



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KURT S. BROWNING
Secretary of State

DATE: May 19, 2011
TO: Supervisors of Elections
FROM: Jennifer Kennedy,
Chief of Staff
SUBJECT: Governor's Signing of CS/CS House Bill 1355

Governor Scott signed CS/CS/HB 1355 into law. Its effective date is May 19, 2011, except for a few sections as noted below. The Division will provide presentations on the new law at the FSASE Conference in June, but in the meantime, you should become familiar with the new law that contains numerous changes to the Election Code. Significant changes include:

Elections Administration

- **Absentee Ballots:**
 - *Delivery period.* Standardizes the time frames during which absentee ballots are to be sent to military, overseas, and other voters via method requested by voter (i.e., mail, e-mail, or fax). The deadline to send absentee ballots to military and overseas is 45 days. The window to mail absentee ballots to all other absentee ballot voters is between 35 and 28 days before the election.
 - *Ballot instructions.* Amends the absentee ballot instructions to include notice to the voter that if the signature on the certificate does not match the signature on record the ballot will not count which is the standard for canvassing boards to follow under current law and that the signature update must be received before canvassing of absentee ballots begins.
 - *Canvassing.* Allows county canvassing boards to begin canvassing absentee ballots at 7 a.m. on the 15th day before an election instead of the 6th day.
- **Directives:** Authorizes the Secretary of State to provide written direction to supervisors of elections on matters relating to their official duties under the Election Code or department rule.
- **Changes to Voter Registration Record:**
 - *Address changes.* Gives registered voters who move from county-to-county the same options for updating their address other than by voter registration application (i.e., in person, by phone, by mail, by e-mail, by fax, or by written signed notice) provided the

change is made directly to the supervisor of elections in the county of new residence. Otherwise, the voter still has to submit the address change by voter registration application.

- *Address changes at the polls.* Allows only the following voters to change their addresses at the polls on Election Day and still vote a regular ballot: 1) those voting in the same county in which they originally registered to vote; or, 2) an active military member or in the same family with an active military member. Other electors making county-to-county address changes at the polls would be required to vote a provisional ballot. The same legal standard for counting the provisional ballot still applies, *i.e.*, count the ballot unless it is more likely than not that the voter is not entitled to vote (e.g., the voter is not registered, the ballot was cast in the wrong precinct, the voter already voted, or evidence of actual fraud exists).
- *Address confirmation at the polls.* The poll worker can no longer use the address on the voter's presented identification to ask the voter to confirm his or her address or to challenge the voter's eligibility to vote in that precinct. In particular, no address-related question may be asked of a voter whose address on the identification matches the address on record including having to recite his or her address. For all other voters, a poll worker could still recite the address on record to the voter and ask the voter whether that address has changed. It is then the voter's choice whether to respond, if at all, and to ask or volunteer anything further about the address. This provision expands upon but primarily supersedes the provision for address confirmation in the Polling Place Procedures Manual (DS-DE 11, eff. 08-2010/Rule 1S-2.034, F.A.C.) which will be revised shortly to conform. The principle is simple—the address on record is deemed to be the valid legal address for the voter until the voter volunteers otherwise or a challenge by someone other than the election official places the address in question.
- *Party or name changes.* Allows a registered voter to change party affiliation or make a name change by written means other than voter registration application provided the notice is signed and contains the person's date of birth or voter registration number.
- *Voter Information Cards:* Adds the polling place address to voter information cards, and requiring supervisors of elections to comply with this requirement with respect to all voter information cards issued after August 1, 2012. Requires voter information card to be issued each time polling place address changes.
- **Early Voting (EV):**
 - *EV period.* Provides for an 8-day EV period, beginning from the 10th to the 3rd day before the election — while maintaining the current maximum 96 total hours of early voting should supervisors deem it necessary in their counties.
 - *EV hours.* Requires early voting at each site to be open for a minimum of 6 hours and a maximum of 12 hours per day.
 - *Reporting.* Requires supervisors to report both the address and the hours for each early voting site to the Department of State no later than 30 days before the election.

- **Election dates:**
 - *Presidential Preference Primary (PPP)*. Eliminates the current date for the PPP (last Tuesday in January) and creates a 10-member PPP Date Selection Committee, which will establish the PPP date every four years to fall between the beginning of January and the beginning of March; the date must be selected by October 1 of the year preceding the presidential election.
 - *Primary election*. Moves the State’s primary election from 10 weeks to 12 weeks before the general election; therefore, the primary in 2012 will be on August 14, 2012. (Because of this change, qualifying will also be two weeks earlier.)
- **Poll Watchers:** Provides for “at-large” poll watchers. Requires designations to be made on form prescribed by the Division. Limits authorization for making designations to a candidate, or chair of a county party executive committee or chair of a political committee. Requires supervisors to approve designations no later than 7 days before early voting and to provide badges to the approved poll watchers.
- **Post-Election:**
 - *Election night results*: Requires county canvassing boards to report timely all early voting and tabulated absentee ballots to the Department of State within 30 minutes after the polls close, and to subsequently report all results (other than provisional ballots) every 45 minutes until complete.
 - *Audits*: Specifies that if a manual recount was conducted, a post-election, random audit of the voting system is not required.
- **Reports (Electronic/Data): (Effective July 1, 2012):**
 - *Precinct-level election results and voting history*. Changes the timeframes and format in which Supervisors of Elections must report precinct level election results and voting history after each election. Precinct-level election results must be submitted to the Department of State within 30 days after certification of results by the Elections Canvassing Commission (in lieu for 45 days after the election)). The law will supersede a part of Rule 1S-2.043, F.A.C. , relating to electronic reporting requirements. These results must be in the file format specified in statute and uploaded after each presidential preference primary, special election, primary election and general election. Moreover, Supervisors must reconcile these results with the voting history that must also be submitted within 30 days after certification of results by the Elections Canvassing Commission.
 - *Precinct census data*. Establishes that the census block as based on the most recent U.S. Census is the default unit for creating or changing precincts. Provides an exception if the boundaries split or conflict with another political boundary, then the boundaries may still be defined along the other 4 categories of designation currently existing in law. Removes the waiver that existed prior to July 1, 2012. Adds that changes to precinct or polling place boundaries or designation must also be reported to the Department of State within 10 days after change. Requires precinct data for all precincts for which there are election results and voting history results.

Minor Political Parties

- **Minor Political Parties:** Creates new procedures for registration; procedures are retroactive for those groups currently registered as minor political parties; provides the Division rule-making authority for dissolution of minor political parties.

Campaign Finance:

- **Cash contributions:** Clarifies that a person cannot contribute more than \$50 cash/cashier's check in the aggregate per candidate/committee per election.
- **Debit cards:** Eliminates the requirements for a list of authorized debit cards to be filed with the Division and the expiration date of the card be no later than midnight of the last day of November.
- **Disclaimers:** Creates a specific political advertising disclaimer for write-in candidates; provides that if a candidate pays for ad, the disclaimer need not indicate that the ad was approved by the candidate; deletes the requirement for tickets and advertising for campaign fund raisers to have a disclaimer.
- **Disposition of surplus funds:** Removes the caps on the amount of surplus funds that a candidate may give to the candidate's political party.
- **Electioneering Communication Organizations:** Changes ECO registration requirements such that registration is no longer dependent upon the amount of any contributions received by the entity, but is dependent solely upon its expenditures. ECOs now register within: (a) 24 hours of the date on which it makes expenditures for an electioneering communication in excess of \$5,000 if such expenditures occur within 30 days of a primary or special primary election or 60 days before any other election; or (b) 24 hours after the 30th day before a primary or special primary election, or within 24 hours after the 60th day before any other election, as applicable, if it makes expenditures for an electioneering communication in excess of \$5,000 before the "30/60 day" election window.
- **Finance Reports from Candidate and Political Committees:** Provides that: (1) Notification to the campaign treasurer of incomplete candidate reports must now be by certified (need not be registered) mail or by any common carrier that provides a proof of delivery. Notice is deemed sufficient when there is proof of delivery to the address on record with the filing officer. The treasurer has 7 days (formerly, 3) days after receipt of the notice to file an addendum to the report. (2) Treasurers must retain receipts for reimbursement of authorized expenditures. (3) Copies of credit card statements are no longer required, but the report must reflect the transaction information for each credit card purchase. (4) Campaign depositories need no longer return all checks to the campaign treasurer. (5) Increased fines for late filed reports also apply to special primary and special elections, not merely to primary and general elections. (6) Notice of fines for late filed reports by political committees can now also be served on the registered agent of the political committee.
- **In-kind contributions to political parties:** Changes the filing of the written acceptance of in-kind contributions by political parties from always being filed with the Division. County executive committees now file with the applicable SOE.

- **Loans by Candidates:** Clarifies that a candidate who makes a loan to the campaign does not have to wait until the campaign is over to be reimbursed; instead, the candidate may be reimbursed by the campaign at any time the campaign has sufficient funds to repay the loan and satisfy its other obligations.
- **Political Party Campaign Finance Reports:** Creates a new filing requirement for political party executive committees for a special primary election and special election when there is a special election to fill a vacancy in office; increases the fines for a party's failure to file a report on the Friday immediately preceding a special election, not merely before a general election; provides that notification to the chair of late-filed reports is deemed sufficient when there is proof of delivery to the address on record with the filing officer.
- **Political Party Polls:** Authorizes political party state and county executive committees to conduct political polls for the purpose of determining the viability of potential candidates; expenditures relating to such polls are not considered contributions or expenditures; the results of the polls can be shared with potential candidates and are not considered contributions to the potential candidates.
- **Registered agents:** Provides that the filing of the appointment of a registered agent for political committees and ECOs is now with the appropriate filing officer, not always with the Division.
- **Violations:** Provides that an administrative law judge in the Division of Administrative Hearings has the same authority as the Florida Elections Commission to impose civil penalties for election law violations; revises the Commission's internal procedures; provides that the failure of a candidate to comply with chapter 106 does not affect the candidate's qualifying for office, except as otherwise expressly stated.

Candidates:

- **County Candidates/Reapportionment:** Allows county candidates who are seeking to qualify by petition in an apportionment year to obtain the required number of signatures from any registered voter in the respective county, regardless of district boundaries. Therefore, a candidate who is elected on a single-member district basis must obtain signatures of 1% of voters in county divided by the total number of districts of the office involved.
- **Nonpartisan Candidates:** Makes campaigning based upon party affiliation a violation of chapter 106.
- **Party Switching:** Prohibits would-be candidates from seeking a party's nomination to an office if the person was a member of any other political party for 365 days preceding qualifying (previously, a candidate could not switch parties within 6 months of the general election).
- **Qualifying papers:** Changes language in the candidate oath; removes the requirement of taking the s. 876.05 oath as a qualifying requirement, except for school board candidates and judicial candidates; requires certain qualifying documents to be verified under oath or affirmation pursuant to s. 92.525(1)(a), which means a SOE or deputy cannot use his or her statutory authority to administer oaths on qualifying papers; provides that a filing officer performs merely a ministerial function; and exempts a filing officer's decision on qualifying from the provisions of the Administrative Procedures Act.

- **Statement of Candidate:** Revises the wording of the Statement of Candidate from the candidate having received a copy of Chapter 106 to having been provided access to the chapter. Therefore, the filing officer does not have to provide a printed copy of Chapter 106 to candidates.

Constitutional Amendments

- **Constitutional Initiative Petitions:** Reduces the shelf-life of initiative petition signatures proposing constitutional amendments from 4 years to 2 years
- **Joint Resolutions:** Provides for alternative ballot summaries and/or the full text of a constitutional amendment proposed by joint resolution to be placed on the ballot; provides until the end of 2013 for voting systems to be modified to accommodate the full text of an amendment; creates a presumption that placing the full text on the ballot provides electors adequate notice of what they're voting on; contains procedures for curing defective ballot summaries; provides that court challenges to amendments proposed by joint resolution must be filed within 30 days of the resolution is filed with the Secretary of State; and makes the provisions of the section retroactive to joint resolutions passed during the 2011 legislative session.

Third-Party Voter Registration Organizations

- **Fraud Prevention:**

Requires such groups to submit voter registration applications within 48 hours of receipt instead of 10 days, to identify registration agents collecting applications, and to act as a fiduciary to voters whose applications have been collected; requires registration forms to contain certain identifying information; mandates that the Division maintain a database of forms issued to third-party voter registration groups; applies the provisions retroactively to existing third-party voter registration groups; requires SOEs to place identifying information on forms provided to the group; and requires SOEs to provide information to the Division on voter registration applications provided to such groups. The Division will adopt an emergency rule in the near future to more definitively establish procedures concerning the changes in law regarding third-party voter registration organizations.

Undue Burden Oath

- **Payment of Petition Circulators/Receipt of Monetary Contributions:**

Provides that an undue burden oath from a candidate or committee is no longer valid if persons are subsequently paid to solicit signatures on a petition; also, if monetary contributions are received, those contributions are first to be used to reimburse the supervisor of elections for any signature verification fees not paid due to the filing of a prior undue burden oath.