

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1567 CS                      Elections  
**SPONSOR(S):** Reagan  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** SB 2650

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee	7 Y, 3 N, w/CS	Mitchell	Mitchell
2) Transportation & Economic Development Appropriations Committee	Withdrawn		
3) State Administration Council	7 Y, 1 N, w/CS	Mitchell	Bussey
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Florida Legislature has made a number of changes to the Florida Election Code (Code)<sup>1</sup> since the 2000 Presidential Election. A number of election provisions have lost their usefulness or application following these changes. To that end, the bill makes conforming, technical and clarifying changes that have been recommended by the Division of Elections (Division).

It also makes a number of substantive changes to the Code that are designed to address problems that occurred during the 2004 elections. The changes are proposed in the following areas:

- Definitions of election-related terms;
- Directives issued by the Division;
- Voter Registration Application;
- Candidate petition process;
- Instruction cards placed in polling places;
- Poll watchers;
- Information on constitutional amendments in precincts;
- Candidate withdrawal and printing a candidate's name on the ballot;
- Election boards for precincts;
- Canvassing board duties;
- Early voting;
- Expanded "no solicitation" zone for election day and early voting sites; and
- Submission of written requests for absentee ballots.

HB 1567 is effective January 1, 2006.

**A SERIES OF AMENDMENTS WAS ADOPTED BY THE COMMITTEE ON ETHICS AND ELECTIONS ON APRIL 6, 2005, AND BY THE STATE ADMINISTRATION COUNCIL ON APRIL 20, 2005. SEE AMENDMENTS SECTION BELOW FOR AN EXPLANATION.**

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<sup>1</sup> chapters 97-106, F.S.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Promote personal responsibility** – Several provisions in the bill promote personal responsibility. The bill requires a voter who wishes to have an absentee ballot mailed to him or her to have the request in to the supervisor no later than 5 p.m. on the 6<sup>th</sup> day prior to the election. All such requests must be honored by the supervisor with an absentee ballot mailed out by the 4<sup>th</sup> day prior to the election.

The bill imposes sanctions on third party voter registration groups who fail to turn in completed voter registration applications by certain deadlines. Sanctions are imposed in the form of fines collected by the Division of Elections and set aside for enforcement and voter education. Such groups are also required to name a registered agent in the state and submit a report outlining the date and location of any organized voter registration drives. Failure to file such reports does not subject the group to any civil or criminal penalties.

#### B. EFFECT OF PROPOSED CHANGES:

Binding Directives (REMOVED FROM BILL BY AMENDMENT; SEE AMENDMENTS SECTION BELOW.)

Section 97.012, F.S., is amended to authorize the Secretary of State to issue binding directives to the county supervisors of elections and county canvassing boards to assure uniformity in the application, operation, or interpretation of the election laws. The Division may issue advisory opinions to supervisors of elections, candidates, local officers having election-related duties, political committees, committees of continuous existence (CCE's), political parties and other organizations engaged in political activity under s. 106.23, F.S., but such opinions are only binding on the person who sought the opinion and do not have general applicability.

The Secretary of State sees a need for binding directives in order to bring more uniformity in the application and operation of Florida's election laws. There were a number of examples of disparate treatment of ballots, voters and registrants during the 2004 elections:

- **Voter Challenges:** The election code requires voter challenges to be handled by the Election Board (precinct clerks and inspectors, i.e. poll workers), which by statute must make the initial determination of whether to sustain a challenge. When it became evident that voter challenges were likely to occur, the Division of Elections sent a memorandum to all supervisors discussing the statutory process and provided suggested procedures to ensure uniformity. Several counties established their own hybrid challenge process: one decided challenges by a subset of the Election Board; one used the precinct clerk and the supervisor of elections to make the determination, rather than the Election Board; and one county even advised the Division they would not implement the procedures outlined in the memorandum and stated, "[t]he Division does not have the authority to mandate it" and that, "[t]hey will follow procedures as they interpret them."
- **Early Voting:** During the primary, one south Florida county permitted 16 hours of early voting on the weekend (only 8 total hours are permitted under current law) and, while most counties permitted voters in line at the close of early voting to cast their ballots, some counties forced voters to leave and return another day.
- **Voter Registration Applications:** Notwithstanding clear language in the statute and legislative history, five counties accepted incomplete voter registration applications in

which the voter failed to mark the citizenship check box, as required by law. The other counties followed the Division's interpretation of the law and treated such applications as incomplete.

- Book Closing: One county permitted changes to incomplete voter registration applications after the book closing date.
- Removal of Ineligible Voters: One north Florida county has steadfastly refused to follow the process outlined in statute regarding the removal of felons from the voter registration rolls.

Supervisors and members of the canvassing board are subject to a \$5,000 fine, to be paid from personal funds, if they are found to have willfully failed to follow a binding directive. The Secretary is the only party who may file a complaint with the Florida Elections Commission alleging such a violation, pursuant to a new subsection in s.104.051, F.S.

Binding directives are exempt from the definition of an agency rule in s. 120.52, F.S.

### Early Voting (AMENDED; SEE AMENDMENTS SECTION BELOW.)

Currently, early voting must be provided by supervisors of elections beginning 15 days before an election, ending on the Monday immediately prior to the election. Early voting can be provided in a main or branch office of the supervisor and at select city halls and public libraries. The use of public libraries for early voting did not work well for many supervisors during the 2004 elections - there were problems with space and the hours of operation (many of the libraries are not open on Sundays). Supervisors have requested that alternative sites for early voting be considered.

Early voting proved to be popular among voters in the 2004 election cycle. Statewide, 18.7% of all voters voted early in the November 2 General Election.<sup>2</sup> Early voting was plagued, however, by chronic long lines and wait times that sometimes stretched to four hours in urban parts of the state. This was a particular problem on the Monday before the election, when many voters in line at poll closing time were permitted to remain in line until they voted. This meant, in some instances, voters were in line until 8 p.m. or 9 p.m. Supervisors and their staffs then had to shut down the early voting centers, secure the voting machines, and prepare for county-wide precinct voting that began at 7 a.m. the next morning. The resulting logistical difficulties and staff fatigue have prompted requests from many supervisors for more time between the end of early voting and Election Day.

Section 101.657, F.S., is amended to do the following:

- Clarifies that early voting is a convenience, not a right.
- Removes the requirement that early voting be allowed only at main and branch offices, public libraries and city halls and allows early voting at the main and branch offices and other sites adequate for the efficient conduct of early voting activities.
- Requires the supervisor to consider square footage, parking and population density when designating early voting sites.
- Requires the supervisor of elections to designate early voting sites no later than 30 days prior to the election and does not allow a change in the sites thereafter except upon approval of the Division.
- Requires early voting to end on the 2nd day before the election (Sunday), rather than the day before the election. This should eliminate some of the concerns expressed above.

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<sup>2</sup> "Analysis and Report of Overvotes and Undervotes for the 2004 General Election," Florida Department of State, Division of Elections, January 31, 2005.

- Specifies that early voting be conducted for 8 hours each weekday instead of *at least* 8 hours and allows voters in line at the closing of an early voting site to vote.
- Requires all early voting sites to be open on the same days and for the same amount of time at each site. This provides a supervisor some flexibility, if for example, one site cannot open until 10 a.m., but another is available at 8 a.m.
- Creates an exemption from the 15-day early voting requirements for municipalities and special district elections that are not held in conjunction with state and county elections. These local governments do not need the long periods of early voting nor do they have the staff or resources to conduct early voting when the number of voters in these elections may not exceed a few thousand people.

In addition, s. 102.031, F.S., is amended to include early voting sites in the “no solicitation” provisions. See discussion of “Solicitation at the Polls” below.

### Solicitation at the Polls

Presently, s. 102.031, F.S., restricts solicitation within 50 feet of the entrance to any polling place, or polling room where the polling place is also a polling room. However, this section also provides a number of exceptions to the restriction. The restriction does not apply if the solicitation of voters is occurring in a marked area that does not disturb, hinder, impede, obstruct or interfere with voter access to the polling place, and the solicitation activities and subject matter are easily identifiable by the voters as an activity in which they may voluntarily participate. In addition, the restriction does not apply if the solicitation activity is conducted at a residence, an established business, private property, a sidewalk, a park or property traditionally utilized as a public area for discussion within the 50-foot zone.

The various exceptions to the 50-foot no-solicitation zone have created a lot of confusion and makes the zone difficult, if not impossible, to apply. First, the exceptions are so numerous that there is almost no area or activity that can be restricted. Second, the law contains conflicting provisions. For example, while paragraph (3)(c)1.c., states that solicitation on a sidewalk cannot be restricted, paragraph (3)(c)2. provides that solicitation on the sidewalk can be restricted if it is determined that the solicitation is impeding, obstructing or interfering with voter access to the polling place or room. This leaves a lot of discretion in the hands of the poll workers and has the potential to be applied inconsistently and in an arbitrary manner.

The State of Florida has a vital interest in preserving the integrity of the election process. The solicitation of voters in close proximity to polling places leads to voter intimidation and interferes with the maintenance of order at the polls. Supervisors of elections have complained that the current law does not give them the adequate authority to restrict solicitation around polling locations. They have also noted that many voters have objected to the proximity and intensity of solicitors, finding the practice intimidating and coercive, and a disincentive to vote.

The bill prohibits solicitation of voters inside the polling place or within 100 feet of the entrance to a polling place. It also removes the exemptions which have proved to be unworkable and difficult to enforce.

The set-back/no solicitation statute, s. 102.031, F.S., does not apply to early voting sites under current law. HB 1567 expands the designation of the 100-foot “no solicitation zone” to each early voting site (See “Drafting Issues or other Comments” below). Finally, the bill prohibits any person from bringing a camera into a polling room or early voting area.

### Absentee Ballot Requests (AMENDED; SEE AMENDMENTS SECTION BELOW.)

Since the comprehensive election reforms of 2001, voting by absentee ballot continues to be very popular with Florida voters. Even larger numbers of voters will likely continue to request absentee ballots in future elections. *There is no deadline in current law for a voter to request an absentee ballot or for the mailing of that ballot.* However, in order to be counted, an absentee ballot must be received by the supervisor of elections by 7 p.m. on the day of the election.

The Legislature eliminated the witness requirement for absentee ballots in 2004 (CS/SB 2566), making it easier for people to cast an absentee ballot and have it count. The “for cause” requirements for voting an absentee ballot were removed in 2001 (CS/SB 1118).

HB 1567 makes several changes to the absentee ballot process. The bill:

- requires a voter who wishes an absentee ballot be mailed to him or her to have the request in to the supervisor no later than *5 p.m. on the 6<sup>th</sup> day prior to the election*;
- requires the supervisor of elections to track when the ballot was delivered to the voter or the voter’s designee or when the ballot was delivered to the post office;
- clarifies that advance ballots for overseas voters need only be mailed if the regular ballots are not ready by the date overseas ballots are required to be mailed; and
- clarifies that an absentee ballot may be *personally* given to a voter up to 7 p.m. election day.

#### Challenged Voters/Provisional Ballots (AMENDED; SEE AMENDMENTS SECTION BELOW.)

Under current law, a voter or poll watcher may challenge any voter by filing a written oath with the Clerk or inspector at the polling place, who then must make a determination of eligibility based upon this oath and an oath that is completed by the voter in response to the challenge. s. 101.111, F.S. If the challenged voter refuses to complete the responsive oath or poll workers doubt the voter’s eligibility to vote, the challenged voter is permitted to vote a provisional ballot.

The bill amends s. 101.111, F.S., to require any voter who is challenged to vote a provisional ballot. This will simplify the process and place what is often a hurried and tense decision of whether to count a person’s vote in the hands of the canvassing board when it canvasses the provisional ballots. The bill also revises the “Oath of Person Entering Challenge” and eliminates the “Oath of Person Challenged” as unnecessary. Finally, the bill makes a frivolous challenge punishable as a first degree misdemeanor.

#### Poll Watchers

Under current law, each political party and candidate may have one poll watcher in each polling room during the election. The bill amends s. 101.131, F.S., to allow poll watchers for early voting areas and sets deadlines for appointment and approval of poll watchers. Designation of poll watchers must be submitted to supervisors of elections no later than 14 days before early voting begins. The bill allows political committees registered to support or oppose an issue on the ballot to have one watcher in each polling place and early voting area. It also prohibits poll watchers from interacting with voters and requires poll watchers to pose any questions regarding polling place procedures to the clerk of the polling place.

#### Vacancies in Nomination and Candidate Withdrawal

Section 100.101, F.S., is amended to remove the requirement to conduct a special election if a vacancy occurs in nomination. Vacancies in nomination resulting from death will be filled by the political party. Those vacancies shall be filled exclusively by the political party. If a vacancy occurs because of death, the party is notified by the Department and the party must submit a new nominee within seven days of notification. Section 100.111, F.S., is amended to remove the process for calling a special election when a vacancy occurs in nomination before September 15. Under the bill, vacancies in nomination from other causes such as resignation, withdrawal or removal shall not be filled. If the name of the new party nominee is submitted after the certification of results of the preceding primary, the ballots will not be changed and any votes cast for the former party nominee will be counted for the new nominee.

Under current law, s. 101.253, F.S., permits a candidate to withdraw from a race up to the 42<sup>nd</sup> day before an election. The candidate's name would be removed from the ballot if submitted no later than 21 days before an election. After the 42<sup>nd</sup> day before an election, the Department has discretion to allow a candidate to withdraw. This discretion resulted in a lawsuit being filed against the Department in 2004.

In the case of *Department of State v. Martin* (1<sup>st</sup> DCA; 1D04-4517), Democratic candidate Jim Stork, citing health reasons, attempted to withdraw from a race after the 42<sup>nd</sup> day before the primary election. The Department refused to allow him to withdraw in accordance with s. 101.253, F.S. The Circuit Court ruled that the Democratic Party could find another candidate to replace Mr. Stork. The First DCA upheld the Circuit Court decision, ruling that "the statute supplied no criteria for the exercise of the discretion delegated to the Department." Because of the lateness of the decision, votes for Mr. Stork were counted as votes for the replacement nominee because the ballots had been printed and mailed out to many voters.

Consistent with the changes to s. 100.111, F.S., above, the bill proposes to repeal s. 101.253, F.S. After the qualifying period has ended, no candidates would be allowed to withdraw from a race.

#### Voter Registration (AMENDED; SEE AMENDMENTS SECTION BELOW.)

HB 1567 amends several sections in ch. 97, F.S., relating to voter registration.

The bill amends s. 97.051, F.S., to modify the oath a person must take upon registering to be consistent with the oath in the Constitution and providing that all information in the application is true.

The bill amends s. 97.052, F.S., to:

- specifically provide that the voter registration application can be used for a signature update;
- remove the reference to homestead exemption on the voter registration application;
- clarify the questions on the application relating to citizenship, felon status, and mental competency; and
- add to the application an optional submission of a voter's e-mail address.

The bill also attempts to address some problems with voter registration in 2004. There were accounts of some supervisors of election accepting applications with certain boxes unchecked. Other supervisors however, treated similar applications as incomplete. Section 97.053, F.S., is amended to do the following:

- clarify that voter registration applications must be complete at the time of book closing for the applicant to be eligible to vote in the upcoming election;
- clarify that the postmark provision relating to the registration date of an applicant is the postmark when mailed to a drivers license office, a voter registration agency, an armed forces recruitment office, the division or any supervisor of elections in the state;
- clarify that a mark must be in the checkbox confirming the questions relating to citizenship, felon status, and mental competency; and

- clarify that the application must include an original signature and not a copy of a signature.

Finally, the bill amends s. 97.055, F.S., to clarify that while the books are closed for an election, only the voter's name, address and signature may be updated for purposes of the upcoming election.

### Candidates Qualifying by Petition

The alternative method for candidates to qualify has been completely reworked. The term "alternative method" is being replaced with "petition method." Section 99.095, F.S., has been reworded so that it applies to all candidates and the redundant requirements in s. 99.0955, F.S., (candidates with no party affiliation) and s. 99.096, F.S., (minor party candidates), have been deleted. The most significant change to s. 99.095, F.S., is the removal of the restriction on not being able to circulate petitions prior to the first Tuesday after the first Monday in January of the election year. Instead, a candidate will be able to collect signatures after a campaign treasurer is appointed. For additional changes see section 14 in the "Section Directory" below.

## C. SECTION DIRECTORY:

Section 1. Section 97.012, F.S., is amended to do the following:

- Authorize the Secretary of State to issue binding directives to the supervisors of elections and/or county canvassing boards to assure uniformity in the application, operation, or interpretation of the election laws.
- Allow voter education activities of the Department of State or the department in conjunction with the supervisors of elections to be exempt from the competitive solicitation requirements.
- Provide that it is the responsibility of the Secretary of State to conduct preliminary investigations into irregularities or fraud involving voter registration, voting, or candidate or issue petition activities. Findings would be reported to the statewide prosecutor or the state attorney.

Section 2. Section 97.021, F.S., is amended to do the following:

- Redefine "paper ballots" as "marksense ballots."
- Define "early voting area."
- Define "third party voter registration organization."

Section 3. Section 97.029, F.S., is created to do the following:

- Provide for an award of attorney's fees and costs to the prevailing party in any court or administrative proceeding challenging the application, interpretation, or constitutionality of any election law.

Section 4. Section 97.051, F.S., is amended to do the following:

- Modify the oath a person must take upon registering to mirror the oath in the Constitution and providing that all information in the application is true.

Section 5. Section 97.052, F.S., is amended to do the following:

- Specifically provide that the voter registration application can be used for a signature update.
- Remove the reference to homestead exemption on the voter registration application.
- Clarify the questions on the application relating to citizenship, felon status, and mental competency.
- Add to the application an optional submission by the voter of an e-mail address.

Section 6. Section 97.053, F.S., is amended to do the following:

- Clarify that voter registration applications must be complete at the time of book closing for the applicant to be eligible to vote in the upcoming election.
- Clarify that the postmark provision relating to the registration date of an applicant is the postmark when mailed to a driver license office, a voter registration agency, an armed forces recruitment office, the division or any supervisor of elections in the state.
- Clarify that a mark must be in the checkbox confirming the questions relating to citizenship, felon status, and mental competency.
- Clarify that the application must include an original signature, not a copy.

Section 7. Section 97.055, F.S., is amended to do the following:

- Clarify that while the books are closed for an election, only the voter's name, address and signature may be updated for purposes of the upcoming election. Those changes must be made pursuant to ss. 98.077 and 101.045.

Section 8. Section 97.0575, F.S., is amended to do the following:

- Create a new section dealing with third party voter registration organizations.
- Place monetary penalties on a third party voter registration organization's board of directors, president, vice president, managing partner or other individuals engaged in similar duties or functions for not timely submitting voter registration applications that the organization has collected.
- Violation may be investigated by the division and civil fines may be assessed by the division.
- Provide reduced penalties if the third party voter registration organization has registered with the division.

Section 9. Section 98.045, F.S., is amended to do the following:

- Delete a reference to s. 98.095, F.S., which is being repealed.

Section 10. Section 98.077, F.S., is amended to do the following:

- Require signature updates for use in verifying absentee and provisional ballots to be received by the appropriate supervisor of elections by 5 p.m. of the fifth day prior to the election.

Section 11. Section 99.061, F.S., is amended to do the following:

- Change references from alternative method to petition process to comport with changes made in s. 99.095, F.S.
- Codify in the election code an ethics code provision that allows a public officer who has filed his or her financial disclosure statement with the Commission on Ethics or the supervisor of elections to file a copy of that disclosure at the time of qualifying.
- Allow a qualifying officer to accept and hold qualifying papers submitted no more than 14 days prior to the beginning of the qualifying period to be processed and filed during the qualifying period.

Section 12. Section 99.063, F.S., is amended to do the following:

- Conform the disclosure requirement to candidates for Lt. Governor so that such candidates may file a copy of the full and public disclosure that was filed with the Commission on Ethics, if applicable.

Section 13. Section 99.092, F.S., is amended to do the following:

- Change references from alternative method to petition process to comport with changes made in s. 99.095



Section 14. Section 99.095, F.S., is substantially amended to do the following:

Rework the alternative method for candidates to qualify. Section 99.095, F.S., has been reworded so that it applies to all candidates. The redundant requirements in ss. 99.0955 and 99.096, F.S., were then removed. Section 105.031, F.S., relating to judicial candidates is amended to conform to these changes. The following changes were made to the process:

- requirement for the candidate to file the oath indicating that he or she was going to qualify by the petition method has been removed.
- the restriction on not being able to circulate petitions prior to the first Tuesday after the first Monday in January of the election year has been removed and replaced with the requirement that signatures may not be obtained until the campaign treasurer is appointed.
- date for submission of petitions to supervisors for verification moved up one week.
- date for supervisors to certify number of valid petitions moved up one week.

Sections 15-17. Sections 99.0955, 99.096, and 99.09651, F.S., are amended to do the following:

- Remove redundant provisions that are addressed in substantial amendment to s. 99.095, F.S. (see s. 99.095, F.S., for details).

Section 18. Section 100.011, F.S., is amended to do the following:

- Clarify that if you are in line at the time the polls close, you are allowed to vote. Although this has been the practice, it was never stated in the Code.

Section 19. Section 100.101, F.S., is amended to do the following:

- Remove the requirement to conduct a special election if a vacancy occurs in nomination. Vacancies in nomination resulting from death will be filled by the political party.

Section 20. Section 100.111, F.S., is amended to do the following:

- Remove the process for calling a special election when a vacancy occurs in nomination before September 15.
- Provide that the political party will fill a vacancy in nomination in the case of death. Vacancies in nomination from other causes will not be filled.
- If the name of the new party nominee is submitted after the certification of results of the preceding primary, the ballots will not be changed and any votes cast for the former party nominee will be counted for the new nominee.
- Remove the restriction on filling vacancies if the person was a qualified candidate for the election, even if the person had withdrawn or been eliminated. This is no longer needed since the only reason for filling vacancies will be due to death of the nominee.

Section 21. Section 100.141, F.S., is amended to do the following:

- Conforming changes.

Section 22. Section 101.031, F.S., is amended to do the following:

- Revise the Voter's Bill of Rights to remove the provision that the voter can prove his or her identity by signing an affidavit. (see revisions to s. 101.043).

Section 23. Section 101.043, F.S., is amended to do the following:

- Remove the provision allowing a voter to sign an affidavit if his or her identity is in question. Instead, it requires the voter to vote a provisional ballot.

Section 24. Section 101.048, F.S., is amended to do the following:

- Clarify that any person who an election official asserts is not eligible may vote a provisional ballot.
- Allow a person casting a provisional ballot to present written evidence supporting his or her eligibility to the supervisor no later than 5 p.m. on the third day following the election. Requires the written instructions given to the provisional voter to provide information on this right.
- Require the county canvassing board to consider the information provided in the Voter's Certificate and Affirmation, written evidence provided by the person, and any other evidence presented by the supervisor of elections in determining whether to count a provisional ballot. Establishes a preponderance of the evidence standard for determining whether to count a provisional ballot.
- Modify the Voter's Certificate and Affirmation
- Require a provisional ballot to be provided on electronic machines for voters with disabilities ( see also s. 101.049, F.S.)

Section 25. Section 101.049, F.S., is amended to do the following:

- Include persons with disabilities within the special circumstances under which provisional ballots shall be cast.

Section 26. Section 101.051, F.S., is amended to do the following:

- Prohibit anyone from soliciting a voter at a polling place, early voting site, or within 100 feet of such locations, in an effort to provide the voter with assistance in casting their vote.
- Require persons assisting a voter to subscribe to an oath.

Section 27. Section 101.111, F.S., is amended to do the following:

- Require a voter who is challenged to vote a provisional ballot.
- Revise Oath of Person Entering Challenge; eliminates Oath of Person Challenged.
- Provide a penalty for a voter or poll worker who files a frivolous challenge.

Section 28. Section 101.131, F.S., is amended to do the following:

- Allow one poll watcher for each polling place rather than each precinct.
- Allow poll watchers for early voting areas and sets deadlines for appointment and approval.
- Allow political committees registered to support or oppose an issue on the ballot to have one watcher in each polling place and early voting area.
- Prohibit poll watchers from interacting with voters and requires poll watchers to pose any questions regarding polling place procedures to the clerk of the polling place.

Section 29. Section 101.151, F.S., is amended to do the following:

- Technical changes to change terminology and require ballots to meet specifications for the voting system.

Section 30. Section 101.171, F.S., is amended to do the following:

- Allow a copy of the constitutional amendments to be either in poster or booklet form at the polls.

Section 31. Section 101.294, F.S., is amended to do the following:

- Prohibit vendors of voting equipment from providing any uncertified voting system, voting system component, or voting system upgrade in this state. Requires certification by vendor to county.

Section 32. Section 101.295, F.S., is amended to do the following:

- Provide a 3<sup>rd</sup> degree felony penalty for any vendor who provides uncertified voting equipment in the state.

Section 33. Section 101.49, F.S., is amended to do the following:

- Require a voter to affirm his or her identity if the poll worker doubts that the signature on the identification provided by the voter is the same as the signature affixed by the voter to the precinct register.
- Amend Affirmation.
- Allow a voter who fails to fill out the affirmation but asserts his or her eligibility to vote a provisional ballot.

Section 34. Section 101.51, F.S., is amended to do the following:

- Clarify that voters may not speak with anyone while in the voting booth.

Sections 35-36. Sections 101.5606 and 101.5608, F.S., are amended to do the following:

- Change references from “paper ballot” to “marksense ballot.”

Section 37. Section 101.5612, F.S., is amended to do the following:

- Allow a supervisor of elections to have a second logic and accuracy test if needed because the polling place ballots did not arrive in time to be tested during the first test.

Section 38. Section 101.5614, F.S., is amended to do the following:

- Remove a reference to statutory subsection.

Section 39. Section 101.572, F.S., is amended to do the following:

- Clarify that the supervisor of elections needs to contact candidates whose names appear on the ballots only if the ballots are being examined prior to the end of the contest period.

Section 40. Section 101.58, F.S., is amended to do the following:

- Authorize employees of the Department of State to have access to premises, records, equipment and staff of the supervisor of elections, upon written direction of the Secretary of State.

Section 41. Section 101.595, F.S., is amended to do the following:

- Require supervisors of elections to provide information to the department on the number of overvotes and undervotes on either the Presidential race or the governor’s race, rather than the first race appearing on the ballot.

Section 42. Section 101.6103, F.S., is amended to do the following:

- Allow the canvassing board to begin processing ballots from mail ballot elections on the 4<sup>th</sup> day before the election, provided no results are released until 7 p.m. on election day.

Section 43. Section 101.62, F.S., is amended to do the following:

- Require a voter who wishes an absentee ballot to be mailed to him or her to have the request in to the supervisor no later than 5 p.m. on the 6<sup>th</sup> day prior to the election.
- Require the supervisor of elections to track when the ballot was delivered to the voter or the voter's designee or when the ballot was delivered to the post office.
- Clarify that advance ballots for overseas voters need only be mailed if the regular ballots are not ready by the date overseas ballot are required to be mailed.
- Clarify that an absentee ballot may be personally given to a voter up to 7 p.m. election day.

Section 44. Section 101.64, F.S., is amended to do the following:

- Require the supervisor to provide the standard oath required by federal law to voters voting absentee under the Uniformed and Overseas Citizens Absentee Voting Act.

Section 45. Section 101.657, F.S., is amended to do the following:

- Clarify that early voting is a convenience, not a right.
- Remove the requirement that early voting be allowed only at main and branch offices, public libraries and city halls and allows early voting at the main and branch offices and other sites adequate for the efficient conduct of early voting activities.
- Require the supervisor to consider square footage, parking and population density in designating early voting sites.
- Require the supervisor of elections to designate early voting sites no later than 30 days prior to the election and does not allow a change in the sites thereafter except upon approval of the division.
- Require early voting to end on the 2nd day before the election, rather than the day before the election.
- Specify that early voting be conducted for 8 hours each weekday instead of *at least* 8 hours and allows voters in line at the closing of an early voting site to vote.
- Require all early voting sites to be open on the same days and for the same amount of time at each site. This provides a supervisor some flexibility if a designated site cannot open until 10 a.m., but another opens at 8 a.m.
- Create an exemption from the 15-day early voting requirements for municipalities and special district elections that are not held in conjunction with state and county elections.

Section 46. Section 101.663, F.S., is amended to do the following:

- Allow a voter who has moved from Florida to vote absentee for President and Vice President if he has moved to another state after the registration books in the other state have closed.

Section 47. Section 101.68, F.S., is amended to do the following:

- Clarify that once an absentee ballot is received by the supervisor, it is deemed cast and no changes or additions shall be made to the Voter's Certificate.

Section 48. Section 101.69, F.S., is amended to do the following:

- Clarify that if a voter has returned an absentee ballot to the supervisor, the voter is not entitled to vote another ballot or have a provisional ballot counted.
- Allow a voter to return an absentee ballot to the precinct or an early voting site, have the absentee ballot marked "canceled," and vote a regular ballot.

Section 49. Section 101.6923, F.S., is amended to do the following:

- Allow the instructions to certain voters to be in “substantially” the form required by statute to allow for the instructions to be specific to the equipment used by the county.

Section 50. Section 101.694, F.S., is amended to do the following:

- Delete the specifications for envelopes being sent to absent electors overseas. This is replaced with a requirement that the envelopes meet the specifications determined by the Federal Voting Assistance Program and the United States Postal Service.

Section 51. Section 101.697, F.S., is amended to do the following:

- Clarify that the Division will make the determination of which means of electronic transmission of absentee ballots are secure prior to adopting a rule allowing the electronic transmittal of these ballots to and from overseas voters.

Section 52. Section 102.012, F.S., is amended to do the following:

- Remove reference to two election boards being appointed for each election. This is an obsolete provision that is no longer needed.
- Clarify that a list of registered voters for the precinct will be provided at the polls, rather than the registration books.

Section 53. Section 102.014, F.S., is amended to do the following:

- Require the Division of Elections to develop a statewide uniform training curriculum for poll workers and requires each supervisor to use such curriculum.
- Remove references to election day, which has the effect of requiring the polling place manual to be available at early voting sites.

Section 54. Section 102.031, F.S., is amended to do the following:

- Apply the solicitation requirements to early voting sites.
- Prohibit solicitation of voters inside the polling place or within 100 feet of the entrance to a polling place. Removes all exemptions. Requires designation of the 100-foot no solicitation zone at each precinct or early voting site.
- Prohibit any person from bringing a camera into a polling room or early voting area.

Section 55. Section 102.071, F.S., is amended to do the following:

- Remove the requirement for triplicate certificates of results to be provided from each precinct.

Section 56. Section 102.111, F.S., is amended to do the following:

- Allow a county to correct a typographical error in the official returns of the county if discovered within 5 days of the certification by the Elections Canvassing Commission.

Section 57. Section 102.112, F.S., is amended to do the following:

- Require the county canvassing board to certify at the time they submit official returns that the board has reconciled the number of persons who voted with the number of ballots counted and that the certification includes all valid votes cast in the election.
- Give the Department the authority to correct typographical errors on returns submitted by counties.

Section 58. Section 102.141, F.S., is amended to do the following:

- Change the deadline for the first unofficial returns from Thursday noon to Friday noon for a primary election and from Thursday noon to Sunday noon for a general election. Requires the returns to include all results except provisional ballots, which will be submitted on the official returns.
- Clarify that the Elections Canvassing Commission is the board responsible for ordering federal, state and multicounty recounts.
- Change the deadline for reporting results of machine recounts from noon on Friday after the election until 3 p.m. on Sunday for primary elections and 3 p.m. on Wednesday for general elections.
- Modify information required to be reported on the conduct of election report.
- Require the supervisor to file a copy of or an export file from the results database of the county's voting system and other statistical information required by the Department, the Legislature or the Election Assistance Commission.

Section 59. Section 102.166, F.S., is amended to do the following:

- Prohibit a manual recount from being ordered if the number of overvotes, undervotes and provisional ballots is fewer than the number of votes needed to change the outcome of the election.
- Remove the provision allowing a candidate who was defeated by between one-quarter and one-half of one percent of the votes from requesting a manual recount. Applies same standard to issues.

Section 60. Section 102.168, F.S., is amended to do the following:

- Clarify the contest of election section regarding when the contest must be filed and who the proper party defendants are.

Section 61. Section 103.021, F.S., is amended to do the following:

- Require the state executive committee of each political party to designate presidential electors by resolution and to deliver a certified copy to the Governor prior to September 1 of the election year. (This provision was moved from s. 103.121, F.S.)
- Define "national party" and "national convention" for purposes of minor parties designating their candidates for President and Vice President. This change is a result of a Florida Supreme Court case involving the presidential candidacy of Ralph Nader in 2004.

Section 62 & 63. Sections 103.051 and 103.061, F.S., are amended to do the following:

- Remove the requirement that presidential electors meet at noon and allows the Governor to set the time for the meeting.

Section 64. Section 103.121, F.S., is amended to do the following:

- Remove provisions relating to bonds and endorsements for executive committees which have been declared unconstitutional.

Section 65. Section 104.051, F.S., is amended to do the following:

- Provide a civil penalty of \$5,000 for any supervisor of elections or member of a county canvassing board who fails to follow a binding directive of the Secretary of State.

Section 66. Section 105.031, F.S., is amended to do the following:

- Clarify terminology relating to the candidate petition process.
- Correct a provision relating to write-in candidates for school board.

- Codify in the election code an ethics code provision that allows a public officer who has filed his or her financial disclosure statement with the Commission on Ethics or the supervisor of elections to file a copy of that disclosure at the time of qualifying.
- Allow a qualifying officer to accept and hold qualifying papers submitted no more than 14 days prior to the beginning of the qualifying period to be processed and filed during the qualifying period.

Section 67. Section 105.035, F.S., is amended to do the following:

- Modify the petition process for judicial and school board candidates to comport with changes made in s. 99.095.

Section 68. Section 106.22, F.S., is amended to do the following:

- Delete provisions relating to duties of the Division of Elections regarding investigations into fraud allegations. The fraud investigation provisions have been moved to s. 97.012, F.S.

Section 69. Section 106.24, F.S., is amended to do the following:

- Conforming change to make reference to the shift of fraud investigations to s. 97.012.

Section 70. Section 16.56, F.S., is amended to do the following:

- Allow the statewide prosecutor to investigate and prosecute crimes involving voter registration, voting or candidate or issue petition activities.

Section 71. Section 119.07, F.S., is amended to do the following:

- Conform language relating to inspection of ballots following the elections.

Section 72. Section 120.52, F.S., is amended to do the following:

- Exempt advisory opinions issued by the division and directives issued by the Secretary of State from the definition of "rule."

Section 73. Section 145.09, F.S., is amended to do the following:

- Require the Department of State to promulgate rules establishing certification requirements for supervisors of elections.

Section 74. Repeals ss. 98.095, 98.0979, 98.181, 98.481, 101.253, 101.635, 102.061, 106.085, and 106.144.

- Sections 98.095 and 98.0979, F.S., relate to the voter registration records and who may receive copies of those records.
- Section 98.0979, F.S., dealing with the central voter database at the state level has been ruled unconstitutional. Anyone may access the records, other than the records with specific exemptions (social security number, signatures, etc.). Therefore, the Department is recommending that s. 98.095, F.S., which relates to the county records, also be made public.
- Section 106.085, relating to prior notice requirements for independent expenditures and s. 106.144, F.S., requiring notice for groups doing endorsements have been ruled unconstitutional.
- Sections 98.181, 101.635 and 102.061, F.S., are obsolete. Section 101.253, F.S., provides for the withdrawal of candidates. The Department is recommending that this section be repealed and that once qualifying is over, no candidates be allowed to withdraw.

Section 75. Provides an effective date of January 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill provides for the collection of fines from third party registration groups when voter applications are submitted after certain deadlines. Such fines are to be set aside in a trust fund to be used for enforcement of the section regulating such groups and for voter education. The amount of such fines is indeterminate at this time.

#### 2. Expenditures:

According to the Department, the bill has no adverse fiscal impact on state government.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

### D. FISCAL COMMENTS:

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

#### 2. Other:

Authorizing the Department to issue binding directives may raise concerns about the separation of powers among the branches of government. The bill appears to give the Department the ability to exercise its discretion to determine what the law is, a task which should fall to the judicial branch when a case or controversy exists.

The Department may intend for the directives to provide a quick resolution to a problem in the face of impending elections. In reality, it may slow the process down and increase election-related litigation.

Finally, it is unclear what protections would be afforded to a supervisor or canvassing board if they follow a binding directive of the Department, but are then sued by an affected party such as a voter or group of voters who are deemed to be ineligible to vote.

### B. RULE-MAKING AUTHORITY:



### C. DRAFTING ISSUES OR OTHER COMMENTS:

In 1992 the United States Supreme Court upheld a Tennessee statute that created a 100-foot "campaign-free zone." A plurality of the Supreme Court in *Burson v. Freeman*, 112 S.Ct. 1846 (1992), held that while this zone clearly affected fundamental first amendment rights, Tennessee's interest in protecting against voter intimidation and election fraud was sufficiently compelling and that the law was sufficiently narrowly tailored to achieve this objective. The Court went into great detail analyzing the state's interests in creating no solicitation zones and determined that, "[t]he only way to preserve the secrecy of the ballot is to limit access to the area around the voter." *Burson*, 112 S.Ct. at 1856. With respect to the choice of making the zone 100 feet, the Court did not employ a litmus paper test that separated valid from invalid restrictions. The Court did note, however, that "the state of Tennessee has decided that the last 15 seconds before its citizens enter the polling place should be their own, as free from interference as possible. We do not find that this is an unconstitutional choice." *Burson*, 112 S.Ct. at 1857.

The *Burson* case demonstrates that a state may legitimately create a no-solicitation zone provided: there is in fact a compelling reason to do so and the statute is narrowly tailored to serve that objective. Given the problems regarding solicitation at the polls that have been reported by the supervisors of elections, it appears that Florida has a compelling interest in creating a no-solicitation zone that can be uniformly applied. Utilizing the same geographic restriction as in *Burson* (100-foot restricted zone) supports the proposition that a court would view the statute as narrowly tailored to serve the state's compelling interests.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A SERIES OF AMENDMENTS WAS ADOPTED IN THE ETHICS AND ELECTIONS COMMITTEE ON APRIL 6, 2005, THAT ACCOMPLISHES THE FOLLOWING:

- Requires each Supervisor of Elections to track, make publicly available and report to the Division of Elections information on absentee and early voters.
- Create a process for electors or pollwatchers to pre-challenge a voter that they believe is not a legal voter. The challenge process follows the same procedure as an election day challenge as prescribed in the bill. Such a process makes it easier to challenge potentially ineligible voters who vote early.
- Removes the e-mail address as an optional item submitted on a voter registration application. (Conforms to HB 1589).
- Returns early voting sites to current law (main or branch offices of SOE, city halls and public libraries), but requires branch offices and public libraries to be permanent.
- Requires each Supervisor of Elections who receives a request for an absentee ballot by the sixth day before an election, to mail out the ballot by the fourth day before the election.
- Removes the authority in s. 97.012 for the Secretary of State to issue binding directives and makes conforming changes.

A SERIES OF AMENDMENTS WAS ADOPTED IN THE STATE ADMINISTRATION COUNCIL COMMITTEE ON APRIL 20, 2005, THAT ACCOMPLISHES THE FOLLOWING:

- remove political parties from the definition of third-party registration organizations.
- ensure that provisional ballots “shall” be counted (rather than “should”) unless by a preponderance of the evidence the person casting the ballot is not entitled to vote (technical amendment).
- require that the employees of the Secretary of State who have access to county supervisors’ offices and equipment, pursuant to written direction of the Secretary, have expertise in the matter of concern.
- clarify in current law that early voting is allowed for 8 hours in the aggregate during each weekend and provides that the 8 hours of early voting must occur between 7 am and 7 pm each day.
- prohibit photography, rather than cameras, at polling places and early voting sites.
- clarify the type of information on absentee voting and early voting that must be made available by the supervisors. The amendments remove the requirement that absentee ballot and early voting numbers be posted to a Internet site. It requires that supervisors report such information by noon each day and in an electronic format to the Division of Elections.