

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 90

INTRODUCER: Governmental Oversight and Accountability Committee; Ethics and Elections
Committee and Senator Baxley

SUBJECT: Election Administration

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Biehl</u>	<u>Roberts</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Candeleria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 90 makes the following changes to the Election Code:

- Reduces the number of elections for which one request for a vote-by-mail ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Limits persons who may lawfully be in possession of a vote-by-mail ballot to the voter and his or her immediate family;
- Prohibits the use of drop boxes for return of a vote-by-mail ballot;
- Prohibits a supervisor of elections from mailing or otherwise providing a vote-by-mail ballot without a request;
- Requires the signature on a voter's certificate or ballot cure affidavit to match the most recent one on file;
- Requires an additional identifier number when a written or telephonic request is made for a vote-by-mail ballot;
- Prohibits display of partisan information on the outside of vote-by-mail ballots or envelopes; and

- Requires supervisors of elections to record instances in which a signature on a completed vote-by-mail ballot does not match the one on file.

The bill takes effect July 1, 2021.

II. Present Situation:

Please see “Effect of Proposed Changes.”

III. Effect of Proposed Changes:

Request for Vote-by-Mail Ballot (Section 1)

Present Situation

Florida law allows an elector to request a vote-by-mail (VBM) ballot to be used in lieu of voting at the polls during early voting or on Election Day. An elector does not need to provide a reason for a VBM ballot request.

An elector can request a VBM ballot in person, in writing, or by telephone.¹ In addition, a request for a VBM ballot can be made by the elector’s legal guardian or, if directed by the elector, a member of the elector’s immediate family. The person making the request must disclose:

- The name of the elector for whom the ballot is requested;
- The elector’s address;
- The elector’s date of birth;
- The requester’s name;
- The requester’s address;
- The requester’s driver license number, if available;
- The requester’s relationship to the elector; and
- The requester’s signature, if the request is made in writing.²

If an elector requests a VBM ballot to be sent to an address not on file in the Florida Voter Registration System, the request must be made in writing and signed by the elector, unless the elector is an absent uniformed service voter or overseas voter.³

Current law does not specifically prohibit a supervisor of elections (supervisor) from mailing or otherwise providing a VBM ballot without a request.

For each request for a vote-by-mail ballot received, the supervisor must record:

- The date the request was made;
- The date the vote-by-mail ballot was delivered to the voter or voter’s designee⁴ or to the post office or other carrier;

¹ Sections 101.62(1)(a)-(b), F.S.

² Section 101.62(1)(b), F.S.

³ Section 101.62(1)(b), F.S.

⁴ An elector may designate in writing a person to pick up the VBM ballot for the elector, in compliance with ballot possession limitations (s. 101.62(4)(c)4., F.S.).

- The date the ballot was received by the supervisor;
- The absence of the elector's signature on the voter's certificate, if applicable; and
- Such other information he or she may deem necessary.⁵

Effect of Proposed Changes

Section 1 requires a person making a written or telephonic request for a VBM ballot to additionally provide one of the following identifiers:

- The elector's Florida driver license number;
- The elector's Florida identification card number; or
- The last four digits of the elector's social security number.

Section 1 also prohibits a supervisor from mailing or otherwise providing a VBM ballot unless a request is made.

Section 1 adds to the types of information related to vote-by-mail ballots that supervisors must record to also include whether the voter's certificate on a returned ballot contains a signature that does not match the elector's signature in the registration books or precinct register.⁶

Delivery of Vote-by-Mail Ballot (Section 2)

Present Situation

Current law requires a supervisor to enclose with each VBM ballot two envelopes:

- A secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and
- A mailing envelope, into which the absent elector shall then place the secrecy envelope.⁷

Current law does not prohibit display of partisan information on the outside of VBM ballots or accompanying envelopes.

Effect of Proposed Changes

Section 2 provides that the outside of a VBM ballot and the secrecy and mailing envelopes may not display the party affiliation of the absent elector who has been issued such ballot or display any other partisan information.

Return of Vote-by-Mail Ballot (Sections 3, 5, and 6)

Present Situation

Current law allows a voter to return a completed VBM ballot via mail or drop it off at an authorized site. It requires supervisors to allow voters to physically return completed VBM ballots by placing the envelope containing the marked ballot in a secure drop box.⁸ Secure drop boxes must be placed at the main office of the supervisor, at each branch office of the supervisor, and each early voting site. Drop boxes may also be placed at any other site that would otherwise

⁵ Section 101.62(3), F.S.

⁶ Section 98.461(2), F.S., requires a computer printout or electronic database to be used at the polls as a precinct register. The precinct register must contain the date of the election, the precinct number, specified information related to each registered voter, and spaces for the voter's signature and for the initials of the witnessing clerk or inspector.

⁷ Section 101.64(1), F.S.

⁸ Section 101.69(2), F.S.

qualify as an early voting site if such site is staffed during the county's early voting hours of operation by an employee of the supervisor's office or a sworn law enforcement officer.⁹

Current law makes it a first-degree misdemeanor for a person to provide or offer to provide, and for any person to accept, a benefit in exchange for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two VBM ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member.¹⁰

Effect of Proposed Changes

Section 5 prohibits the use of drop boxes for return of completed VBM ballots.

Section 6 also limits persons who may lawfully possess a VBM ballot to the voter and his or her immediate family and makes a conforming change to persons who may be designated by an elector to pick up his or her VBM ballot.

Effective Period for Vote-by-Mail Ballot Request (Sections 1 and 7)

Present Situation

A general election is held on the first Tuesday after the first Monday in November of every even-numbered year – this means that a general election is held every two years.¹¹ A primary election is held 11 weeks before each general election.¹² The dates for the next primary election and general election are:

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

Florida law provides that one request from an elector for a VBM ballot is sufficient to receive a VBM ballot for all elections through the end of the calendar year of the second ensuing regularly scheduled general election,¹³ unless the elector indicates at the time of the request the elections for which he or she would like to receive a VBM ballot.¹⁴ A request for a VBM ballot may be considered canceled when any first-class mail sent by the supervisor of elections (supervisor) to the elector is returned as undeliverable.¹⁵

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

- All elections held within a calendar year;¹⁶

⁹ *Id.*

¹⁰ Section 104.0616(2), F.S. The term "immediate family" means a person's spouse or the parent, child, grandparent, or sibling of the person or the person's spouse (s. 104.0616(1), F.S.).

¹¹ Article VI, s. 5(a), FLA. CONST.; and s. 100.031, F.S. A general election is held to choose a successor to each elective federal, state, county, and district officer whose term will expire before the next general election.

¹² Section 100.061, F.S. A primary election is held to determine party nominees to be on the ballot in the general election to fill each federal, state, county, or district office.

¹³ For example, under the current law, if a voter makes a general request for a VBM ballot in February 2021, then he or she would receive VBM ballots for all elections through the end of 2024, because the next two general elections will be held in November 2022 and November 2024, respectively.

¹⁴ Section 101.62(1)(a), F.S.

¹⁵ *Id.*

¹⁶ *See, e.g.,* the 2006 Florida Statutes.

- All elections through the next regularly scheduled general election;¹⁷
- All elections through the next two regularly scheduled general elections;¹⁸ and
- All elections through the end of the calendar year of the second ensuing regularly scheduled general election.¹⁹

In addition to Florida law, the federal Uniformed and Overseas Citizens Absentee Voter Act (UOCAVA) provides absentee voting requirements for federal offices for voters who are United States uniformed services members on active duty, Merchant Marine members, spouses or dependents thereof, or United States citizens residing outside of the United States.²⁰ In part, the UOCAVA requires establishment of an official post card form, known as the federal post card application (FPCA), to be used for voter registration application and absentee ballot application.²¹ The UOCAVA does not specify a length of time for which one FPCA request is effective. The Federal Voting Assistance Program, which is tasked with administrative responsibilities for the UOCAVA, currently provides guidance that the FPCA request allow an eligible voter to request an absentee ballot for all federal elections in the calendar year.²² The guidance further recommends that eligible voters send in a new FPCA request every January and each time they move.²³

Effect of Proposed Changes

Section 1 reduces the number of elections for which one request for a VBM ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election.²⁴

Section 7 specifically provides that if an elector has already submitted a VBM ballot request that would, under the current law, be effective through the end of the calendar year of the second ensuing regularly scheduled general election, he or she must resubmit a VBM ballot request after the effective date of the bill in order to receive VBM ballots for the 2022 primary election and general election.

¹⁷ See, e.g., ch. 2010-167, s. 7, L.O.F.

¹⁸ See, e.g., ch. 2007-30, s. 30, L.O.F.

¹⁹ See, e.g., ch. 2011-40, s. 37, L.O.F.

²⁰ 52 U.S.C. 203.

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

²² Federal Voting Assistance Program, *Frequently Asked Questions about Absentee Voting*, available at <https://www.fvap.gov/guide/appendix/faq>, last accessed February 17, 2021.

²³ *Id.*

²⁴ For example, under the proposed changes, if a voter makes a request for a VBM ballot on August 1, 2021, then he or she would receive VBM ballots for all elections held through December 31, 2022, which is the end of the calendar year of the next regularly scheduled general election.

Starting Date for Vote-by-Mail Canvassing Period (Section 4)

Present Situation

Florida law allows county canvassing boards²⁵ to begin canvassing VBM ballots starting at 7 a.m. on the 22nd day before an election.²⁶ In 2019, the Legislature extended this starting period from 15 days before an election to 22 days before an election.²⁷

In 2020, at the request of the supervisors and in response to the COVID-19 pandemic, Governor Ron DeSantis issued an executive order suspending the 22-day timeframe and allowing each county canvassing board to begin canvassing VBM ballots as soon as the Logic and Accuracy (L&A) testing of the machines/equipment was completed.²⁸ The L&A tests are designed to ensure the integrity and accuracy of the tabulators and voting machines.²⁹ Because the timing of these L&A tests is tied to the beginning of early voting in each county,³⁰ which varies from 10 to 15 days before an election,³¹ in 2020 counties were generally able to start their VBM canvass 35 to 40 days before the primary election and general election, which is 13 to 18 days earlier than the 22 days that the current statute provides.

The media has credited the canvassing of VBM ballots prior to Election Day as one of the reasons Florida's 2020 general election went so smoothly and why results were available so much more quickly than for states, such as Pennsylvania, that had to wait until Election Day to start counting.³²

Effect of Proposed Changes

Section 4 allows a county canvassing board to begin canvassing VBM ballots as soon as the county finishes L&A testing. In practice, this means that:

- A county that begins early voting as soon as permitted under law (15 days before an election) may begin VBM canvassing as early as the 40th day before an election instead of the 22nd day before an election, providing an additional 18 days to count; and
- A county that waits until 10 days before an election to begin early voting will be permitted to begin VBM canvassing as early as the 35th day before an election instead of the 22nd day before an election, providing an additional 13 days to count.

This change will facilitate a more orderly election administration process and quicker reporting of results.

²⁵ A county canvassing board is composed of the supervisor of elections; a county court judge, who acts as chair; and the chair of the board of county commissioners (s. 102.141(1), F.S.).

²⁶ Section 101.68(2)(a), F.S.

²⁷ Chapter 2019-162, s. 19, L.O.F.

²⁸ Office of the Governor, Executive Order No. 20-149 (June 17, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-149.pdf, last accessed February 4, 2021.

²⁹ Section 101.5612(2), F.S.

³⁰ Each supervisor must complete an L&A test on any day up to 25 days before the start of early voting (*id.*).

³¹ *Id.*; see also, s. 101.657(1)(d), F.S. (counties *may* start early voting 15 days before an election, but *must* start no later than 10 days before).

³² See, e.g., Tampa Bay News 10 (WTSP), *Florida Counted Votes Quickly in the 2020 Election – What Happened in the Other States?* (Nov. 18, 2020), available at <https://www.wtsp.com/article/news/politics/florida-2020-election-counting/67-33b47308-7571-4c70-8afc-cfa8b872bcca>, last accessed February 4, 2021.

Canvassing of Vote-by-Mail Ballots/Signatures (Section 4)

Present Situation

The mailing envelope in which an absent elector sends back a marked VBM ballot must bear on the back side a voter's certificate via which the elector must affirm with a signature that he or she is a qualified and registered voter of the relevant county and that he or she has not and will not vote more than one ballot in the election.³³

If an elector returns a VBM ballot that does not include a signature or contains a signature that does not match the one in the registration books or precinct register, the supervisor must notify the elector of the signature deficiency and direct the elector to the cure affidavit³⁴ and instructions on the supervisor's website.³⁵ Along with the cure affidavit, the elector must submit a copy of one of a specified list of acceptable identifications.³⁶

During canvassing of VBM ballots, a canvassing board must, if the supervisor has not already done so, compare the elector's signature on the voter's certificate or the ballot cure affidavit with the elector's signature in the registration books or the precinct register. A VBM ballot may only be counted if:

- The signature on the voter's certificate or the cure affidavit matches the signature in the registration books or precinct register;³⁷ or
- The cure affidavit contains a signature that does not match the signature in the registration books or precinct register, but the elector has submitted a current and valid "Tier 1 identification"³⁸ that confirms the identity of the elector.³⁹

Effect of Proposed Changes

Section 4 requires the signature on a voter's certificate or ballot cure affidavit to match the *most recent* signature in the registration books or precinct register.

Effective Date of the Bill (Section 8)

The bill takes effect July 1, 2021.

³³ Section 101.64(1), F.S.

³⁴ The VBM ballot cure affidavit requires the elector to affirm with a signature that he or she requested and returned the VBM ballot and has not and will not vote more than one ballot in the election (s. 101.68(4)(c), F.S.).

³⁵ Section 101.68(4)(a), F.S. The supervisor may make the notification via email, text message, or telephone.

³⁶ Section 101.68(4)(d)3., F.S.

³⁷ In the case of a cure affidavit, the supporting identification must also confirm the identity of the elector.

³⁸ "Tier 1 identification" means a current and valid identification that includes the elector's name and photograph, including a Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; Florida license to carry a concealed weapon or firearm; of employee identification card issued by any branch, department, agency, or entity of the federal government, the state, a county, or a municipality (s. 101.68(4)(d)2., F.S.).

³⁹ Section 101.68(2)(c)1., F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. Bills that affect state or local elections are exempt from the requirements of Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the reduced time period for which one VBM ballot request is sufficient results in a higher total number of requests, supervisors are likely to experience additional workload and incur additional processing costs.

Elimination of drop boxes as a method for returning VBM ballots may reduce supervisors' workload because supervisors will no longer be required to staff off-site drop boxes.

Requiring supervisors of elections to record instances in which a signature on a returned VBM ballot does not match the one on file may slightly increase supervisors of elections' workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 101.62, 101.64, 101.65, 101.68, 101.69, and 104.0616.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on March 10, 2021:

The committee substitute makes the following changes:

- Reduces the number of elections for which one request for a vote-by-mail ballot is sufficient to all elections through the end of the calendar year of the next regularly scheduled general election;
- Moves up the starting time for canvassing vote-by-mail ballots from 22 days before an election to 35-40 days before an election;
- Limits persons who may lawfully be in possession of a vote-by-mail ballot to the voter and his or her immediate family;
- Prohibits the use of drop boxes for return of a vote-by-mail ballot;
- Prohibits a supervisor of elections from mailing or otherwise providing a vote-by-mail ballot without a request;
- Requires the signature on a voter's certificate or ballot cure affidavit to match the most recent one on file;
- Requires an additional identifier number when a written or telephonic request is made for a vote-by-mail ballot;
- Prohibits display of partisan information on the outside of vote-by-mail ballots or envelopes; and
- Requires supervisors of elections to record instances in which a signature on a completed vote-by-mail ballot does not match the one on file.

CS by Ethics and Elections on February 16, 2021:

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

B. Amendments:

None.

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