

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 90

INTRODUCER: Ethics and Elections Committee and Senator Baxley

SUBJECT: Vote-by-mail Ballots

DATE: March 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 90 reduces the number of elections for which one request for a vote-by-mail ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election. In addition, this bill requires an elector to affirmatively resubmit a vote-by-mail ballot request after July 1, 2021 (the effective date of this act) in order to receive vote-by-mail ballots for the 2022 primary and general elections.

The bill also moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election if the public testing of automatic tabulating equipment has been completed.

The offices of the supervisors of elections will experience additional workload and may incur additional costs as a result of the changes contained in the bill.

The bill takes effect July 1, 2021.

II. Present Situation:

Schedule of Elections

A general election is held on the first Tuesday after the first Monday in November of every even-numbered year – this means that a general election is held every two years.¹ A primary election is held 11 weeks before each general election.² The dates for the next primary election and general election are:

- Primary election – August 23, 2022; and
- General election – November 8, 2022.

Vote-by-Mail Generally

Florida law allows a voter to request a vote-by-mail (VBM) ballot, which the voter can either return via mail or drop off at an authorized site in lieu of having to vote at the polls during early voting or on Election Day. A voter does not need to provide a reason for a VBM ballot request. A request for a VBM ballot can be made in person or in writing.³

Effective Period for Vote-by-Mail Ballot Requests

Florida law provides that one request from a voter for a VBM ballot is sufficient to receive a VBM ballot for all elections through the end of the calendar year of the second ensuing regularly scheduled general election,⁴ unless the voter indicates at the time of the request the elections for which he or she would like to receive a VBM ballot.⁵ A request for a VBM ballot may be considered canceled when any first-class mail sent by the supervisor of elections (supervisor) to the voter is returned as undeliverable.⁶

Since the establishment of Florida's absentee/vote-by-mail program, the number of elections for which one request for a VBM ballot is sufficient has varied, including:

- All elections held within a calendar year;⁷
- All elections through the next regularly scheduled general election;⁸
- All elections through the next two regularly scheduled general elections;⁹ and
- All elections through the end of the calendar year of the second ensuing regularly scheduled general election.¹⁰

¹ Article VI, s. 5(a), FLA. CONST.; and s. 100.031, F.S. A general election is held to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election.

² Section 100.061, F.S. A primary election is held to determine party nominees to be on the ballot in the general election to fill each federal, state, county, or district office.

³ Section 101.62(1)(a), F.S.

⁴ For example, under the current law, if a voter makes a general request for a VBM ballot in August 2021, then he or she will receive VBM ballots for all elections through the end of 2024, because the next two general elections will be held in November 2022 and November 2024, respectively.

⁵ Section 101.62(1)(a), F.S.

⁶ *Id.*

⁷ *See, e.g.,* the 2006 Florida Statutes.

⁸ *See, e.g.,* ch. 2010-167, s. 7, L.O.F.

⁹ *See, e.g.,* ch. 2007-30, s. 30, L.O.F.

¹⁰ *See, e.g.,* ch. 2011-40, s. 37, L.O.F.

In addition to Florida law, the federal Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) provides absentee voting requirements for federal offices for voters who are United States uniformed services members on active duty, Merchant Marine members, spouses or dependents thereof, or United States citizens residing outside of the United States.¹¹ In part, the UOCAVA requires establishment of an official post card form, known as the federal post card application (FPCA), to be used for voter registration application and absentee ballot application.¹² The UOCAVA does not specify a length of time for which one FPCA request is effective. The Federal Voting Assistance Program, which is tasked with administrative responsibilities for the UOCAVA, currently provides guidance that the FPCA request allows an eligible voter to request an absentee ballot for all federal elections in the calendar year.¹³ The guidance further recommends that eligible voters send in a new FPCA request every January and each time they move.¹⁴

Starting Date for Vote-by-Mail Canvassing Period

Florida law allows county canvassing boards¹⁵ to begin canvassing VBM ballots starting at 7 a.m. on the 22nd day before an election.¹⁶ In 2019, the Legislature extended this starting period from 15 days before an election to 22 days before an election.¹⁷

In 2020, at the request of the supervisors and in response to the COVID-19 pandemic, Governor Ron DeSantis issued an executive order suspending the 22-day timeframe and allowing each county canvassing board to begin canvassing VBM ballots as soon as the Logic and Accuracy (L&A) testing of the machines/equipment was completed.¹⁸ The L&A tests are designed to ensure the integrity and accuracy of the tabulators and voting machines.¹⁹ Because the timing of these L&A tests is tied to the beginning of early voting in each county,²⁰ which varies from 10 to 15 days before an election,²¹ in 2020 counties were generally able to start their VBM canvass 35 to 40 days before the primary election and general election, which is 13 to 18 days earlier than the 22 days that the current statute provides.

The media has credited the canvassing of VBM ballots prior to Election Day as one of the reasons Florida's 2020 general election went so smoothly and why results were available so

¹¹ 52 U.S.C. 203.

¹² 52 U.S.C. ss. 20301(b)(2) and 20302(a)(4).

¹³ Federal Voting Assistance Program, *Frequently Asked Questions About Absentee Voting*, available at <https://www.fvap.gov/guide/appendix/faq>, last accessed February 17, 2021.

¹⁴ *Id.*

¹⁵ A county canvassing board is composed of the supervisor of elections; a county court judge, who acts as chair; and the chair of the board of county commissioners (s. 102.141(1), F.S.).

¹⁶ Section 101.68(2)(a), F.S.

¹⁷ Chapter 2019-162, s. 19, L.O.F.

¹⁸ Office of the Governor, Executive Order No. 20-149 (June 17, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-149.pdf, last accessed February 4, 2021.

¹⁹ Section 101.5612(2), F.S.

²⁰ Each supervisor must complete an L&A test on any day up to 25 days before the start of early voting (*id.*).

²¹ *Id.*; *see also*, s. 101.657(1)(d), F.S. (counties *may* start early voting 15 days before an election, but *must* start no later than 10 days before).

much more quickly than for states, such as Pennsylvania, that had to wait until Election Day to start counting.²²

Vote by Mail Ballots during 2020 General Election Statistics

As of January 31, 2021, there are 14,539,256 active registered voters in the State of Florida.²³ The 2020 election featured the second highest voter turnout in Florida history at 77 percent, the highest was 1992 with an 83 percent voter turnout.²⁴ Below is the breakdown of the method used by the registered voters who voted during the 2020 general election:

- Total Number of Voters: 10,965,776;
- Vote-by-Mail Provided (Not Returned): 1,142,105;
- Voted by Vote-by-Mail: 4,855,677;
- Voted Early: 4,332,221;²⁵ and
- Voted In-Person: 1,777,878.

III. Effect of Proposed Changes:

Effective Period for Vote-by-Mail Ballot Requests

The bill reduces the number of elections for which one request for a VBM ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election.²⁶

The bill specifically provides that if a voter has already submitted a VBM ballot request that would, under the current law, be effective through the end of the calendar year of the second ensuing regularly scheduled general election, the voter must resubmit a VBM ballot request after July 1, 2021, (the effective date of the bill) in order to receive VBM ballots for the 2022 primary election and general election.

Starting Date for Vote-by-Mail Canvassing Period

The bill allows a county canvassing board to begin canvassing VBM ballots as soon as the county finishes L&A testing. In practice, this means that:

- A county that begins early voting as soon as permitted under the law (15 days before an election) may begin VBM canvassing as early as the 40th day before an election instead of the 22nd day before an election, providing an additional 18 days to count; and

²² See, e.g., Tampa Bay News 10 (WTSP), *Florida Counted Votes Quickly in the 2020 Election – What Happened in the Other States?* (Nov. 18, 2020), available at <https://www.wtsp.com/article/news/politics/florida-2020-election-counting/67-33b47308-7571-4c70-8afc-cfa8b872bcca>, last accessed February 4, 2021.

²³ Florida Division of Elections, *Voter Registration by County and Party*, available at <https://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-reportsxlsx/voter-registration-by-county-and-party/>, (last visited, February 19, 2021).

²⁴ *Id.*

²⁵ Florida Division of Elections, *2020 General Election Vote-by-Mail*, available at <https://fldoswebumbracoprod.blob.core.windows.net/media/703948/gen-2020.pdf>, (last visited, February 19, 2021)

²⁶ For example, under the proposed changes, if a voter makes a request for a VBM ballot in August 2021, then the voter will receive VBM ballots for all elections held through December 31, 2022, which is the end of the calendar year of the next regularly scheduled general election.

- A county that waits until 10 days before an election to begin early voting will be permitted to begin VBM canvassing as early as the 35th day before an election instead of the 22nd day before an election, providing an additional 13 days to count.

This change is intended to facilitate a more orderly election administration process and quicker reporting of results.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. Election laws are exempt from the requirements of Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The offices of the supervisor of elections are likely to experience additional workload and incur additional costs to the extent the time period for which one VBM ballot request is sufficient results in a higher total number of requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 101.62 and 101.68 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Ethics and Election on February 16, 2021:

As originally filed, the bill reduced the number of elections for which one VBM ballot request is sufficient to all elections held within a calendar year of the request. The committee substitute instead reduces the number to all elections through the end of the calendar year of the next regularly scheduled general election.

- B. **Amendments:**

None.