election Law Violations

### Background

Current law provides for fines to be automatically assessed against political committees for late-filing of required reports.<sup>214</sup> Current law also provides for almost 100 additional, separate violations in Florida law under chapter 106, F.S., (Campaign Financing) and chapter 104, F.S. (Election Code: Violations; Penalties).

The Florida Elections Commission or, in cases referred to the Division of Administrative Hearings, an administrative law judge may impose fines for violations of chapter 106, F.S., or chapter 104, F.S.<sup>215</sup> Such fines may not exceed \$1,000 per count.<sup>216</sup> In determining the fine amounts, the commission or administrative law judge must consider, among other mitigating and aggravating circumstances:

- The gravity of the act or omission;
- Previous history of similar acts or omissions;
- The appropriateness of the fine amount to the financial resources of the person, political committee, affiliated party committee, electioneering communications organization, or political party; and
- Whether the party has shown good faith in attempting to comply with the provisions of chapter 106, F.S., or chapter 104, F.S.<sup>217</sup>

### Effect of the Bill

The bill increases the fine threshold of \$1,000 per count to \$2,500 per count and provides for a 3x fine multiplier, not to exceed \$7,500, after a person commits three counts of the same category of offense.

The bill also provides that a fine imposed against a political committee for a violation of chapter 106, F.S., jointly and severally attaches to the chair of the political committee, the treasurer of the political committee, and any other person with control over the political committee. However, collection from these individuals may only occur if the political committee does not pay the fine within 30 days.

## B. SECTION DIRECTORY:

Section 1 amends s. 97.012, F.S., relating to the Secretary of State's duties.

Section 2 amends s. 97.052, F.S., relating to the uniform statewide voter registration application.

Section 3 amends s. 97.057, F.S., relating to voter registration by DHSMV.

Section 4 amends s. 97.0575, F.S., relating to 3PVROs.

Section 5 amends s. 97.071, F.S., relating to voter information card.

Section 6 creates an unnumbered section of law related to applicability of changes made in Section 5.

Section 7 amends s. 98.065, F.S., relating to registration list maintenance programs.

Section 8 amends s. 98.0655, F.S., relating to registration list maintenance forms.

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<sup>213</sup> Section 775.082(4), F.S., provides that a person convicted of a misdemeanor in the first degree may be sentenced to a term of imprisonment not exceeding one year.

<sup>214</sup> Section 106.07(8)(a), F.S.

<sup>215</sup> Section 106.265(1), F.S.

<sup>216</sup> *Id.*

<sup>217</sup> Section 106.265(2), F.S.

Section 9 amends s. 98.075, F.S., relating to registration records maintenance activities; ineligibility determinations.

Section 10 amends s. 98.077, F.S., relating to update of voter signature.

Section 11 amends s. 98.093, F.S., relating to duty of officials to furnish information relating to deceased persons, persons adjudicated mentally incapacitated, persons convicted of a felony, and persons who are not United States citizens.

Section 12 amends s. 98.0981, F.S., relating to reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics; live turnout data.

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

Section 14 creates s. 99.0215, F.S., relating to name of candidate.

Section 15 amends s. 99.097, F.S., relating to verification of signatures on petitions.

Section 16 amends s. 100.021, F.S., relating to notice of general election.

Section 17 amends s. 101.141, F.S., relating to notice of special election to fill any vacancy in office.

Section 18 amends s. 100.342, F.S., relating to notice of special election or referendum.

Section 19 amends s. 101.001, F.S., relating to precincts and polling places; boundaries.

Section 20 amends s. 101.048, F.S., relating to provisional ballots.

Section 21 amends s. 101.151, F.S., relating to specifications for ballots.

Section 22 amends s. 101.5612, F.S., relating to testing of tabulating equipment.

Section 23 amends s. 101.6103, F.S., relating to mail ballot election procedure.

Section 24 amends s. 101.62, F.S., relating to request for VBM ballots.

Section 25 amends s. 101.67, F.S., relating to safekeeping of mailed ballots; deadline for receiving VBM ballots.

Section 26 amends s. 101.68, F.S., relating to canvassing of VBM ballots.

Section 27 amends s. 101.6923, F.S., relating to special VBM ballot instructions for certain first-time voters.

Section 28 amends s. 101.6925, F.S., relating to canvassing special VBM ballots.

Section 29 amends s. 101.694, F.S., relating to mailing of ballots upon receipt of federal postcard application.

Section 30 amends s. 101.71, F.S., relating to polling place.

Section 31 amends s. 101.733, F.S., relating to election emergency response; purpose; elections emergency contingency plan.

Section 32 amends s. 102.111, F.S., relating to the ECC.

Section 33 amends s. 102.112, F.S., relating to the deadline for submission of county returns to DOS.

Section 34 amends s. 102.141, F.S., relating to CCB; duties.

Section 35 amends s. 103.021, F.S., relating to nomination for presidential electors.

Section 36 amends s. 103.022, F.S., relating to write-in candidates for President and Vice President.

Section 37 amends s. 103.091, F.S., relating to political parties.

Section 38 amends s. 104.16, F.S., relating to voting fraudulent ballot.

Section 39 amends s. 104.18, F.S., relating to casting more than one ballot at any election.

Section 40 amends s. 104.42, F.S., relating to fraudulent registration and illegal voting; investigation.

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. 106.07, F.S., relating to reports; certification and filling.

Section 43 amends s. 106.0702, F.S., relating to reporting; political party executive committee candidates.

Section 44 amends s. 106.0703, F.S., relating to ECOs; reporting requirements; certification and filing; penalties.

Section 45 amends s. 106.08, F.S., relating to contributions; limitations on.

Section 46 creates s. 106.1436, F.S., relating to voter guide; disclaimers; violations.

Section 47 amends s. 106.265, F.S., relating to civil penalties.

Section 48 amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.

Section 49 provides an effective date of July 1, 2023.

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

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

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

The increased fine amounts as set forth in the bill may result in increased revenue for the state.

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

The bill could have a minimal fiscal impact on state expenditures. DOS may be required to modify rules currently in existence and is required to promulgate new rules under the bill, such as rules governing signature matching procedures and training, a uniform format for the receipt 3PVRs must provide to applicants, a uniform statewide application for a written VBM request, and a format for supervisors to submit voting history information for each qualified voter. The costs of such rulemaking, however, should be absorbed in DOS's current budget as part of its day-to-day operations.

Additionally, the increased frequency and required information for reporting information to DOS and supervisors for use in list maintenance activities may increase workload and costs of reporting governmental entities.

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

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal negative fiscal impact on local government expenditures. The bill requires the voter information cards that supervisors must issue to voters to contain new information. However, the authorization to provide authorizing certain notices on the county's or supervisor's website instead of in a newspaper of general circulation may result in cost savings.

Additionally, the bill requires clerks of court to report certain information to supervisors. This may increase workload and costs of reporting.

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

The bill increases the fine amounts that may be assessed against 3PVRO for failing to comply with certain statutory requirements. The bill also increases fines for certain election law violations, which will financially impact those the fines are assessed against.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the Florida Constitution because it is a law concerning elections.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires DOS to adopt rules to implement certain provisions of the bill. DOS must adopt two rules by October 1, 2023: a uniform format for the receipt that 3PVROs must provide applicants and a uniform statewide application to make a written request for a VBM ballot. The bill's provisions provide DOS with sufficient direction to guide it in the creation of the rules.

DOS must also adopt rules governing signature matching procedures and training and adopt by rule a format for supervisors to submit voting history information for each qualified voter.

DOS has rulemaking authority over the applicable chapters pursuant to s. 97.012(1), F.S.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.