

**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 Ethics and Elections Committee

BILL: CS/SB 956

INTRODUCER: Ethics and Elections Committee and Senator Alexander

SUBJECT: Elections

DATE: April 20, 2009                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kruse	Rubinas	EE	<b>Fav/CS</b>
2.			TA	
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Committee Substitute for Senate Bill 956 is a compilation of numerous changes to the Florida Election Code. Some of the changes include:

- Expressly providing that the Florida Election Code preempts any local provision regarding elections unless otherwise specifically provided by law.
- A substantial revision to third party voter registration organization requirements.
- The removal of retirement center identification and neighborhood association identification from the list of identifications that may be used at the polls or by certain first time voters.
- Prohibiting persons or groups from soliciting voters within 100 feet of the line in which voters are standing to enter a polling place or early voting site.
- Authorizing leadership funds.
- Requiring marksense ballots to be printed by precinct.
- Allowing an overseas voter to request, receive, or return an absentee ballot or ballot materials by electronic transmission, including e-mail or fax, if the Department of State can establish the security of the transmission.

- Revising the times when the Election Canvassing Commission must meet to certify an election to 9 a.m. on the 9<sup>th</sup> day after a primary election and 9 a.m. on the 14<sup>th</sup> day after a general election.
- Requiring supervisors of elections to be elected on a non-partisan basis.
- Provisions regulating paid petition circulators, including registration and the invalidation of petitions not in compliance with the act as well as offering a voter another opportunity to sign a petition to replace the one that is invalidated.

Committee Substitute for Senate Bill 956 substantially amends the following sections of the Florida Statutes: 97.012, 97.0535, 97.0575, 97.073, 98.015, 98.065, 98.075, 99.012, 99.021, 99.061, 99.063, 100.111, 100.371, 101.043, 101.045, 101.131, 101.151, 101.5612, 101.591, 101.62, 101.64, 101.6923, 101.6952, 101.697, 102.031, 102.111, 102.112, 102.141, 102.166, 102.168, 103.091, 103.121, 105.031, 105.035, 105.041, 105.051, 105.061, 105.08, 105.09, 106.011, 106.08, 106.141, 106.143, 106.17, 106.24, 106.29, 106.295, and 876.05. The CS repeals sections 97.052(6), 101.5911, and 876.07. The CS creates 97.0115, 100.372 and 106.113.

The CS takes effect on July 1, 2009.

## II. Present Situation:

### *Preemption*

Currently, the state has no statute that expressly preempts election law to the state.<sup>1</sup>

### *Responsibilities of the Secretary of State*

The Secretary of State is the chief election officer in Florida. His responsibilities include:

- Obtaining and maintaining uniformity in the interpretation and implementation of election laws;
- Providing administrative rules that uniformly standardize the implementation of election laws;
- Collecting data to effectively analyze the effectiveness of the election laws;
- Maintaining a voter fraud hotline and providing voter education assistance and voter fraud education to the public;
- Providing technical assistance to supervisors of elections on various election related issues;
- Providing training to state agencies on election law implementation;
- Creating and maintaining the Florida Statewide Voter Registration System (hereinafter, "FVRS") as required by the Help America Vote Act of 2002 (hereinafter "HAVA");

<sup>1</sup> In *Browning v. Sarasota Alliance for Fair Elections, Inc.*, 968 So. 2d 637, 641-642 (Fla. 2<sup>nd</sup> DCA 2007) Appellees sponsored an amendment that required a certain type of voting system to be used in the county, mandatory audit provisions for the county, and specific certification procedures. The amendment was approved by the county electors in the 2006 general election. The Appellants' argued that the amendment conflicted with the Florida Election Code or was preempted by the Florida Election Code. *Id.* The court found that the Florida Election Code does not contain any language regarding express preemption. *Id.* at 645. However, the court determined that implied preemption precluded the amendment from taking effect. *Id.* at 653. Currently, this case is pending review in the Florida Supreme Court. See *Sarasota Alliance for Fair Elections v. Browning*, Case No. SC07-2074.

- Bringing actions in court to enforce the performance of duties of a supervisor of elections or any official performing election law duties or rules adopted to interpret any election laws; and
- Conducting investigations into any fraud or problems involving voter registration, voting, candidate petition or issue petition activities, and reporting those findings to the proper official.<sup>2</sup>

### ***Voter Identification***

The following are authorized photo identifications for election purposes:

- Florida driver's license.
- Florida identification card.
- United States passport.
- Debit or credit card.
- Military identification.
- Student identification.
- Retirement center identification.
- Neighborhood association identification.
- Public assistance identification.<sup>3</sup>

Prior to an elector voting at the polls, the elector must present one of the photo identifications listed above before voting.<sup>4</sup> If the person registered by mail, has never previously voted in the state, and does not have a Florida driver's license, Florida identification card, or a social security number, the person must present one of the applicable photo identifications listed above prior to voting unless that person fits within one of the six exemptions listed for this requirement.<sup>5</sup> If the person chooses to vote by absentee, he or she must provide a copy of one of the applicable photo identifications listed above with his or her voted absentee ballot unless that person is covered by one of the six exemptions listed for this requirement.<sup>6</sup>

### ***Third Party Registration Organizations***

A third-party registration organization is defined as "any person, entity, or organization soliciting or collecting voter registration applications. This definition does not include a person who seeks to register to vote or collect applications from the person's spouse, child or parent, or who works as an employee of the Division of Elections, (hereinafter "division"), supervisor of elections, Department of Highway Safety and Motor Vehicles, or a voter registration agency."<sup>7</sup>

Prior to performing any voter registration activities, a third party voter registration organization must perform the following:

- Name a registered agent in Florida.

<sup>2</sup> § 97.012, F.S.

<sup>3</sup> §§ 97.0535, 101.043, and 101.6923, F.S.

<sup>4</sup> § 101.043, F.S.

<sup>5</sup> § 97.0535, F.S.; The exemptions to this requirement are located in § 97.0535(4), F.S., and are not the subject of any change in the CS or original amendment.

<sup>6</sup> § 101.6923, F.S.; The exemptions to this requirement are located in § 101.6923(2), F.S., and are the same as those exemptions listed in § 97.0535, F.S. The exemptions are not the subject of any change in the CS or original amendment.

<sup>7</sup> § 97.021(36), F.S.

- Submit to the division the name of the registered agent, along with the names of the persons responsible for the daily operations of the organization, including the names of the board of directors, president, vice-president, managing partner, or other such individuals with similar duties.
- File with the division on a quarterly basis a report showing the date and location of any organized voter registration drives conducted in the preceding three months.

There is no penalty for failing to provide this information. However, applications collected by an organization must be timely delivered to the division or supervisor of elections. If the applications are not delivered in a timely manner, fines apply. Applications are deemed to be collected by the organization on the date that the applicant signed the application. A progressive structure of automatic fines apply for every application that is turned in late. The fines start at fifty dollars for every application turned in more than 10 days late and increases in various increments up to a fine of \$500 dollars for an application that is collected but never turned in. The fines increase if the violation is willful. The aggregate fine that may be collected against an organization, including any affiliate organizations, per calendar year is \$1,000. The fines are reduced by three-fourths if the organization complied with submitting the proper information mentioned above. The division is authorized to investigate violations and assess civil fines. The Secretary of State must waive the fines upon a showing that failure to deliver the application promptly was based on *force majeure* or impossibility of performance.<sup>8</sup>

### ***Registration List Maintenance***

Each supervisor of elections must conduct a general registration list maintenance program at least every two years in each odd-numbered year to maintain accurate and current voter registration records in FVRS. The program must be completed at least 90 days prior to any federal election.<sup>9</sup>

A supervisor must incorporate one of the following methods in the supervisor's list maintenance program:

- Use of change of address information given by the United States Postal Service through its licensees to identify registered voters whose addresses might have changed;
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable mail sent to all registered voters in the county; or,
- Use of change of address information that is known from returned nonforwardable return-if-undeliverable address confirmation requests mailed to every registered voter

<sup>8</sup> § 97.0575, F.S.; The previous and current form of this statute have been litigated previously. In *League of Women Voters of Florida v. Cobb*, 447 F.Supp.2d 1314 (S.D.Fla., 2006), the court granted a preliminary injunction upon a finding that the law discriminated in favor of political parties because these entities were excluded from the definition of "third-party voter registration organization" and the law's "heavy, strict, joint and several liability fines" were unconstitutional because the fines "chill[ed] Plaintiff's first amendment speech and association rights." *Id.* at 1316. The court opined that Plaintiffs had a first amendment right to the "collection and submission of voter registration drives." *Id.* at 1334. In 2007, the Legislature amended the statute to address the problems identified in *Cobb*. See Ch. 2007-30, pgs. 323-324, LAWS OF FLA. In *League of Women Voters of Florida v. Browning*, 575 F.Supp.2d 1298, 1319, 1323 (S.D. Fla. 2008), the court denied Plaintiffs' preliminary injunction request finding that the amended law was neither unconstitutionally vague nor did it impose a "severe" burden on constitutional rights. Further, the court found that the amended law addressed Florida's interests in protecting its voters. *Id.* at 1325.

<sup>9</sup> § 98.065, F.S.

who has not voted in the last two years and who did not make any written request to update his or her registration record during that two-year period.<sup>10</sup>

A supervisor, who receives change-of-address information, based on list maintenance activities or information received from jury notices signed by the voter and returned to the courts, from the Department of Highway Safety and Motor Vehicles, or from other sources, must take certain actions. If the information reveals that a registered voter has changed his or her legal residence within the state, the supervisor must change the registration records to reflect the new address. The supervisor must then send the registered voter an address change notice.<sup>11</sup> 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 by forwardable mail to the registered voter at his or her new address.<sup>12</sup> Voters who are sent an address confirmation final notice who do not return the prepaid, preaddressed return form within 30 days or for whom the notice is returned as undeliverable are designated as inactive. A voter may be restored to the active list if he or she updates his or her registration, requests an absentee ballot, or appears to vote. If the voter remains on the inactive list for two general elections, the voter's name will be removed from FVRS and he or she will be required to re-register to vote in order to be restored to FVRS.<sup>13</sup>

### ***Resign to Run Law***

Section 99.012, F.S., places certain restrictions on most<sup>14</sup> persons qualifying for public office. First, it mandates that a person may not qualify as a candidate for more than one public office if any part of the terms of offices run concurrently with one another. This prohibition applies to federal, state, district, county or municipal offices.<sup>15</sup> Second, it restricts public officers, unless seeking a federal public office,<sup>16</sup> from qualifying as a candidate for any other state, district, county, or municipal office, if the terms of the offices run concurrently with one another, unless the officer resigns from his or her current office. The resignation must be:

- Irrevocable;
- In writing and given at least 10 days before the first day of qualifying for the office the officer intends to seek; and
- Effective no later than the earlier of:
  - The date upon which the officer would take office, if he or she is elected; or
  - The date the officer's successor is required to take office.

If the resignation is effective immediately or effective a date prior to that of qualifying, then the person is considered a non-office holder to which this law would not apply.<sup>17</sup>

The statute provides an exemption from the resign-to-run law for subordinate officers, deputy sheriffs, or police officers. These persons must resign effective upon qualifying if the person is

<sup>10</sup> § 98.065(2), F.S.

<sup>11</sup> § 98.065(4)(a), F.S.

<sup>12</sup> §§ 98.065(4)(b) and 98.0655(3), F.S.

<sup>13</sup> § 98.065(4)(c), F.S.

<sup>14</sup> This section does not apply to political party officers or persons serving without pay on an appointive board or authority.

§ 99.012(6), F.S.

<sup>15</sup> § 99.012(2), F.S.

<sup>16</sup> § 99.012(7), F.S.

<sup>17</sup> § 99.012(3), F.S.

seeking an office that is currently held by an officer who holds the authority to appoint, employ, promote, or otherwise supervise that person and who also has qualified as a candidate for reelection to that office.<sup>18</sup>

If a person does not comply with this law, his or her name may be removed from the ballot by court order.<sup>19</sup>

### ***Vacancies in Nomination***

Section 100.111(4), F.S., sets forth the procedure to be followed when a vacancy in nomination occurs. Specifically, when a vacancy in nomination occurs, the Department of State notifies the appropriate chair of the appropriate political party executive committee. Within five days, the chair must call a meeting of the committee to designate a nominee to fill the vacancy. The name of the designee must be given to the department within 7 days after notice of a vacancy was provided so that the designee may have his or her name included on the ballot. If the name is submitted after certification of the preceding primary results, the ballots will not be changed and the former nominee's name will appear on the ballot. Any ballots cast for the former nominee will be counted for the new designee. If there is no opposition at the general election, the designee shall be elected to office at the general election.<sup>20</sup>

### ***Initiative Petitions***

Petitions signed by the requisite number of voters may be used to place an issue<sup>21</sup> before the voters and for several other purposes.<sup>22</sup> Most notably, petitions are used to secure ballot position for constitutional amendments proposed by citizen initiatives. Section 3, Art. XI, State Const., which authorizes citizen initiatives, states:

The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the custodian of state records a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

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<sup>18</sup> § 99.012(4), F.S.

<sup>19</sup> § 99.012(5), F.S.

<sup>20</sup> § 100.111(4), F.S.

<sup>21</sup> Under s. 106.011(7), F.S., the term “‘issue’ means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election.”

<sup>22</sup> Petitions may be used to place an issue before the voters, for a candidate to qualify for office, to recall a local elected official, or to change the method of the selection of trial court judges. *See* s. 3, Art. XI, State Const.; ss. 99.095, 100.371, 105.035, and 100.361, F.S.

Accordingly, signatures equal to 8 percent of the votes cast in the last presidential election must be gathered to place a citizen initiative amendment on the ballot. For the 2010 general election, 676,811 signatures are required.<sup>23</sup>

Signatures collected must be dated when made and are valid for a period of four years following the date. The sponsor must submit the forms to the appropriate supervisor for verification. The supervisor must verify the signatures within 30 days of receiving the forms and the verification fee required by s. 99.097, F.S. The supervisor can verify that a signature is valid only if it meets certain requirements. The law provides that a person may revoke his or her signature within 150 days of signing a petition form by submitting a signed petition revocation form.<sup>24</sup>

### ***Book-Closing Deadline***

Currently, the registration books are closed on the 29<sup>th</sup> day prior to an election. When the books are closed, only changes to a voter's name, address, and signature may be made for the upcoming election. Changes to a person's party affiliation may also be permitted if the upcoming election is not a nomination election.<sup>25</sup> If a person moves his or her legal residence from the precinct in which he or she is registered into a different precinct, the person may vote a regular ballot if the person is in the correct precinct, the person's registration is verified, and the person completes and presents at the precinct an affirmation that affirms the person has changed his or her legal residence. If the eligibility of the voter cannot be determined, he or she may vote a provisional ballot.<sup>26</sup>

### ***Designation of Poll Watchers***

A political party, political committee, and a candidate who requests to have poll watchers, must designate in writing such watchers for each polling room prior to noon of the second Tuesday preceding the election. Designations for early voting must be in writing and received by the supervisor at least two weeks before early voting begins. Supervisors have one week in which to approve such designations. The supervisor must furnish a list of such designees and the polling room or early voting area for which they were approved to the election board. Each party, committee, and candidate, may have one watcher for each polling room or early voting area at any one time during the election.<sup>27</sup>

### ***Absentee Ballots***

For each absentee ballot request, the supervisor of elections must record certain information and make the information available in electronic format. The information includes the date the request was made, the date the ballot was delivered to the voter, post office, or voter's designee, and any other information the supervisor deems necessary. The information must be updated daily, provided to the division contemporaneously, and made available by noon of each day. The information is considered confidential and only the following persons and entities may access the information:

- The voter requesting a ballot;

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<sup>23</sup> FLA. DEP'T OF STATE, DIV. OF ELECTIONS, Constitutional Amendments, Congressional District Requirements, *available at* <<http://election.dos.state.fl.us/constitutional-amendments/cong-dist-require.shtml>> (Site last accessed on 17 April 2009.)

<sup>24</sup> § 100.371, F.S.

<sup>25</sup> § 97.055, F.S.

<sup>26</sup> § 101.045, F.S.

<sup>27</sup> § 101.131, F.S.

- A canvassing board;
- An election official;
- A political party or its official;
- A candidate that is opposed in an upcoming election; or
- A registered political committee, or committee of continuous existence (hereinafter, “CCE”).<sup>28</sup>

A request for an absentee ballot must be received by 5 p.m. on the sixth day before an election. The deadline for mailing an absentee ballot is the 4<sup>th</sup> day prior to the election.<sup>29</sup> The deadline for mailing absentee ballots to overseas voters is 35 days before the primary and 45 days before the general election.<sup>30</sup>

An absentee voter is specifically instructed to be sure there is sufficient postage on the mailing envelope if the ballot is mailed.<sup>31</sup>

If an absentee ballot request for an overseas voter contained an e-mail address, the supervisor must inform the voter of the candidates who will be on the ballot via electronic transmission. A list of candidates must be e-mailed to the voter at least 30 days prior to the election.<sup>32</sup>

If the Department of State can establish secure electronic means for receiving ballots from overseas voters, the department must adopt rules to authorizing the procedure for the supervisor to accept such ballots either by secure fax or other electronic means. The rules must provide that in order to accept the ballot, voter verification and the security of the transmission must be established. The rules must also provide for the recording of each ballot received.<sup>33</sup>

### ***Unlawful Solicitation of Voters***

Currently, no one may solicit voters inside the polling place or within 100 feet<sup>34</sup> of:

- The entrance to a polling place;
- The entrance to a polling room if the polling place is also a polling room; or
- The entrance to an early voting site.

The terms “solicit” and “solicitation” are defined to include but are not limited to “seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except [exit polls] . . . ; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item.”<sup>35</sup>

<sup>28</sup> § 101.62(3), F.S.

<sup>29</sup> § 101.62(2), F.S.

<sup>30</sup> § 101.62(4)(a), F.S.

<sup>31</sup> §§ 101.65, and 101.6923, F.S.

<sup>32</sup> § 101.6952(1), F.S.

<sup>33</sup> § 101.697, F.S.

<sup>34</sup> The length of 100 feet around the entrance to a polling place has been upheld by the United State Supreme Court in *Burson v. Freeman*, 504 U.S. 191, 211, 112 S.Ct. 1846, 1858 (1992).

<sup>35</sup> § 102.031(4), F.S.

***Political Parties***

A political party may by rule provide for the membership of its state executive committee to be elected to 4-year terms at a primary election occurring during a presidential election year. Candidates for office must qualify between noon of the 71<sup>st</sup> day and noon of the 67<sup>th</sup> day prior to the primary. Sixty days after the winning candidates take office, the chair of the state executive committee must hold an organizational meeting of all new members for the purpose of electing officers.<sup>36</sup>

Each state executive committee must include the following:

- All members of Congress who are members of the party;
- All statewide elected officials who are members of the party;
- 10 Florida registered voters who are members of the party appointed by the Governor if the Governor is a member of the party;
- The President of the Senate, the Minority Leader in the Senate, the Speaker of the House of Representatives, and the Minority Leader in the House of Representatives, whomever is a member of the political party; and
- Twenty members of the Legislature who are members of the party—of these 20, ten must be appointed with the concurrence of the state chair of the party. These ten are appointed as follows:
  - 5 by the President of the Senate.
  - 5 by the Speaker of the House.
  - 5 by the Minority Leader in the Senate.
  - 5 by the Minority Leader in the House.<sup>37</sup>

Section 103.091(6)(c), F.S., provides that members of a state executive committee may have more than one vote per person if the political party allows for this type of voting.

Members of a state executive committee or a governing body of a political party may vote by proxy.<sup>38</sup>

***Political Committees***

Florida law identifies most groups that spend more than an aggregate of \$500 per year on election contributions or expenditures as a “political committee,” and requires them to register and report contributions and expenditures, along with other campaign finance information, periodically with the Division of Elections or the supervisor of elections.<sup>39</sup> Certain organizations, such as committees of continuous existence, political parties, and certain non-political corporations, are excluded from the definition of “political committee.”<sup>40</sup>

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<sup>36</sup> § 103.091(4), F.S.

<sup>37</sup> § 103.091(6)(b), F.S.

<sup>38</sup> § 103.091(7), F.S.

<sup>39</sup> §§ 106.011(1)(a), 106.03, 106.07, 106.0705, F.S.

<sup>40</sup> § 106.011(1)(b), F.S.

***Contributions by Political Parties to Candidates/Non-allocables***

A candidate is limited to accepting an aggregate of \$50,000 (\$250,000 for a statewide candidate) from a political party, no more than half of which can be accepted before the 28-day period immediately preceding the general election.<sup>41</sup>

The following items, known as “non-allocables,” are excluded from the aggregate \$50,000 contribution limit (\$250,000 limit for statewide candidates): polling services, research services, costs for campaign staff, professional consulting services, and telephone calls.

***Surplus Funds***

A candidate who withdraws, becomes unopposed, is eliminated, or is elected to office has a number of options for disposing of surplus campaign funds, including returning a pro rata share to contributors, providing \$10,000 to his or her political party, donating the funds to a charity, and/or putting a certain amount into an office account.<sup>42</sup> Prior to disposing of surplus funds, however, a candidate who filed an undue burden oath stating that he or she was unable to pay the 1% election assessment<sup>43</sup> or the 10-cents-per-signature cost to verify petition signatures<sup>44</sup> in order to qualify to run, or who qualified by the petition method and thus did not pay an election assessment,<sup>45</sup> must reimburse the state or local government for such waived assessment or fee, or both.<sup>46</sup> There is no requirement that the candidate be specifically notified of this obligation.

***Political Advertising Sponsorship Disclaimers***

A political advertisement run by someone other than a candidate must state “Paid political advertisement” or “Pd. Pol. Adv.,” and must state the name and person sponsoring the advertisement, and, in certain cases, include additional information if the person paying for the advertisement differs from the sponsor.<sup>47</sup> Further, a political advertisement offered on behalf of a candidate, including those paid for by a political party, must expressly state that the content of the advertisement was approved by the candidate and identify who paid for the advertisement.<sup>48</sup>

Florida law does not currently authorize the use of any names or abbreviations that a political party has filed with the Department of State as authorized in s. 103.081, F.S., which protects party registered names, abbreviations, or symbols from being used in certain third-party political advertising without the party’s permission.

***Contributions to Candidates; Exploratory Polls***

Florida law defines a “candidate” as someone who makes an expenditure or receives a contribution “with a view to bringing about his or her nomination or election to, or retention in, public office.”<sup>49</sup> Thus, a person who wants to pay for an “exploratory poll” to determine the

<sup>41</sup> § 106.08(2), F.S.

<sup>42</sup> § 106.141, F.S.

<sup>43</sup> This applies to municipal candidates qualifying by the filing fee method. § 99.093(2), F.S.

<sup>44</sup> This applies to all candidates qualifying by the petition method. § 99.097(4), F.S.

<sup>45</sup> See § 99.095(1), F.S. (candidates qualifying by the petition method are not required to pay a qualifying fee or party assessment).

<sup>46</sup> § 106.141(6), F.S.

<sup>47</sup> § 106.143(1)(b), F.S.

<sup>48</sup> § 106.143(4), F.S.

<sup>49</sup> § 106.011(16), F.S. The election code also broadly defines a “candidate” to include anyone who qualifies for office or seeks to qualify by the petition method. *Id.*

viability of their own *potential* candidacy would be considered a candidate under Florida law, and must appoint a campaign treasurer and set-up a campaign depository from which to make the expenditure.<sup>50</sup> Similarly, a political party conducting such a poll on behalf of a potential candidate and sharing the results would likely transform the “potential” candidate into a “candidate” (with all the requisite campaign finance requirements), as the act of providing the results would probably be viewed as a non-allocable “contribution” under Florida law.<sup>51</sup>

### ***Florida Elections Commission***

The executive director of the Florida Elections Commission currently serves under the direction, supervision, and control of the Commission.<sup>52</sup> The position is not Senate-confirmed and there are no prescribed term length or limits in law.

### ***Campaign Finance Reporting by Political Parties/Salaries***

A political party is required to report quarterly, and on the Friday immediately preceding the primary and general election, all expenditures for salaries as part of their general campaign finance filing. The filing must detail the amount, date, and purpose of such expenditure.<sup>53</sup>

### ***Leadership Funds***

In the 1989 session, the Legislature banned leadership funds --- accounts comprised of monies contributed to political parties which are designated to be used at the partial or total discretion of a “leader.”<sup>54</sup> Since that time, a number of entities<sup>55</sup> have been created by law or used in a way that could be considered similar to leadership funds.

### ***Voter Registration Applications***

Currently, a supervisor must notify each voter registration applicant whether the applicant’s application was approved, incomplete, denied, or is a duplicate. Notice of approval is sent in the form of a voter registration card. Notice of denial must give the applicant the reason for the denial of the application.<sup>56</sup>

If an applicant fails to provide any of the required information on a voter registration application, the supervisor must notify the applicant within 5 business days after the supervisor has received the information in FVRS. The applicant can complete the application in order to vote in the next election until the book closing deadline for the next election.<sup>57</sup> If the application is incomplete, the applicant must supply the missing information using a voter registration application signed by the applicant.<sup>58</sup>

<sup>50</sup> § 106.021(1)(a), F.S.

<sup>51</sup> See § 106.08(2), F.S. (political party contributions of polling services to candidates is a non-allocable contribution that does not count against the aggregate limit a party may contribute to a candidate).

<sup>52</sup> § 106.24(4), F.S.

<sup>53</sup> §§ 106.29(1) and 106.07(4)(a)7., F.S.

<sup>54</sup> Ch. 89-256, s. 24, LAWS OF FLA. (codified at §106.295, F.S.)

<sup>55</sup> Such organization would include certain federal 527 organizations, committees of continuous existence, and electioneering organizations --- to name a few.

<sup>56</sup> § 97.073, F.S.

<sup>57</sup> § 97.052(6), F.S.

<sup>58</sup> *Id.* at n 33.

***Deceased Electors***

Currently, the department identifies deceased electors by comparing information received from the Department of Health. This information is received monthly and contains the name, address, date of birth, date of death, social security number, race, and sex of each deceased person age 17 and older. Within seven days of receiving the information through FVRS, the supervisor must remove the name of the voter.<sup>59</sup>

***Candidate Oaths and Information Required for Qualification***

In s. 99.021, F.S., a printed copy of the oath or affirmation must be provided to the candidate by the qualifying officer. The candidate oath requires the candidate to affirm that he or she has taken the oath required in s. 876.05, F.S.<sup>60</sup> The oath set forth in s. 876.05, F.S., is required to be taken by anyone who seeks to qualify for public office, except candidates for federal office. The oath requires a candidate to swear that he or she is either a public officer or employee. If a candidate is not a public employee or officer at the time of taking the oath, then the oath requires the candidate to falsely swear. If a candidate fails to take the oath, then the candidate has failed to qualify for office.<sup>61</sup> The language in the non-partisan oath located in s. 105.031, F.S., contains the same requirements as the oath in s. 99.021, F.S.

Financial disclosures are not currently required by statute to be notarized pursuant to the notary statute, s. 117.05, F.S. However, the financial disclosure form does contain the notarial certificate set forth in s. 117.05(13)(a), F.S.<sup>62</sup> Also, the law does not set forth the specific information to be included in the appointment of campaign treasurer and designation of campaign depository.

***Ballots***

Ballots are required to contain various headings and titles for the respective offices that are being decided in an election.<sup>63</sup> Currently, the law also requires that the names of minor political party candidates and no-party-affiliation candidates appear on the ballot following the names of recognized political parties in the order they were certified.<sup>64</sup>

Tabulating equipment tests must use preprinted ballots and ballot-on-demand ballots if those ballots will be used in the election.<sup>65</sup> However, there is no requirement that supervisors employ actual ballots printed for the election when testing tabulating equipment.

***Audits***

After the certification of an election, the board responsible for certifying the election must conduct a manual audit of the voting systems used in a random selection of precincts. The audit must consist of the tally of votes from one randomly selected race from at least one percent but no more than two percent of the randomly selected precincts. The audit must be completed and

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<sup>59</sup> §§ 98.093 and 98.075, F.S.

<sup>60</sup> §§ 99.021 and 105.031, F.S.

<sup>61</sup> § 876.07, F.S.

<sup>62</sup> FLA. COMMISSION ON ETHICS, Forms, Form 6 2008, available at < <http://www.ethics.state.fl.us/> > (Site last accessed on 20 April, 2009).

<sup>63</sup> § 101.151(2)(a), F.S.

<sup>64</sup> § 101.151(3)(b), F.S.

<sup>65</sup> § 101.5612(5), F.S.

the results made public before midnight of the 7<sup>th</sup> day following certification. The board has 15 days in which to report the results of the audit.<sup>66</sup> The Department of State has specific rule-making authority with regard to the audit procedure.<sup>67</sup>

### ***Certifying Elections and Ordering Recounts/State Elections Canvassing Commission***

The State Elections Canvassing Commission is comprised of the Governor and two other Cabinet officers selected by the Governor. In the event this composition cannot be achieved (due to scheduling or other unforeseen reasons), the members of the commission may agree on another elected official to fill any vacancies.<sup>68</sup>

The Commission performs two principally ministerial tasks:<sup>69</sup>

- It orders machine and manual recounts in federal, state, and multi-county elections, when required by law;<sup>70</sup> and,
- It certifies the final results of such elections as soon as the official results are compiled from the counties (7 days following a primary election (Tuesday); 12 days following a general election (Sunday)).<sup>71</sup>

### ***Election Contests***

Currently, someone contesting an election may file a complaint with the circuit court clerk ten days after midnight of the date the last board certifies the election results. The statute also specifies which boards performing certification duties are proper and indispensable defendants in an election contest.<sup>72</sup>

### ***Local Governments***

Currently, local governments are not prohibited from making expenditures<sup>73</sup> to advocate for the passage or defeat of an issue, referendum, or amendment, the outcome of which will be decided at an election.

Section 106.011, F.S., defines a political advertisement as a paid expression in any communications media,<sup>74</sup> whether radio, television, newspaper, magazine, periodical, campaign

<sup>66</sup> § 101.591, F.S.

<sup>67</sup> § 101.5911, F.S.

<sup>68</sup> § 102.111(1), F.S.

<sup>69</sup> For local elections, the county (or other local) canvassing board performs these duties. §§ 102.141(7), 102.166(1), F.S.

<sup>70</sup> §§ 102.141(7), 102.166(1), F.S.

<sup>71</sup> §§ 102.111(1), 102.112, F.S.

<sup>72</sup> § 102.168, F.S.

<sup>73</sup> An “expenditure” means “a purchase, payment distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication.” Section 106.011(4), F.S. There is a specific statutory exemption for certain internal newsletters of pre-existing organizations. *Id.*

<sup>74</sup> “Communications media” means “broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies; however, with respect to telephones, an expenditure shall be deemed an expenditure for the use of communications media only if made for the costs of telephones, paid telephonists, or automatic telephone equipment to be used by a candidate or political committee to communicate with potential voters . . .; however, with respect to the Internet, an expenditure shall be deemed an expenditure for use of communications media only if made for the cost of creating or disseminating a message on a computer information system

literature, direct mail, or display or by any other means except by the spoken word in direct conversation, which *expressly advocates* the election or defeat of a candidate or the approval or rejection of an issue.<sup>75</sup>

An electioneering communication on an issue to be voted at an election means a paid expression in any communications media<sup>76</sup> by means other than the spoken word in direct conversation that: 1) contains a clear reference that an issue is to be voted on at an election without expressly advocating the passage or defeat of the issue; and, 2) is published after the issue is designated a ballot position or 120 days before the date of the election on the issue, whichever occurs first.<sup>77</sup>

### *Supervisors of Elections*

Each of Florida's 67 counties has a supervisor of elections whose responsibilities include voter registration and conducting elections.<sup>78</sup> Supervisors of elections are elected constitutional officers with the exception of Miami-Dade County.<sup>79</sup> The Florida Constitution specifically states:

There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter<sup>[80]</sup> or special law approved by the vote of the electors of the county, any county officer may be chosen in another manner therein specified, . . . .<sup>81</sup>

A majority of the supervisors in Florida's 67 counties run on a partisan basis; however, supervisors in Columbia, Leon, Palm Beach, Polk, and Volusia are elected on a non-partisan basis pursuant to county charter. Furthermore, in 2012, the Lee County supervisor will also be elected on a non-partisan basis, due to a recent change to the county charter.

### **III. Effect of Proposed Changes:**

The following is a section by section analysis of CS/SB 956:

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*accessible by more than one person but excluding the internal communications of a campaign or of any group.*" (emphasis added). § 106.011(13), F.S.

<sup>75</sup> There are specific statutory exemptions for certain internal newsletters of pre-existing organizations and editorial endorsements by recognized news media. § 106.011(17), F.S.

<sup>76</sup> See *infra* note 74 (defining "communications media").

<sup>77</sup> Section 106.011(18), F.S. There are specific statutory exemptions for certain internal newsletters of pre-existing organizations, editorial endorsements by recognized news media, and public debates. *Id.*

<sup>78</sup> See Chapter 98, F.S.

<sup>79</sup> Miami-Dade County's charter specifically abolished the supervisor's office in 1958, and transferred the power and function of this office to the Mayor, who was given the authority to appoint a suitable person to carry out the functions of the office. See Miami-Dade Home Rule Amendment and Charter, § 9.01, available at <<http://www.miamidade.gov/charterreview/library/08-01-29-charter.pdf>> (Site accessed on 11 Feb. 2009).

<sup>80</sup> Currently, 20 of Florida's 67 counties have a county charter: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval, Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla. Fla. Assoc. of Counties, Florida's Charter Counties, available at <[www.fl-counties.com/aboutflco/chartercounties.shtml](http://www.fl-counties.com/aboutflco/chartercounties.shtml)> (Site accessed on 11 Feb. 2009).

<sup>81</sup> FLA. CONST. art. VIII, § 1.

**Section 1** creates s. 97.0115, F.S., which gives state election law preemption, unless otherwise specifically provided.<sup>82</sup>

**Section 2** revises the Secretary of State's responsibilities to include providing direction and opinions to the supervisors of elections with regard to their official duties as set forth in chapters 97-102 and chapter 105 or any rules adopted by the Department of State. It also requires the Secretary of State to be non-partisan in all decisions and statements. The Secretary of State is prohibited from engaging in the following activities:

- Being active or holding an office in a political organization;
- Publically endorsing or opposing a candidate for public office or partisan organization;
- Taking a public position for or against, or participating in a campaign for or against the merits of any ballot issue or measure except in an official capacity;
- Making a speech on behalf of a candidate or political organization;
- Attending a political party function except in his or her official capacity;
- Soliciting funds for, paying an assessment to, or contributing to a political organization or candidate; and
- Purchasing, accepting, or distributing tickets for any political party function.

A violation of this language constitutes a second degree misdemeanor.

**Section 3** removes retirement center identification and neighborhood association identification from the list of acceptable forms of photo identification that must be presented in order to vote. This deletion applies to those voters who registered by mail, have never voted in Florida, and do not have a driver's license, Florida identification card, or social security number. It also requires these first-time voters to provide this identification prior to election day. Further, it requires the supervisor to validate these voters' registrations prior to election day. If not, the applicant will have to vote a provisional ballot.

**Section 4** provides the following:

- Third party registration organizations must register with the division and provide certain specific information.
- Registration forms collected by these organizations must be turned into the division or the supervisor of elections within 48 hours of being completed. The new language allows for *force majeure* to be an affirmative defense to this requirement.
- It removes the current automatic fines for failure to deliver registration applications on time and removes the aggregate fine cap of \$1,000.
- It removes the provision that fines will be reduced by three-fourths if the third-party group complied with the registered agent and group information filings.
- A person who intentionally violates this section is guilty of a first degree misdemeanor and his or her registration agent status shall be revoked.
- A \$250 civil penalty may be assessed against a third-party voter registration organization for an intentional violation in certain circumstances.

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<sup>82</sup> See *infra*, note 1.

- The Attorney General may assess other penalties for a violation, including a permanent or temporary injunction.
- The supervisors and division must provide voter registration forms to all third party registration organizations.
- Such voter registration forms must contain individual identifying information.
- The supervisors and the division must maintain a publicly available electronic database of the third-party organizations and the forms assigned to them.
- Enhanced rulemaking authority is granted to the division.

**Section 5** requires supervisors of elections to perform list maintenance activities every quarter in each odd-numbered year and monthly in each even-numbered year.

**Section 6** provides that any person who does not comply with the resign-to-run law, s. 99.012, F.S., will not be qualified for election and will be removed from the ballot by the qualifying officer.<sup>83</sup>

**Section 7** provides that if a nominee does not properly qualify for office or does not meet the qualifications for office, a vacancy in nomination is *not* created. It also provides that a legislative or county office candidate who is elected in an open primary shall be deemed elected at that time. Thus, such candidate's term of office would begin immediately, rather than at or after the general election. However, this provision would only apply if the candidate was elected in an open primary after a vacancy in nomination occurred.

**Section 8** provides that petition signatures are valid for two years rather than four. It requires petition forms to be submitted to the supervisor for verification within 45 days of the date on which the petition was signed. It also removes the 150-day time frame limitation within which a petition could be revoked. Thus, a petition could be revoked at any time.

**Section 9** removes retirement center identification and neighborhood association identification from the list of acceptable forms of photo identification that an elector must present at the polls prior to voting.

**Section 10** provides that if an elector changes his or her legal residence less than 29 days before the election, he or she must vote a provisional ballot.

**Section 11** provides that the Division of Elections must promulgate a form to designate poll watchers. It requires that poll watcher designations be signed by the chairman of the county political executive committee, chairman of a political committee, or candidate requesting such watchers. It provides that all poll watchers are at-large poll watchers. It also requires the supervisor of elections to provide poll watcher identification badges. These badges must be worn by the watchers when present at the polls.

**Section 12** provides that the absentee ballot request information provided in electronic format must be made available beginning 60 days before the primary election until 15 days after the

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<sup>83</sup> Recently, in *Browning v. Young*, 993 So. 2d 64, 68 (Fla. 1<sup>st</sup> DCA 2008), the court noted that a qualifying officer may not know when the candidate holds an office from which he or she must resign.

general election. The section also requires supervisors to begin mailing absentee ballots 40 days before a primary and 50 days before a general election. After these dates, the supervisor must mail ballots within 48 hours of receiving a request.

**Section 13** prohibits supervisors from placing on the absentee ballot mailing envelope any information indicating the voter's party affiliation or lack thereof. It also requires the supervisor to establish and maintain a prepaid account with the post office in order to pay postage on any absentee ballots that are returned to the supervisor for insufficient postage.

**Section 14** removes retirement center identification and neighborhood association identification from the list of acceptable forms of photo identification for those voters who registered by mail, have never voted in Florida, do not have a driver's license, Florida identification card, or social security number and vote using an absentee ballot.

**Section 15** prohibits solicitation within 100 feet of voters standing in line to enter a polling place or early voting area. It provides that the terms "solicit" or "solicitation" include offering legal advice regarding voting or ballots and it adds that the terms include either in-person solicitation or solicitation by audio or visual equipment.

**Section 16** provides that a political party may adopt additional requirements for qualifying to the office of a county or state executive committee. It also provides that the state executive committees of political parties shall include, in addition to its elected and statutorily named members, members appointed in the following manner:

- By the Senate President and Senate Minority Leader: members equal to the number of elected senators who are members of the party only half of whom must be senators.
- By the Speaker of the House of Representatives and House Minority Leader: members equal to the number of elected senators who are members of the party only half of whom must be representatives.
- By the Governor: members equal to the number of elected senators who are members of the political party if the Governor is a member of the political party. If the Governor is not a member of the political party, then the senior Florida United States Senator who is a member shall make the appointments. If there is no senior Florida United States Senator who is a member of the party, then the appointments by the Governor shall not be made.<sup>84</sup>

This section also clarifies that proxy voting is allowed if it is permitted by party rule. Furthermore, this section requires that all members of a state executive committee, whether elected or appointed, be considered full members with all rights and privileges of the office.

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<sup>84</sup> Currently, there are 26 Republican Senators and 14 Democratic Senators. Thus, the Republican appointees would be as follows: 26 appointments by the Senate President, only 13 of which must be Senators, 26 appointments by the House Speaker, only 13 of which must be representatives, and 26 appointments by the Governor. The Democratic appointees would be as follows: 14 appointments by the Senator Minority Leader, 7 of which must be Senators, 14 appointments by the House Minority Leader, 7 of which must be representatives, and 14 appointments by United States Senator Nelson. The number of appointees to each state executive committee would potentially change each election because it is based on the number of state Senate seats held by each party.

**Section 17** establishes that Leon County is the venue for any action involving a political party's constitution, rules, or bylaws.

**Section 18** provides organizations registered in other states as political committees or similar entities are not considered political committees in Florida. Furthermore, it provides that any expenditure related to potential candidate polls in s. 106.17, F.S., are not contributions or expenditures for the purpose of defining a "candidate."

**Section 19** removes the 28-day time period limitation prior to a general election for contributions from political parties to candidates. It also includes office expenses associated with cost of campaign staff and communications media within the list of non-allocable items that political parties may contribute to candidates.

**Section 20** provides that the qualifying officer shall notify a candidate of any amounts that he or she may owe for the election assessment or petition verification fee within seven days after the candidate becomes unopposed or withdraws. This notification provision applies to a candidate who has filed an oath that he or she cannot pay the election assessment or petition signature verification fee without incurring an undue burden or to a candidate who qualified by the petition process and was not required to pay an election assessment.

**Section 21** provides a disclaimer for political advertisements for in-kind expenditures made by a political party pursuant to s. 106.08, F.S. This section also provides that political parties may use in any of its disclaimers any names or abbreviations if they are registered in accordance with s. 103.081, F.S.

**Section 22** allows the state and county executive committees of a political party to conduct "test the water" potential candidate polls. Expenditures for these polls are not considered contributions to potential candidates. These polls may only be shared with a potential candidate prior to the potential candidate:

- filing as a candidate or write-in candidate; or
- seeking to qualify for office by the petition process.

**Section 23** provides that the appointment of the executive director of the Florida Elections Commission is subject to Senate confirmation, is for a term of only two years, and is capped at 4 two-year terms.

**Section 24** provides that political parties may report salary expenditures in the aggregate rather than individually.

**Section 25** authorizes leadership funds in Florida.

**Section 26** repeals subsection (6) of s. 97.052, F.S., since it conflicts with the language regarding the notice of the disposition of an incomplete voter registration application contained in Section 27 of the bill.

**Section 27** imposes timeframes for notifying voter registration applicants of the disposition of their voter registration application. If the application is approved, the supervisor must send the

voter a voter registration card within two weeks after the approval. If the application is incomplete or denied, a notice must be sent within five business days after the supervisor has the information in FVRS. If incomplete, the applicant has one year to respond. If no response is received, the application is closed. If denied, the supervisor must include in the notice the reason for the denial. If the application is a duplicate of a current record, the supervisor must process the application as an update. The supervisor must notify the voter that their registration has been processed as an update and must issue the voter a new voter information card.

**Section 28** provides that information regarding deceased voters may be obtained from the U.S. Social Security Administration's master death file or index. Supervisors must remove the name of the deceased voter within 7 days of receiving information through FVRS, rather than upon receipt of such information. Further, this section provides that the supervisor may remove a deceased voter's name from FVRS upon receipt of a copy of a death certificate issued by a governmental agency authorized to issue such certificates.

**Section 29** provides that the qualifying officer shall make the candidate oath available to the candidate rather than give the candidate a printed copy of the oath. It removes language from the oath regarding the requirement to take the loyalty oath since that requirement is being repealed. It adds language to the oath requiring candidates to affirm that they will support the state and federal constitutions for state candidates, and federal constitution for federal candidates.

**Section 30** provides that the statement of financial disclosure that candidates must file in order to qualify for office must be notarized pursuant to s. 117.05, F.S.<sup>85</sup> It requires that the filing documents required at qualification be originals. It removes the requirement to file the loyalty oath since that requirement is being repealed. It requires the candidate oath to be notarized pursuant to s. 117.05, F.S. It also requires the following information to be included when filing the appointment of campaign treasurer and designation of campaign depository:

- The name, address, and telephone number of the candidate;
- The office sought, with district, circuit, or group designation;
- The campaign treasurer's name, address, and telephone number;
- The primary campaign depository's name and address;
- The candidate and campaign treasurer's dated signatures; and
- The campaign treasurer's acceptance of the appointment.

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<sup>85</sup> This requirement appears to be created as the result of the decision in *Browning v. Young*, 993 So.2d 64, 67-68 (Fla. 1<sup>st</sup> DCA 2008), which held that the candidate in question complied with the election laws and was entitled to have her name on the ballot even though the financial disclosure statement that she filed for qualifying purposes had a defect in verification: while her signature on the form had been notarized, and all other appropriate information was present, the line for the applicable county had been filled out to say "Florida." The court determined that "the Legislature meant to provide some degree of uniformity by ensuring that the information required by section 112.3144 [financial disclosure form] be provided in the same way by every candidate on the same form. Candidates are required to have the form notarized in the manner required by the Commission on Ethics, but it is not at all clear that this procedural element can be elevated to a mandatory condition to be met in order to qualify for office." *Id.* at 66-67. Based upon the court's reasoning, it is apparent that including the notary requirement in the qualification statute will raise the requirement to a "mandatory condition to be met in order to qualify for office."

**Section 31** removes the requirement that candidates for Governor and Lt. Governor file the loyalty oath since the bill repeals the requirement that candidates must take the loyalty oath prior to qualifying for office.

**Section 32** provides that marksense (optical scan) ballots shall be printed by precinct rather than by ballot style. This section also provides for the removal of some ballot headings such as “Congressional,” “State,” “Legislative,” and “County.” It also provides that minor political party candidates and no-party-affiliation candidates appear on the ballot following the names of recognized political parties in the order they were qualified, rather than certified.

**Section 33** requires that optical scan tests utilize actual ballots rather than test ballots.

**Section 34** provides for a manual audit in three randomly selected races rather than one race as is current practice. It provides that the audit shall be conducted in three percent of the precincts, rather than between one and two percent of the precincts as is current practice. It provides that the random selection of races and precincts must be conducted at 3 p.m. on the 9<sup>th</sup> day after a primary and at 3 p.m. on the 14<sup>th</sup> day after a general election. Notice of the audit must be posted in a newspaper of general circulation and on the supervisor’s website at least 48 hours before the audit is conducted. The audit must be completed and made public before midnight on the 7<sup>th</sup> day following the selection of races and precincts. The new language also provides that if a manual recount was conducted pursuant to s. 102.166, F.S., the candidate or committee chair may request that an audit be conducted in that race. The new language sets forth procedures for making the request, and places the deadline for such request at 1 p.m. on the 9<sup>th</sup> day following the primary election and 1 p.m. on the 14<sup>th</sup> day following a general election. If a request is made, that race shall be considered one of the three randomly selected races to be audited. If there are more than three requests, the races in which an audit will occur shall be decided by lot. The Department of State is given the authority to adopt rules for the administration of audits.

**Section 35** provides that if an overseas voter requests an absentee ballot and provides his or her e-mail, the supervisor must record the e-mail address in the absentee ballot record, confirm by e-mail that the request was received, and inform the voter the date on which the ballot will be sent. The supervisor must also notify the voter by e-mail when the voted absentee ballot is received by the supervisor.

**Section 36** provides that the Department of State must determine that secure electronic means can be established for requesting, sending, and receiving absentee ballots and ballot materials to and from overseas voters. Such means may include e-mails, faxes, or other forms of electronic transmissions. If the security can be established, the department must adopt rules that provide for verification of the voter’s identity, the security of the transmission, the secrecy of the ballot unless waived by the voter, and the recording of each ballot received by the supervisor.

**Section 37** clarifies that members of the Elections Canvassing Commission serve in addition to their other duties. It also specifically sets a date and time for certification of the election: 9 a.m. on the 9<sup>th</sup> day after a primary and 9 a.m. on the 14<sup>th</sup> day after a general election.

**Section 38** corrects a cross-reference.

**Section 39** provides that the Secretary of State shall order all machine recounts for federal, state, and multicounty races. The local board responsible for certifying the election is responsible for ordering machine recounts in all other races.

**Section 40** provides that the Secretary of State shall order all manual recounts of the overvotes and undervotes for federal, state, and multicounty races. The local board responsible for certifying the election is responsible for ordering manual recounts of the overvotes and undervotes in all other races. This section also provides an exception to the manual recount requirement if a candidate for which the recount is made requests in writing that it not be made.

**Section 41** provides that requests for election contests must be made by 5 p.m. on the 22<sup>nd</sup> day after the election being contested. This section also clarifies which canvassing boards are indispensable parties for certain elections.

**Section 42** relates to non-partisan candidates. It adds supervisors of elections to the list of non-partisan candidates that must qualify pursuant to s. 105.031, F.S. It provides that the qualifying officer shall make the candidate oath available to the candidate rather than give the candidate a printed copy of the oath. It removes language from the oath regarding the requirement to take the loyalty oath since that requirement is being repealed. It adds language to the oath requiring candidates to affirm that they will support the state and federal constitutions. For judicial candidates, it requires the financial disclosure to be notarized pursuant to s. 117.05, F.S. It provides that the filing documents required at qualification be originals. It removes the requirement to file the loyalty oath since that requirement is being repealed. It requires the candidate oath to be notarized pursuant to s. 117.05, F.S. It also requires the following information to be included when filing the appointment of campaign treasurer and designation of campaign depository:

- The name, address, and telephone number of the candidate;
- The office sought, with district, circuit, or group designation;
- The campaign treasurer's name, address, and telephone number;
- The primary campaign depository's name and address;
- The candidate and campaign treasurer's date signatures; and
- The campaign treasurer's acceptance of the appointment.

**Section 43** requires supervisors of elections to be elected in non-partisan elections.

**Section 44** provides that candidates for supervisor of elections may qualify by the petition process set forth in s. 105.035, F.S., for non-partisan candidates.

**Section 45** provides that space must be made available on the ballot to write in the name of a write-in candidate for supervisor of elections.

**Section 46** provides that the name of any unopposed candidate for supervisor of elections shall not appear on the ballot, and the candidate will be deemed to have voted for himself or herself at the general election.

**Section 47** clarifies that an election for a supervisor shall be by the vote of the qualified electors of a county.

**Section 48** clarifies that candidates for the office of supervisor of elections must follow the law with regard to campaign contributions and expenses, and must keep records and file reports in accordance with ch. 106, F.S.

**Section 49** adds candidates for the office of supervisor of elections to the current prohibition that does not allow any political party or partisan organization to endorse, support, or assist any candidate for judicial office. This prohibition is found in s. 105.09, F.S. The penalty for violating s. 105.09, F.S., is a second degree misdemeanor.

**Section 50** prohibits a local government, or person acting on its behalf, from spending or authorizing, and prohibits a person or group from accepting, public funds for a political advertisement or electioneering communication that involves an issue, referendum, or amendment that the public will vote on at an election. The section exempts electioneering communications that are limited to factual information. The section further clarifies that a local government elected official is not prohibited from expressing an opinion on any issue at any time as long as it does not violate the aforementioned prohibition.

**Section 51** removes the requirement that all candidates for public office take the loyalty oath found in s. 876.05, F.S.

**Section 52** repeals s. 101.5911, F.S., regarding rulemaking authority for voting system audit procedures. The language contained in section 34 of the bill gives the Department of State rulemaking authority with regard to audits.

**Section 53** repeals s. 876.07, F.S., because it requires candidates to take the loyalty oath found in s. 876.05, F.S., as a condition to qualifying for office.

**Section 54** does the following:

- Defines "paid petition circulator" as a petition circulator who receives any compensation or other valuable consideration for petition circulating, other than for the reimbursement of legitimate out-of-pocket expenses incurred by the petition circulator in the ordinary course of these activities, and "petition circulator" as any person who, in a direct face-to-face interaction, presents to another person for his or her possible signature an initiative petition form.
- Restricts a person from engaging in any activities as a paid petition circulator in this state without first registering with the Department of State, and provides that a person or entity may not provide compensation for paid petition circulating to a petition circulator who is not registered with the department.
- Requires a paid petition circulator to register with the department, submit a signed written affirmation that the circulator has not been convicted of a criminal offense in this state or any other state or under federal law involving fraud, forgery, perjury, or identity theft within the 4 years preceding the date of the application, and prohibits providing compensation to the circulator based upon the number of initiative petition signatures obtained.

- Requires a paid petition circulator to provide his or her name, address, and signature as part of the registration process, as well as identify which petitions the circulator will be carrying and identify the person or entity paying the circulator.
- Requires a paid petition circulator to complete a state created training program that provides an overview of state and federal law as it relates to petition gathering.
- Requires the department to register an applicant and issue a registration number within 5 business days after receipt of a completed application.
- Provides a registrant 10 business days to notify the department of any change in information or registration status.
- Requires an authorized representative of the initiative sponsor to submit a signed written affirmation with any petitions submitted for verification that were circulated by a paid petition circulator that the signatures on the initiative petition forms were collected in compliance with this bill.
- Requires the department to issue to a registrant evidence of registration which shall include the registrant's photo and registration number, and provides that this evidence of registration shall constitute valid proof of the registrant's compliance with the law.
- Requires every initiative petition form presented by a registrant to a person for his or her possible signature must contain the registrant's registration number.
- Invalidates petitions that were not collected in compliance with this act, but offers voters whose signatures were invalidated an opportunity to sign a replacement petition.
- Provides for the creation of a registration fee to cover the department's cost of registration, training, and regulation.

**Section 55** provides that signatures on previously approved initiative petitions may be submitted for verification before October 1, 2009; however, any forms submitted on or after that date must comply with the provisions contained in the bill.

**Section 56** provides for severability of any provision of the bill that is deemed to be invalid.

Committee Substitute for Senate Bill 956 takes effect on July 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

### **Section 2**

It is unclear whether a law barring the Secretary of State, in his or her individual capacity, from making contributions to (or soliciting contributions for) any political candidate or group supporting or opposing ballot issues would pass First Amendment scrutiny. States may limit political contributions only if the State “demonstrates a *sufficiently important* interest and employs means *closely drawn* to avoid unnecessary abridgement of associational freedoms” (emphasis added).<sup>86</sup> The only state interest that the courts have found *sufficiently important* to uphold a restriction on campaign contributions is the *actual* or *perceived corruption* resulting from large individual contributors to a candidate.<sup>87</sup>

### **Section 4**

It is unclear whether the language in section 4 would be found constitutional in a Florida court given the previous history of litigation in Florida on this issue.<sup>88</sup> However, a law similar to the language contained in section 4 of the bill has been found by a court to be constitutional.<sup>89</sup>

### **Section 15**

The language contained in section 15 of the bill may be subject to a constitutional challenge. In *Burson v. Freeman*, 504 U.S. 191, 210-211 (1992), the United States Supreme Court noted that “[a]t some measurable distance from the polls, of course, governmental regulation of vote solicitation could effectively become an impermissible burden . . .” It is unclear where the line would be drawn, but the Court found that Tennessee was on the constitutional side of the line with the 100-foot boundary.

### **Section 49**

There is some disagreement among the courts regarding the constitutionality of s. 105.09, F.S., contained in section 49 of the bill, which forbids political parties or partisan political organizations from supporting, endorsing, or assisting any candidate for election to a judicial office.<sup>90</sup>

<sup>86</sup> *Buckley v. Valeo*, 424 U.S. 1, 25 (1976).

<sup>87</sup> *Id.* at 26-29.

<sup>88</sup> See *infra* note 8; *But see American Association of People with Disabilities v. Herrera*, 580 F.Supp.2d 1195, 1214 (N.D. N.M. 2008)(where district court specifically held that a third party does not have a constitutional right to register voters. The court denied plaintiff’s request for a preliminary injunction finding the law was not unconstitutional or preempted by federal law.)

<sup>89</sup> See *infra*, note 88, *Herrera* case.

<sup>90</sup> See *Concerned Democrats of Florida v. Reno*, 458 F.Supp. 60 (S.D. Fla. 1978) (where plaintiffs sought ruling that statute was unconstitutional on First Amendment grounds; court, finding that plaintiffs were likely to prevail on the merits, granted a preliminary injunction preventing the state attorney from enforcing s. 105.09, F.S., pending a final determination of the case on the merits.) See also *Martin County Republican Executive Comm. v. Butterworth*, Case No. 98-411-CA (Fla. 19<sup>th</sup> Cir. June 23, 1998) (where trial court, based on ruling in *Concerned Democrats of Florida v. Reno*, ruled s. 105.09, F.S. unconstitutional); *Pinellas County Republican Executive Comm. v. Butterworth*, Case No. 98-1570-CI-07 (Fla. 6<sup>th</sup> Cir. June 9, 1998)(where court granted summary judgment in favor of plaintiffs holding that s. 105.09, F.S. is unconstitutional); *Hillsborough County Republican Executive Comm. v. Butterworth*, Case No. 98-2855 (Fla. 13<sup>th</sup> Cir., June 29, 1998) (where court held s. 105.09, F.S., facially unconstitutional); *But see Seminole County Republican Comm. v. Butterworth*, Case No.

**Section 50**

In *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4791004 at \*7 (N.D. Fla. 2008), clarified by, *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4878917 (N.D. Fla. 2008), the Federal District Court for the Northern District of Florida recently enjoined the State of Florida from enforcing the electioneering communications provisions of Chapter 106, Florida Statutes, as they relate to *candidate* electioneering ads except for the “functional equivalent” of express advocacy,<sup>91</sup> which it held the State may properly regulate.<sup>92</sup>

The *Broward Condominiums* court also enjoined, completely and without exception, the enforcement of all Chapter 106 regulations of *issue-only* electioneering ads. The court held:

The Supreme Court’s (U.S.’s) explanation of the functional equivalent of express advocacy does not allow for “express advocacy made about ballot issues.” The Supreme Court’s guidance on the functional equivalent of express advocacy is confined to communications that advocates (sic) for a candidate. Therefore, *to the extent that a communication only addresses a ballot issue and does not, through the ballot issue, advocate a listener, reader, or hearer to vote for a particular candidate, then that communication is issue advocacy and it constitutes protected political speech that cannot be regulated.*<sup>93</sup>

(emphasis added). The case is currently on appeal to the federal Eleventh Circuit Court of Appeals.

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98-350-CA-16-K (Fla. 18<sup>th</sup> Cir., Jan. 21, 1999), *per curiam aff’d*, Case No. 5D99-446 (5<sup>th</sup> DCA 2000)(where trial court determined that s. 105.09, F.S., was facially constitutional and constitutional as applied).

<sup>91</sup> The court characterized the “functional equivalent of express advocacy” as a “very narrowly drawn category.” *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4791004 at \*7 (N.D. Fla. 2008), clarified by, *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4878917 (N.D. Fla. 2008). In order for speech to fall into this category, it must:

1. Be “susceptible of no reasonable interpretation other than as an appeal to vote for or against a *specific candidate*,” and,
2. Be a “broadcast, cable, or satellite communication that refers to a *clearly identified candidate* within sixty days of a general election or thirty days of a primary election.”

*Id.* The court found that this two-pronged analysis was consistent with the First Amendment's command that “when it comes to defining what speech qualifies as the functional equivalent of express advocacy subject to ... a ban ... we give the benefit of the doubt to speech, not censorship.” *Id.* (citing *Fed. Elec. Comm. v. Wisconsin Right to Life, Inc.*, 127 S.Ct.2652, 2674 (2007)).

<sup>92</sup> *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4791004 (N.D. Fla. 2008), clarified by, *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4878917 (N.D. Fla. 2008).

<sup>93</sup> *Broward Coalition of Condominiums, Homeowners Associations and Community Organizations, Inc. v. Browning*, 2008 WL 4878917, at 1 (N.D. Fla. 2008).

**Section 54**

It is currently unclear whether a law regulating paid petition circulators would be unconstitutional in Florida. In *Florida Hometown Democracy, Inc. v. Browning*, 980 So.2d 547, 549 (Fla. 1<sup>st</sup> DCA 2008), the court citing *State ex. rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So. 2d 561, 566 (Fla. 1980) reiterated “legislative enactments and administrative rules regulating the citizen initiative petition process are constitutionally permissible ‘only when necessary to ensure ballot integrity.’” The court ruled the signature revocation law unconstitutional finding that the law did not go to ballot integrity. *Browning* at 550. This case is currently on appeal to the Florida Supreme Court.

**Prohibiting Payment on a Per Signature Basis**

Montana, Nebraska, North Dakota, Oregon, South Dakota, and Wyoming have laws which ban initiative sponsors from paying petition circulators per signature. These laws have been challenged in the courts with mixed results. The provisions of the laws in North Dakota and Oregon have been upheld by the U.S. 9th and 8th Circuit Courts, respectively. Similar provisions in the laws of Idaho, Maine, Mississippi, Ohio, and Washington were held unconstitutional by federal district courts. The U.S. 6th Circuit Court of Appeals upheld the Ohio ruling in March 2008.<sup>94</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:****Sections 32, 42, 43, 44, 45, 46, 47, 48, and 49 (Relating to Supervisors of Elections)**

The political parties will realize a loss from the filing fees and party assessments of candidates for supervisor of elections who currently run on a partisan basis. The political parties receive the 2 percent party assessment and the 3 percent filing fee from partisan candidates for supervisors of elections.<sup>95</sup> In addition, candidates for supervisor of elections who pay a qualifying fee would see a reduction in the fees since they would not be required to pay a party assessment.<sup>96</sup>

**Section 50**

The prohibition against expenditures for local advertising may result in fewer dollars going to media outlets such as newspapers, radio, and television stations. The precise economic impact cannot be determined at this time and will likely vary on an issue-by-issue basis.

<sup>94</sup> House of Representatives Staff Analysis, pg. 3, HB 497 (March 18, 2009), *citing* Banning Payment-per-Signature for Initiative Petition Circulators, National Conference of State Legislatures, Updated May 28, 2008.

<sup>95</sup> See § 99.061(2), F.S., and § 99.092(1), F.S.

<sup>96</sup> See § 105.031(3), F.S.

**C. Government Sector Impact:*****Section 4***

There will be indeterminate costs associated with a publically available electronic database of third party registration organizations required by section 4 of the bill.

***Section 5***

There will be indeterminate costs associated with the increased frequency of list maintenance procedures as contemplated in section 5 of the bill.

***Section 32***

There will indeterminate increased costs associated with printing ballots by precinct rather than by ballot style required in section 32 of the bill.

***Section 34***

There will be indeterminate costs associated with the expansion of the current audit provisions contained in section 34 of the bill.

***Sections 32, 42, 43, 44, 45, 46, 47, 48, and 49 (Relating to Supervisors of Elections)***

Election officials would be relieved of the administrative costs associated with the collection and remittance of the party assessment for candidates seeking the office of supervisor of elections.

***Section 50***

Although section 50 of the bill would not result in higher local revenues, prohibiting local government expenditures on political issues would mean that more money is available to be spent on other local programs. The precise economic impact on local government cannot be determined at this time and will likely vary on an issue-by-issue basis.

**VI. Technical Deficiencies:**

Section 6 of the bill appears to conflict with s. 99.012(5), F.S.

**VII. Related Issues:*****Section 3***

This provision may violate the Help America Vote Act of 2002 which appears to allow first-time voters who register by mail to vote a regular ballot if they produce the required identification prior to voting. If they cannot produce the required identification, they may vote a provisional ballot.<sup>97</sup>

***Section 8***

The 45-day submission requirement for initiative petitions could place the bill in danger of being vetoed by the Governor based on the fact that the Governor vetoed a similar requirement contained in CS/SB 900. In that bill, the submission requirement was 30 days; however, the Governor, in his veto message indicated that it was not the length of days but rather the fact that

<sup>97</sup> See 42 U.S.C. 15483 § 303(b).

the requirement “significantly burdens the right of Florida citizens to propose amendments to the Florida Constitution by increasing the likelihood that voters, through no fault of their own, will be denied the opportunity to have their voices heard.”<sup>98</sup>

### ***Section 34***

There is an active disagreement between state and local election administrators as to the need for expanding the post-certification manual audit provisions from: a) one race to three races; and, b) one-to-two percent of precincts to three percent of precincts. The Secretary of State favors the proposal; the Florida State Association of Supervisors of Elections, representing the 67 election supervisors responsible for the actual conduct of the election, is on the record as opposing it as unnecessary.

### ***Section 50***

The Florida Supreme Court has upheld the use of public funds by local government to advocate with respect to a local referendum. In *People Against Tax Revenue Mismanagement, Inc. v. County of Leon*,<sup>99</sup> Leon County voters passed an optional sales tax in a local referendum. After the referendum passed, plaintiffs argued that the sales tax election was invalid because local governmental agencies used public funds and public resources to mount an informational campaign supporting the referendum. Plaintiffs described the agencies’ actions as “violat[ing] the ‘neutral forum’ of the election.”<sup>100</sup> In response, the Florida Supreme Court held:

Such a position, however, is tantamount to saying that governmental officials may never use their offices to express an opinion about the best interests of the community simply because the matter is open to debate. A rule to that effect would render government *feckless*. One duty of a democratic government is to lead people to make informed choices through fair persuasion.

\* \* \*

. . . [L]ocal governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a *duty and a right* to say which course of action they think best, and to make fair use of their offices for this purpose. The people elect governmental leaders precisely for this purpose.<sup>101</sup>  
(emphasis added).

### ***Preclearance***

Section five of the Voting Rights Act provides that:

any change with respect to voting in a covered jurisdiction -- or any political subunit within it -- cannot legally be enforced unless and until the jurisdiction first obtains the requisite determination by the United States District Court for the District of Columbia or makes a submission to the

<sup>98</sup> Veto Message Staff Analysis, CS/SB 900, Florida Senate (August 27, 2007).

<sup>99</sup> 583 So. 2d 1373, 1374 (Fla. 1991).

<sup>100</sup> *Id.* at 1374-1375.

<sup>101</sup> *Id.* at 1375 (footnote omitted).

Attorney General. This requires proof that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. If the jurisdiction is unable to prove the absence of such discrimination, the District Court denies the requested judgment, or in the case of administrative submissions, the Attorney General objects to the change, and it remains legally unenforceable.<sup>102</sup>

Currently, Florida has five counties that are subject to preclearance: Collier, Hardee, Hendry, Hillsborough, and Monroe.<sup>103</sup>

## VIII. 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 Elections on April 16, 2009:**

Since the Committee Substitute incorporates amendments to a shell bill, please refer to Section III, Effect of Proposed Changes.

- B. **Amendments:**

None.

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

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<sup>102</sup> UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, About Section 5 of the Voting Rights Act, Introduction to Section 5 of the Voting Rights Act, *available at* < [http://www.usdoj.gov/crt/voting/sec\\_5/about.php](http://www.usdoj.gov/crt/voting/sec_5/about.php)> (Site last accessed on 20 April 2009).

<sup>103</sup> UNITED STATES DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, Section 5 Covered Jurisdictions, *available at* < [http://www.usdoj.gov/crt/voting/sec\\_5/covered.php](http://www.usdoj.gov/crt/voting/sec_5/covered.php)> (Site last accessed on 20 April 2009).