

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Ethics and Elections Committee

BILL: PCS/SB 958

INTRODUCER: Ethics and Elections Committee and Senator Constantine

SUBJECT: Elections

DATE: March 26, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	Pre-meeting
2.			JU	
3.			TA	
4.			RC	
5.				
6.				

I. Summary:

Proposed Committee Substitute for Senate Bill 958 is an omnibus elections measure that contains numerous changes to the Florida Election Code, many of which were recommended by the Division of Elections (“the Division”). The major changes are summarized as follows:

- Revives the second primary election.
- Gives the division authority to dissolve minor political parties for failing to file information required under the Florida Election Code.
- Provides notice and an opportunity to voters to provide sufficient evidence prior to election day to verify a voter registration application.
- Provides voters who vote provisional ballots with 2 days after election to present sufficient evidence verifying voter registration application instead of 3 days.
- Gives election officials 13 days to enter voter registration information rather than 15 days.
- Creates registration list maintenance forms and provides revisions to list maintenance procedures.
- Gives supervisors authority to remove deceased voters from statewide voter registration system if presented with death certificate or if they have personal knowledge of death.
- Exempts federal candidates from the current candidate oath and public employee oath.
- Creates a new oath for federal candidates.
- Moves up the qualification period for state, multicounty district, county, district, and special district offices, except judicial offices.
- Provides a uniform method of qualifying for special district offices.
- Revises the petition qualification method for certain offices.

- Provides that a petition signature will not be counted if voter gives an address other than the legal residence where voter is registered.
- Provides that a county commissioner is “elected” at the time of certification of the election results.
- Moves the primary election to 10 weeks before general election, rather than 9 weeks.
- Removes the exception for canvassing of returns for a special election.
- Clarifies the procedures for recall of municipal officeholders.
- Changes initiative petition validity from four years to two years.
- Provides that a copy of a voter challenge will be provided to the election board in the challenged voter’s precinct.
- Provides that mail ballot canvassing may begin six days prior to election, rather than four.
- Provides that an absentee ballot request is effective for all elections through next two general elections after the request is made.
- Provides that supervisors must send absentee ballots overseas at least 45 days before the general election.
- Provides an extra day for delivery of an absentee ballot to a voter’s designee.
- Provides that absentee ballots may be canvassed six days prior to election rather than four.
- Changes the notice requirements for holding an emergency election.
- Provides that the Governor can declare an all mail ballot election in lieu of suspending an election due to an emergency.
- Changes poll worker disability training requirement.
- Provides an additional 19 hours for the submission of returns after a general election.
- Requires county canvassing boards to submit preliminary election returns to Department of State on election night in a format provided by the department.
- Provides that provisional ballots will be included in the unofficial returns.
- Provides that the unofficial returns must be submitted by noon on the fourth day after a general election, or any election other than a primary election.
- Provides an extra day for the submission of unofficial returns after a general election in which a recount was conducted.
- Sets September 1st of presidential election year as the deadline for write-in candidates to qualify for the offices of President and Vice-President.
- Moves up the qualification period by two weeks for candidates for state or county executive committee office of a political party.
- Changes the contribution and expenditure reporting dates for candidates and committees under §106.07, F.S., to require judicial candidates to file a quarterly report on July 10th and all candidates to file a quarterly report on October 10th.
- Provides that if a person is selected to fill a temporary vacancy in a municipal office due to the suspension of the officeholder, the person may serve the remainder of the officeholder’s term if the officeholder is subsequently removed from office.
- Repeals section 104.29, F.S., regarding the ability of ballot watchers to observe the reading, calling, and tallying of the ballots.

Proposed Committee Substitute for Senate Bill 958 takes effect on January 1, 2008.

Proposed Committee Substitute (PCS) for Senate Bill 958 substantially amends, creates, or repeals the following sections of the Florida Statutes: 97.021, 97.053, 97.055, 97.071, 97.1031,

98.056, 98.065, 98.075, 98.081, 99.021, 99.061, 99.063, 99.093, 99.095, 99.097, 99.103, 100.041, 100.061, 100.081, 100.092, 100.097, 100.111, 100.141, 100.191, 100.361, 100.371, 101.041, 101.048, 101.111, 101.252, 101.51, 101.6103, 101.62, 101.68, 101.733, 102.014, 102.112, 102.141, 102.166, 103.021, 103.022, 103.085, 103.091, 104.29, 105.031, 105.041, 105.051, 106.07, 106.08, 106.29, 106.35, 112.51, 189.405, 191.005, 582.18, 876.05.

II. Present Situation:

Political Parties (Sections 1, 30, & 31)

Major political parties may adopt rules that allow its state or county executive committee membership to be elected for 4-year terms at the primary election in each year that a presidential election is held. Electors who want to qualify must do so between the 57th day and the 53rd day before the primary election.¹

Minor political parties may be formed when a group, whose membership totals less than 5 percent of the total registered electors of this state on January 1st before a primary election, files a certificate with the Department of State which states the name of the organization, the names of current officers, including members of its executive committee, and a copy of its constitution or bylaws. Minor political parties have a duty to inform the department of any change with its filing certificate within 5 days after such change is made.² Currently, the division does not possess any authority to make rules to dissolve a minor political party that fails to file reports or provide information required under the Florida Election Code. However, the division does possess the authority to cancel the registrations of and dissolve inactive political committees.³

Voter Registration Applications (Section 2)

Current law provides that a voter registration official⁴ has 15 days after receiving a voter registration application to enter the registration into the statewide voter registration system.⁵ However, the Department of State is required to verify a driver's license number, a Florida ID card number, or the last four digits of a social security number that is provided on the voter registration application before accepting the application as valid. If the application is received by the book-closing deadline but the identifier provided by the applicant cannot be verified before the applicant attempts to vote, the applicant must vote a provisional ballot, which is counted only if the application is verified by either the end of the canvassing period, or evidence is presented by the applicant to the supervisor that is sufficient to verify the number on the application. The applicant has until 5 p.m. of the third day after the election in order to present this evidence.⁶

¹ §103.091, F.S.

² § 97.021(17), F.S.

³ § 106.025(7), F.S.

⁴ A "voter registration official" is defined as "any supervisor of elections or individual authorized by the Secretary of State to accept voter registration applications and execute updates to the statewide voter registration system. §97.021(41), F.S.

⁵ § 97.053(7), F.S.

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

Registration List Maintenance (Sections 3 & 4)

For the purpose of maintaining accurate voter registration records, supervisors of elections must conduct a general registration list maintenance program, which must be uniform, nondiscriminatory, and must comply with several federal voting acts, including the Help America Vote Act of 2002.⁷ Every odd numbered year,⁸ a supervisor must incorporate one of the following methods in the supervisor's list maintenance program:

- Change of address information given by the USPS through its licensees used to identify registered voters whose addresses might have changed;
- Change of address information that is identified from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county, or;
- Change of address information that is identified from returned nonforwardable return-if-undeliverable address confirmation requests mailed to all registered voters who have not voted in the last two years and who did not make any written request to update their registration record during that two-year period.⁹

The program must be completed at least 90 days before any federal election and all actions must be entered, tracked, and maintained in the statewide voter registration system.¹⁰

If a supervisor receives change of address information from one of the methods listed above which reveals that a registered voter's legal address might have changed, the supervisor must send the voter an address confirmation notice by forwardable, return if undeliverable mail, to the address at which the voter was last registered. This notice must contain specific information as outlined in the statute so that the voter can send the notice back indicating if his or her legal residence has either moved outside the state, has moved inside the state, or has not changed. The form must be returned within 30 days of receipt.¹¹

All voters who are sent this notice and do not return the form within 30 days of receipt along with all voters for whom a notice has been returned as undeliverable must be designated by the supervisor as inactive. Voters on the inactive list may not be used to calculate the number of signatures needed on a petition. Inactive list voters can be restored to active status by updating his or her voter registration, requesting an absentee ballot, or appearing to vote. If no update occurs, or no request for an absent ballot is made and the voter does not vote by the second general election after receiving inactive status, the voter's name will be removed from the statewide voter registration system. Thus, in order to vote again, the voter will have to reregister to vote.¹²

If a supervisor willfully neglects or refuses to conduct list maintenance procedures, he or she commits a first degree misdemeanor as provided in section 104.051, F.S. If the Department of State determines from reviewing supervisor biannual certifications of list maintenance activities

⁷ § 98.065(1), F.S.

⁸ § 98.065(3), F.S.

⁹ § 98.065(2), F.S.

¹⁰ § 98.065(3), F.S.

¹¹ § 98.065(4), F.S.

¹² § 98.065(4)(c), F.S.

that list maintenance procedures have not been conducted, the department must conduct the procedures for that particular county.¹³

Deceased Voters (Section 5)

While the statutes authorize that a voter may be removed from the statewide voter registration system if the voter dies,¹⁴ the supervisor must wait to receive this information from the Department of State through the statewide voter registration system before removing the deceased voter.¹⁵ The Department of State receives this information from the Department of Health, which provides a list of information each month to the Department of State regarding deceased persons seventeen years of age or older.¹⁶ The current procedure does not allow a supervisor to remove deceased voters from the voter registration system when he or she is presented with information from sources other than the Department of Health or the Department of State, such as a certified copy of the deceased voter's death certificate. Prior to January 1, 2006, a supervisor could remove the name of a deceased voter from the registration books if he or she received information from other sources and verified the information received.¹⁷

Candidate Oath (Sections 6 & 39)

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

Candidate Qualification (Sections 7, 9, 29, 32, 36, 37, & 38)

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

¹³ § 98.065(6), F.S.

¹⁴ § 98.045(2)(a), F.S.

¹⁵ § 98.075(3), F.S.

¹⁶ § 98.093(2)(a), F.S.

¹⁷ See s. 24, chapter 2005-278, Laws of Florida; § 98.093(5), F.S. (2004).

¹⁸ § 99.021, F.S.

¹⁹ § 876.05, F.S.

²⁰ U.S. CONST. Art. I, § 2, § 3.

qualification period is between the 57th and 53rd day before the primary election.²¹ For candidates for state or multicounty district office, the qualification period is between the 50th day and the 46th day prior to the primary election.²²

Any person who wants to qualify for a county, district, or special district office not mentioned above must file his or her qualification papers and fee with the supervisor of elections of the county, or qualify by the petition process set forth in section 99.095, F.S., by noon of the first day of qualifying. The qualification period for these offices is between the 50th day and 46th day prior to the primary election or special district election, unless the special district election is held at the same time as the general election. If this occurs, the qualification period for special district offices is between 50th day and 46th day prior to the primary election. After the qualification period closes, the supervisor has 30 days to send each applicable candidate's filing fee to the secretary of the state executive committee of the political party to which the candidate belongs.²³

In order to qualify a person must submit the following items²⁴ to the qualifying officer by the end of the qualifying period:

- A check from the candidate's campaign account in the appropriate amount²⁵ or a copy of the notice that the candidate qualified by the petition process.²⁶
- The candidate oath.
- The loyalty oath.
- If a partisan office, a written statement of political party affiliation.²⁷
- The appointment of campaign treasurer and designation of campaign depository form.²⁸
- A financial disclosure statement.²⁹

Write-in Candidates

Persons wanting to qualify as a write-in candidate for office must file their papers with the correct filing officer (either the Department of State or Supervisor of Elections for that particular county) between noon of the first day and noon of the last day of the qualification period for the particular office sought. Write-in candidates are not required to pay a filing fee or assessment. A person cannot qualify as a write-in candidate if he or she has already qualified for the office.

Persons who want to qualify as write-in candidates for President and Vice President may do so by filing an oath with the Department of State between the 57th day and noon of the 49th day prior to the primary election in the year in which a presidential election is held. A space must be allocated on the ballot for the write-in candidate's name. The candidates must also file with the department a certificate naming the requisite number of persons to be electors.³⁰

²¹ § 99.061(9), F.S.

²² § 99.061(1), F.S.

²³ § 99.061(2), F.S.

²⁴ § 99.061(7)(a), F.S.

²⁵ See § 99.092, F.S.

²⁶ See § 99.095, F.S.

²⁷ See § 99.021(b), F.S.

²⁸ See § 106.021, F.S.

²⁹ See Art. II, § 8, FLA. CONST., § 99.061(4), § 112.3144, and § 112.3145, F.S.

³⁰ § 103.022, F.S.

Qualifying by Petition

Persons seeking to qualify as candidates for any office can avoid the filing fee and assessment if they qualify by the petition method. A candidate must obtain signatures from voters in the area represented by the office that equals at least one percent of the total number of registered voters in that area as recorded by the department's compilation from the last general election. Before obtaining any signatures, the candidate must file the appointment of campaign treasurer and designation of depository form.³¹ Petitions must be submitted to the supervisor of the county in which they were circulated by noon of the 28th day before the first day of qualifying for the particular office sought. The supervisor must certify the number of valid signatures by the seventh day prior to the first day of qualifying. The supervisor must submit certifications to the division for federal, state, or multicounty district office candidates. The division then determines if the requisite number of signatures has been obtained and notifies the candidate. For all other county or district offices, the supervisor makes the signature determination and notifies the candidate. If the requisite number of signatures is obtained, the candidate may qualify for office.³²

If a person submits the required number of petitions by the petition qualifying deadline and the candidate is notified more than 5 days after the day before the last day of qualifying that he or she obtained the required number of signatures, the person has five days within which to file qualifying papers and submit the candidate oath to qualify for office.³³

Special Districts

Persons wanting to qualify for a single-county or multi-county special district governing board must qualify by meeting requirements that are somewhat different than those mandated by the Florida Election Code, such as the number of petitions required to qualify and the filing fee, which must be 3 percent of office's salary or \$25, whichever is greater.³⁴ Persons wanting to qualify as a candidate for an independent special fire control district may either file a fee of \$25 or file 25 signed petitions with the filing officer.³⁵ Persons who want to qualify for the officer of supervisor of a soil and water conservation district must qualify by a different petition method.³⁶

Municipal Elections (Sections 8 & 35)

Assessment

Currently, municipal candidates are required to pay an election assessment equal to one percent of the annual salary of the office sought when they qualify for office. The qualifying officer has 30 days after qualifying to send this assessment to the Department of State for deposit in the Elections Commission Trust Fund.³⁷

³¹ See § 106.021, F.S.

³² § 99.095, F.S.

³³ § 99.061(6), and § 105.031, F.S.

³⁴ § 189.405(2), (3), F.S.

³⁵ § 191.005(1), F.S.

³⁶ § 582.18 (1)(a), F.S.

³⁷ § 99.093(1), F.S.

Suspension and Removal

The Governor has the authority to suspend any elected or appointed municipal official for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, a felony or misdemeanor arrest related to official duties, or a federal felony or misdemeanor indictment or charge. When this occurs, a temporary vacancy is created for the office during the suspension. This form of vacancy is filled in the same manner and pursuant to the same authority by which a permanent vacancy in that office is filled. If there is no provision for filling a permanent vacancy for the office, the Governor must fill the vacancy by making a temporary appointment.³⁸ If the suspended official is convicted of charges that support the reason for suspension, the Governor must remove the official from office,³⁹ creating a vacancy in that office.⁴⁰ While the statute at issue currently provides for how a temporary replacement should be filled for an office where the official has been suspended, it does not provide for how to fill a permanent vacancy in that office if the official is subsequently removed from office.

Petition Signature Verification (Section 10)

Currently, if a voter, when signing a petition, lists an address that does not correspond with the voter's legal residence address where the voter is registered to vote, then the supervisor must treat the voter's signature as if the voter had listed his or her legal residence where he or she is registered to vote.⁴¹ This law allows voters to sign petitions in districts where they are not registered to vote. Furthermore, this law does not require the supervisor to send notice to the voter to update his or her legal residence for voter registration purposes.

County Commissioners (Section 11)

County commissioners are constitutional officers. County commission boards may be composed of five or seven members that serve staggered terms of four years. There must be one commissioner residing in each district who shall be elected as provided by law.⁴² Commissioners from odd numbered districts must be elected at the general election in years that are multiples of four. Commissioners from even numbered districts must be elected at the general election in even numbered years which are not a multiple of four. Terms commence on the second Tuesday following the election. Charter counties may choose by referendum a term beginning date later than the one provided above; however, it must be uniform for all commissioners and cannot be later than the first Tuesday after the first Monday in January following each commissioner's election.⁴³

³⁸ § 112.51, F.S.

³⁹ *Id.*

⁴⁰ *See* § 114.01(1)(c), F.S.

⁴¹ § 99.097(3), F.S.

⁴² Art. VIII, § 1, FLA. CONST.

⁴³ § 100.041(2), F.S.

Primary Election (Sections 12, 41-66)

The primary election is scheduled to be held 9 weeks prior to the general election.⁴⁴ Florida's second primary election was abolished by the Legislature on January 1, 2006.⁴⁵

Municipal Recall (Section 14)

Currently, municipal electors may choose to remove any municipal or charter county government official.⁴⁶ A recall petition may not be filed until the municipal official has served at least one-fourth of his or her term of office.⁴⁷ The recall petition procedure is briefly summarized below:

Petitions

First, a recall petition must be prepared containing the name of the person sought to be recalled and a statement of grounds for recall⁴⁸ which must be limited to the following grounds: malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, and conviction of a felony involving moral turpitude.⁴⁹ Upon request, the proponent of the petition should provide the content of the petition in alternative formats. The law specifically lists the number of signatures required for the petition based on the greater of either the municipality's current number of electors or the number of electors at the municipality's preceding municipal election. The electors making the charges in the statement of grounds for recall and the electors signing the petition are referred to as the "committee." A specific person must be designated in the petition to serve as chair of the committee.⁵⁰

Signatures

Section 100.361(1)(c), F.S., sets forth the requirements necessary for signatures and witness oaths. All signatures must be obtained within 30 days, and the petition must be filed within 30 days after the first signature is obtained.⁵¹ The chair of the committee must file the petition with the municipality or charter county clerk. Once the petition is filed with the clerk, the petition and all subsequent papers and forms filed with the clerk must be made available in alternative formats upon request. The petition cannot be amended after it is filed with the clerk. The clerk must then give the petition to the supervisor of elections who must determine if the petition contains the required number of valid signatures within 30 days. The committee or persons seeking verification of the signatures must pay the supervisor 10 cents for each name checked.⁵²

⁴⁴ § 100.061, F.S.

⁴⁵ See House Bill 1673 (2005), and chapter 2005-286, Laws of Florida.

⁴⁶ § 100.361(1), F.S.

⁴⁷ § 100.361(6), F.S.

⁴⁸ § 100.361(1)(a), F.S.

⁴⁹ § 100.361(1)(b), F.S.

⁵⁰ § 100.361(1)(a), F.S.

⁵¹ *Id.*

⁵² § 100.361(1)(d), F.S.

Right to have Signature Removed

Any elector who signs a recall petition has the right to request in writing that his or her name be stricken from the petition. This written demand must be signed by the elector and must be filed with the clerk. The clerk shall then strike the elector's name from the petition and certify this change by placing his or her initials next to the name stricken. However, no signature may be stricken after the clerk delivers the "Recall Petition and Defense," described below, to the supervisor for signature verification.⁵³

Signature Determination

If a determination is made that the petition does not contain the required number of signatures, the clerk must certify this fact to the governing body of the municipality or charter county and file the petition. Any further action will not be taken, and additional names may not be added to the petition. The petition may not be used again.⁵⁴

Recall Petition and Defense

If a determination is made that the petition does contain the required number of signatures, the clerk must serve a certified copy of the petition upon the official facing recall. The official has five days after service within which to file a defensive statement with the clerk. The clerk, within 5 days, must prepare a sufficient number of copies of the petition and defensive statement, and copies of the names, addresses, and oaths on the original petition. The clerk must deliver these copies to chair of the committee and obtain a receipt from the chair. The clerk's prepared copies are referred to as the "Recall Petition and Defense."⁵⁵

The "Recall Petition and Defense" must be signed by at least 15 percent of the electors.⁵⁶ The chair has 60 days from the delivery of the "Recall Petition and Defense" to obtain signatures and file the petition with the clerk. The clerk, after assembling the petitions and checking witness oaths, must deliver the petition to the supervisor, who verifies signatures, purges all names stricken, and certifies within 30 days if the petition contains the requisite number of signatures. The supervisor must report his or her findings to the governing body. The supervisor is also paid 10 cents for each name checked by the committee requesting verification.⁵⁷

If the required signatures are not obtained, the clerk must report this fact to the governing body, file the petitions, and terminate the proceedings. The petitions cannot be used again. If, however, the required signatures are obtained, the clerk must serve notice on the official being recalled and deliver to the governing body a certificate stating the percentage of qualified voters who signed.⁵⁸

⁵³ § 100.361(1)(g), F.S.

⁵⁴ § 100.361(1)(e), F.S.

⁵⁵ § 100.261(1)(f), F.S.

⁵⁶ § 100.361(1)(g), F.S.

⁵⁷ § 100.361(1)(h), F.S.

⁵⁸ § 100.361(1)(i), F.S.

Current law provides specific procedures for the recall election⁵⁹ and the filling of vacancies.⁶⁰ It also provides specific provisions that must be followed if an official being recalled resigns from office.⁶¹ Prohibited offenses with regard to recall include impersonating another, forging names on a petition, providing false information on a petition, or signing any paper knowing you are not a registered elector of the municipality. Expenditures for campaigns for or against the officer being recalled cannot be made until the date the recall election is publicly announced. A person may not employ or pay someone else to accept employment or payment to circulate or witness recall petitions. Any person who violates any provision of section 100.361, F.S., commits a second degree misdemeanor.⁶²

Initiative Petition Signature Validity (Sections 15 & 16)

Signatures on initiative petition forms must be dated when made and will be valid for a period of 4 years from that date, if all other requirements of law are met.⁶³

Ballots (Sections 17, 18, & 40)

Section 101.041, F.S., currently provides for voting to be by secret ballot “printed and distributed.” However, not all ballots are still “printed and distributed.”

Currently, persons voting provisional ballots have until 5 p.m. of the third day after the election to present sufficient written evidence to the supervisor of their eligibility to vote.⁶⁴

Section 104.29, F.S., specifically mandates that election officials shall allow as many as three watchers near them to see if ballots are being correctly read, called, and tallied. Any violation of this section is a first degree misdemeanor.

Voter Challenges (Section 19)

Any elector or poll watcher may challenge the right of a voter to vote if the challenge is made no earlier than 30 days prior to the election. The challenger must file a completed copy of the oath required for making such a challenge with the supervisor’s office. The challenged voter must be given a copy of the completed oath registering the challenge, and may vote a provisional ballot. Electors or poll watchers who file challenges shall not be held liable for any good faith action; however, if the challenge is frivolous, the elector or poll watcher commits a first degree misdemeanor.⁶⁵

⁵⁹ § 100.361(2), F.S.

⁶⁰ § 100.361(4), F.S.

⁶¹ § 100.361(5), F.S.

⁶² § 100.361(7), F.S.

⁶³ § 100.371(3), F.S.

⁶⁴ § 101.048, F.S.

⁶⁵ § 101.111, F.S.

Poll Workers (Sections 20 and 25)

Poll workers are required to receive mandatory training prior to working each election. This training must include at least one hour of disability training, which is designed to train poll workers on etiquette and sensitivity issues regarding disabled voters.⁶⁶

Current law also provides that when an elector presents himself or herself to vote and no impediment to voting arises (such as a challenge or no evidence of elector's name on voting register) a poll worker must announce the name of the voter and allow him or her to enter the voting booth to cast a ballot.⁶⁷

Mail Ballot Election Procedure (Section 21)

The county canvassing board may begin canvassing mail ballots at 7 a.m. on the fourth day before the election, which includes processing the ballots through tabulation equipment. Results may not be released until after 7 p.m. on election day.⁶⁸

Absentee Ballots (Section 22)

Absentee ballots may be requested in person or in writing. One request for a ballot shall be good for all elections held within calendar year of the request, unless, at the time of the request, the elector or designee indicates the elections for which the elector wants an absentee ballot. A request will be deemed canceled if any first-class mail sent from the supervisor to the elector is returned as undeliverable.⁶⁹ However, receipt of a federal postcard application for an absentee ballot is an effective request for all elections through the next two regularly scheduled general elections.⁷⁰ Currently, notwithstanding other means by which absentee ballots are delivered, absentee ballots may be delivered to an elector's designee up to four days prior to election day.⁷¹

The supervisor must mail absentee ballots to qualified electors overseas that have made a request no later than 35 days prior to the primary or general election. In the early 1980s, the United States Government sued Florida arguing that Florida's three elections (first primary, second primary, and general election) in nine weeks violated federal law because it did not give sufficient time for supervisors to prepare absentee ballots, mail them overseas, and have voters return them by election day. Subsequently, the United States and Florida entered into a Consent Decree, which was meant to ensure that Americans overseas had a reasonable time within which to return their ballots for federal primary and general elections prior to the deadline for receipt of ballots.⁷² Florida Administrative Code rule 1S-2.013⁷³ was adopted pursuant to the Consent Decree and provides that, with regard to the presidential preference primary and the general

⁶⁶ § 102.014, F.S.

⁶⁷ § 101.51(1), F.S.

⁶⁸ § 101.6103, F.S.

⁶⁹ § 101.62(1)(a), F.S.

⁷⁰ § 101.694(1), F.S.

⁷¹ § 101.62(4)(b)4., F.S.

⁷² *Increasing Participation by Florida's Overseas Voters*, Florida Senate Report 97-P-33, Executive Business, Ethics and Elections Committee (1997).

⁷³ This rule was originally Rule 1C-7.013, F.A.C.

election, overseas absentee ballots for a federal office that are postmarked and signed no later than the date of the federal election must be counted if they are received within 10 days after the federal election and are otherwise valid.⁷⁴

Election Emergencies (Section 24)

The Governor has the power to suspend or delay elections upon the issuance of an order declaring a state of emergency or impending emergency.⁷⁵ “Emergency” is defined as any accidental, natural or manmade accident, or threat of accident, which either results or may result in substantial injury or harm to the public or substantial damage to or loss of property to the extent it will prohibit an election official from conducting an election.⁷⁶

The Governor must reschedule an election suspended or delayed due to an emergency within 10 days after the date of the original date of the election, or as soon as practicable. Notice of the election must be published at least once in a newspaper of general circulation in the affected area, and if possible, broadcast on radio and television as a public service announcement, at least one week prior to the election date.⁷⁷

Canvassing Returns (Sections 13, 23, 26, 27, & 28)

The county canvassing board may canvass absentee ballots four days before the election.⁷⁸

Returns must be filed by 5 p.m. on the 7th day after a primary election, and by 5 p.m. on the 11th day after the general election.⁷⁹

Unofficial returns for each federal, statewide, state, or multicounty office or ballot measure must be sent by the canvassing board to the Department of State no later than noon of the third day after a primary election and noon of the fifth day after any general election. The unofficial returns do not include provisional ballots.⁸⁰

All general election laws are applicable to special elections or special primary elections. However, county canvassing for a special election must be held on the day after the election and the certificate immediately forwarded to the Department of State.⁸¹

If a recount occurs, the canvassing board must provide a second set of unofficial returns for each federal, statewide, state, or multicounty office or ballot measure by 3 p.m. on the fifth day after a primary election and 3 p.m. on the eighth day after a general election in which a recount was conducted.⁸²

⁷⁴ Rule 1S-2.013(7), F.A.C.

⁷⁵ § 101.733(1), F.S.

⁷⁶ § 101.732(3), F.S.

⁷⁷ § 101.733(2), F.S.

⁷⁸ § 101.68(2)(a), F.S.

⁷⁹ § 102.112(2), F.S.

⁸⁰ § 102.141(4), F.S.

⁸¹ § 100.191, F.S.

⁸² § 102.141, F.S.

Candidate Reports (Section 33)

Candidates and political committees must file regular quarterly reports of all contributions received and all expenditures made. These quarterly reports are due on the 10th day following the end of each calendar quarter.⁸³ After qualification, candidates who have opposition, political committees and committees of continuous existence must file reports on the 32nd, 18th, and 4th days prior to the primary and on the 46th, 32nd, 18th, and 4th days prior to the general election. However, statewide candidates who have requested contributions from the Election Campaign Financing Trust Fund or any statewide candidate who is in a race with a candidate who has requested contributions from this fund must file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election.⁸⁴ Under this reporting schedule, judicial candidates do not have to file a second quarterly report because the qualification period for judicial candidates is in May.

Public Fund Disbursement (Section 34)

Current law provides for the distribution of funds from the Election Campaign Financing Trust Fund to candidates who meet certain requirements⁸⁵ for public financing. The division is required to distribute these funds to candidates who have been certified by the division to receive them. Distribution of the funds must be made within 7 days after qualifying closes and every seven days after the first distribution.⁸⁶

III. Effect of Proposed Changes:

Political Parties (Sections 1, 30, & 31)

The PCS expands the division's rule making authority by giving it the ability to make rules stipulating how a minor party's registration may be canceled if it does not file reports or information required under the Florida Election Code. If created, these rules must include notice provisions that contain the fact and conduct warranting the registration's cancellation. **(Sections 1 & 30)**

The PCS moves up the qualification period for the offices of the state or county executive committee membership of a major political party by two weeks to the time between the 71st day and the 67th day prior to the primary election. **(Section 31)**

Voter Registration Applications (Section 2)

The PCS requires a voter registration applicant to be notified that his or her application is incomplete if the applicant's completed voter registration is received by the book closing deadline but the provided driver's license number, identification card number, or the last four digits of the applicant's social security number could not be verified. The notice must inform the voter that he or she must provide evidence to the supervisor that the number on the application is

⁸³ § 106.07(1), F.S.

⁸⁴ *Id.*

⁸⁵ *See* § 106.33, F.S., and § 106.34, F.S.

⁸⁶ § 106.35, F.S.

valid. If this evidence is provided, the supervisor must place the voter's name on the registration rolls as an active voter. If the voter does not provide the necessary evidence, or the number is not verified prior to voting, the voter will be provided with a provisional ballot. The division believes that this will reduce the number of voters who must vote provisional ballots on election day.

The PCS provides that an applicant, who votes a provisional ballot, has two days following the election, rather than three, to present evidence sufficient to verify the number on the application. This language will allow provisional ballots to be included in the first set of unofficial returns, which governs the necessity of a recount.

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

Registration List Maintenance (Sections 3 & 4)

The PCS requires the Department of State to develop registration list maintenance forms that must include an address confirmation request, an address change notice, and an address confirmation final notice. The bill requires the inclusion of specific information on the request form and address confirmation final notice. It also requires that the notices be sent by forwardable mail. The address confirmation final notice instructs the voter to return the form included with the notice within 30 days after the date of the notice if his or her legal residence has not changed or has changed within the state. If the form is not returned and the voter does not vote by the second general election after the notice is sent, the voter's name will be removed from the registration books. If the voter's legal residence has moved to a location outside the state, the voter should return the form because it serves as a request to be removed from the registration books. The bill also provides that the voter, who has moved his or her legal residence outside the state, will be provided with information on how to register to vote in his or her new jurisdiction. **(Section 3)**

The PCS also requires a supervisor, who receives information that a registered voter has changed his or her legal residence within the state, to change the registration records to reflect the new address. The supervisor must then send the registered voter an address change notice. This allows the supervisor to update the record first and then notify the voter instead of having to send notice to the voter and wait 30 days before updating the record. The new language also provides that if the supervisor receives information that a registered voter has moved his or her legal residence outside the state, the supervisor must send an address confirmation final notice to the registered voter. Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days are designated as inactive. **(Section 4)**

Deceased Voters (Section 5)

The PCS restores the supervisor's ability to remove a voter's name from the statewide voter registration system if he or she is either presented with a copy of the death certificate from a government agency or has personal knowledge of the voter's death.

Candidate Oath (Sections 6 & 39)

The PCS exempts candidates for federal office from the standard candidate oath. It creates a new federal candidate oath that does not require a federal candidate to give oath that he or she is a resident of Florida at the time of qualifying since the United States Constitution does not require a federal candidate to be a resident until he or she is elected.⁸⁷ **(Section 6)**

The amended language also exempts federal office candidates from taking the oath required of public employees as provided in section 876.05, F.S., for the reason stated above. **(Section 39)**

Candidate Qualification (Sections 7, 9, 29, 32, 36, 37, & 38)

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

With regard to special district candidates, the amended language makes qualification uniform for all special district offices. It moves up the qualifying period by three weeks and adds that the filing fee for a special district candidate does not have to be drawn from the candidate's campaign account. Special district candidates must qualify by paying a filing fee of \$25.00 or qualify by petition under s. 99.095, F.S. The PCS specifies that candidates for single county special districts must qualify with the supervisor of elections in the county where the district is located. However, candidates for multi-county districts must qualify with the Department of State. The PCS does not require special district candidates to appoint a campaign treasurer or designate a primary campaign depository if they do not collect contributions and only expend money for the filing fee or signature verification fee. **(Sections 7, 36, 37, & 38)**

The PCS specifies that special district candidates qualifying by petition need only 25 voter signatures from the geographical area of the office sought. Also, the PCS requires candidate certifications for a federal, state, multicounty district, or a multicounty special district office be submitted to the division seven days prior to the first day of the qualifying period for each specific office. The supervisor must determine if candidates for a county, district, or special district office have retained the required number of signatures. **(Section 9)**

The PCS changes the deadline for write-in candidates for the offices of President and Vice-President of the United States to file his or her oath with the Department of State to September 1st in the year in which the election is held. Furthermore, candidates must file with the

⁸⁷ See fn. 20.

department a certificate naming the required number of persons to serve as electors by September 1st of the same year. **(Section 29)**

The PCS changes the qualification period for school board member offices by moving up this period by three weeks to the time between the 71st day and the 67th day before the primary election. **(Section 32)**

Municipal Elections (Sections 8 & 35)

The PCS requires that the qualifying officer forward all assessments from municipal candidates to the Florida Elections Commission, rather than the Department of State, for deposit in the Elections Commission Trust Fund. **(Section 8)**

The PCS provides that a person selected to fill a temporary vacancy created by the suspension of a municipal official shall serve the remaining portion of the official's term of office if the official is subsequently removed. This new language will prevent a municipality from holding one election to fill a temporary vacancy due to an official's suspension and another subsequent election to fill a permanent vacancy due to the suspended official's removal from the same office. **(Section 35)**

Petition Signature Verification (Section 10)

The PCS provides that a petition will not be counted if a voter signs a petition providing an address other than his or her voter registration address. If this occurs, the supervisor must mail the voter a registration application and notify the voter why the application was sent.

County Commissioners (Section 11)

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

Primary Election (Sections 12, 41-66)

The bill moves the primary election to 10 weeks prior to the general election, rather than 9 weeks. This change prevents a primary election from occurring on the Tuesday after the Labor Day holiday. **(Section 12)**

The PCS revives the second primary election. **(Sections 51 & 52)** Other changes in the PCS are conforming for the purpose of reinstating the second primary election. **(Sections 41-50, 53-66)**

Municipal Recall (Section 14)

The PCS provides that each signed and dated petition form must be filed simultaneously and no later than 30 days after the first signature is obtained. The supervisor of elections must verify the signatures no more than 30 days after the petition forms are submitted by the clerk in accordance with s. 99.097, F.S. The PCS requires the supervisor to determine if the requisite number of signatures is obtained for the purposes of the recall petition and the recall petition and defense.

The PCS clarifies that the clerk must make the petition and all subsequent forms and papers available in alternative formats when requested. The PCS also clarifies that the clerk has five days after a defensive statement is received or after the last day that a defensive statement could have been filed to prepare the "Recall Petition and Defense" document. The PCS further clarifies that all signed petition forms must be filed with the clerk within 60 days after the clerk delivers the "Recall Petition and Defense" document to the recall committee chair for circulation.

The PCS removes the prohibition from subsection (10) that prohibited any campaigning for or against the officer facing recall before the date of the election is announced to the public. The bill clarifies that if anyone violates any provision in subsection (10), rather than the entire municipal recall section, he or she will have committed a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.

Initiative Petition Signature Validity (Sections 15 & 16)

The PCS changes the signature validity period for initiative petitions from 4 years to 2 years from the date of the signature. **(Section 15)** This change will apply to all initiative petitions approved for circulation on or after January 1, 2008. **(Section 16)**

Ballots (Sections 17, 18, & 40)

Since all ballots are no longer printed and distributed, the PCS removes this language from this section. **(Section 17)**

The PCS shortens the time period in which provisional voters must submit evidence of their eligibility to vote from 3 days after the election to 2 days after the election. This change will allow provisional ballots to be included in the first set of unofficial returns which determine the necessity of a recount. **(Section 18)**

The PCS repeals section 104.29, F.S., which prohibited inspectors from refusing to allow watchers while ballots are being counted to see if the ballots are being correctly read, called, and tallied. This is an outdated provision of the code because ballots are no longer read, called, and tallied. **(Section 40)**

Voter Challenges (Section 19)

The PCS provides that when a voter's right to vote is challenged, the supervisor must provide a copy of the challenge to the election board in the challenged voter's precinct. This language will insure that a voter will be provided with a copy of the challenge before voting, even if the challenge is made prior to election day.

Poll Workers (Sections 20 and 25)

The PCS removes the requirement that election officials announce the name of the elector prior to entering the voting booth. **(Section 20)**

The PCS removes the one-hour requirement for poll worker disability training. It also removes the requirement that this training be completed prior to working at the polls for each election. Rather, the supervisor must certify to the Department of State periodically if each poll worker has completed disability training prior to working each election cycle. **(Section 25)**

Mail Ballot Election Procedure (Section 21)

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

Absentee Ballots (Section 22)

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

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

Election Emergencies (Section 24)

The PCS changes the notice requirements for an election rescheduled due to an emergency. Currently, notice of an election suspended or delayed due to an emergency must be provided by publication in a newspaper and, where practicable, broadcast on radio and television as a public service announcement at least one week before the election. The PCS removes the mandatory language for publication, and allows notice to be provided in any reasonable manner, which can include if practicable, publication or a broadcasted public service announcement at least one week prior to the election.

The PCS also allows the Governor, instead of suspending or delaying an election, to hold an election by mail. The bill gives the Department of State rulemaking authority to provide procedures for an all mail ballot election when an emergency exists.

Canvassing Returns (Sections 13, 23, 26, 27, & 28)

The PCS conforms the canvassing of special elections to that of general elections by removing the requirement that the canvassing of special election returns begin the day following the election. **(Section 13)**

The PCS amends section 101.68, F.S., to allow county canvassing boards to begin canvassing absentee ballots on the sixth day prior to an election, rather than the fourth day. **(Section 23)**

The PCS provides a county canvassing board with an additional 19 hours to file returns following a general election. **(Section 26)**

The PCS requires canvassing boards to submit preliminary returns to the Department of State on election night in a format designated by the department. The bill also requires canvassing boards to submit unofficial returns for the general election, or any election other than a primary, to the Department by noon on the fourth day after the election rather than the fifth day. The PCS requires provisional ballots to be included in the returns that determine the need for a recount. The PCS also gives the canvassing board nine days after a general election in which a recount occurred to submit a second set of unofficial returns to the department, rather than eight days. **(Section 27)**

The PCS conforms a cross-reference. **(Section 28)**

Candidate Reports (Section 33)

The PCS reorganizes the campaign finance reporting dates in order to require judicial candidates, who qualify in May of an election year, to file a quarterly report for the second calendar quarter on July 10th. The way the bill is drafted, however, also creates an additional reporting requirement for *all candidates*, mandating that everyone file a quarterly report for the 3rd calendar quarter on October 10th (in addition to reports already required on the 32nd and 18th day preceding the general election).

Public Fund Disbursement (Section 34)

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

Effective Date (Section 67)

The PCS takes effect on January 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Reducing the amount of time from 4 years to 2 years for gathering signatures for citizen initiatives may cause grass roots organizations to incur the expense of paid signature gatherers due to the abbreviated validity period for petition signatures.

C. Government Sector Impact:

Reviving the second primary election in Florida will create a significant economic impact on local and state government. According to the Division of Elections, the latest estimate for a special election in Florida is \$23,112,598.00.

VI. Technical Deficiencies:

None.

VII. Related Issues:**County Commissioners (Section 11)**

The Florida Constitution provides that “[o]ne commissioner residing in each district shall be elected as provided by law.”⁸⁸ The Florida Supreme Court has interpreted this provision to require residency at the time of election.⁸⁹ A trial court recently held that a person is not “elected” until certification of the election by the canvassing board.⁹⁰ This case is now pending before the 5th District Court of Appeal.⁹¹

Absentee Ballots for Overseas Voters (Section 22)

If the second primary is revived in Florida for the fifth week prior to the general election, Florida will be unable to petition the federal government for relief from the Consent Decree concerning overseas ballots because supervisors will not have enough time between the second primary and the general election to send absentee ballots overseas 45 days before the election.

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

⁸⁸ Art. 8, § 1, FLA. CONST.

⁸⁹ *State v. Grassi*, 532 So. 2d 1055, 1056 (Fla. 1988).

⁹⁰ *Robinson v. Rocco*, Case No. H-27-CA-2006-1365, 5th Cir. (December 21, 2006).

⁹¹ See Case Nos. 5D07-553 and 5d07-621.

VIII. Summary of Amendments:

None.

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