With All Eyes on "Implementation" of Amendment 4, Senate Bill 7066 Makes Significant Additional Changes to Florida Election Laws in Response to the 2018 Election

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On the final day of regular time in this year's legislative session, which came in the wake of an election year involving an unprecedented three statewide recounts, the Florida Legislature passed Senate Bill 7066. The legislation has received a lot of attention for its "implementation" of Amendment 4, a citizen initiative to restore voting rights to felons, but the bill also included a number of significant changes to Florida's election laws that are more directly responsive to some of the issues that cropped up during the 2018 election.

Gov. Ron DeSantis has yet to sign the bill, and some are calling on him to veto it due to its Amendment 4-related provisions. While most of the discussion centers on implementation of the amendment, whether or not the following less-discussed but nevertheless noteworthy changes to Florida election law go into effect also depends on the governor's decision to sign or veto.

Vote-by-Mail Ballot Requests

The bill requires a voter to request a vote-by-mail ballot no later than 5 p.m. on the 10th day before an election. The law currently requires such requests to be received no later than the 6th day before an election. The bill requires supervisors to mail the ballots no later than the 8th day before the election.

The bill requires supervisors to permit voters to deliver completed vote-by-mail ballots by placing the ballot in a secure ballot envelope and dropping the envelope in a secure drop box at the supervisor's office or any early voting site. Further, the included vote-by-mail instructions must inform the voter in capitalized, bold font that the voter may vote the completed vote-by-mail ballot by dropping it off at the supervisor's office or an early voting site.

Provisional Ballots

If a voter claims to be properly registered and eligible to vote but the voter's eligibility cannot be determined by voting officials, then the voter is permitted to vote a "provisional ballot" and later provide proof of his or her eligibility to vote. The bill provides a detailed process for determining

whether a provisional ballot is valid and should be counted, as well as a method for a voter to "cure" a provisional ballot that is either missing a signature or has a signature that does not match the voter's signature on file. A provisional ballot may be counted only if:

- The signature on the voter's Provisional Ballot Voter's Certificate and Affirmation matches the signature in the registration books or the precinct register;

- The signature on the voter's "cure affidavit" matches the signature in the registration books or the precinct register and the required supporting information submitted with the cure affidavit confirms the identity of the elector; or

- If neither the Provisional Ballot nor the cure affidavit signature match the voter's signature in the registration books or precinct register, then the voter must submit with the cure affidavit a current and valid "Tier 1" form of identification (described below) confirming his or her identity.

Cure Affidavits

If a voter submits a provisional ballot with a defective signature, the supervisor must permit the voter to submit a cure affidavit until 5 p.m. on the second day **after** an election. The cure affidavit must attest to the fact that the voter submitted a provisional ballot and that the voter will not submit more than one ballot or attempt to commit voter fraud.

The cure affidavit must be signed by the voter and be accompanied by a copy of either a "Tier 1" or "Tier 2" form of identification. Tier 1 identification consists of a current and valid form of identification including a voter's name and photograph. Examples include driver's licenses, passports, debit or credit cards, military identification cards, student identification cards, public assistance identification cards, Veterans Affairs identification cards, and a Florida license to carry a concealed weapon, among other options. Tier 2 identification shows the voter's name and current residential address. Tier 2 examples include a current utility bill, bank statement, paycheck, or government document. Tier 2 identification should only be submitted if the voter does not have Tier 1 identification.

The cure affidavit must be received by the local supervisor of elections by 5 p.m. on the second day after the election or it will not count. The affidavit may be hand-delivered, mailed, faxed, or emailed to the supervisor.

The bill also permits cure affidavits for deficient vote-by-mail ballots to be received by the local supervisor up until 5 p.m. on the 2nd day after an election.

Review of Voter Signature Match

The bill requires the Florida Secretary of State to provide formal signature matching training to supervisors of elections and county canvassing board members.

The bill requires any canvassing board that finds a voter's signature on a provisional ballot or cure affidavit does not match the signature in the registration books or precinct register to make that finding by a majority vote and beyond a reasonable doubt.

If a voter's signature on a provisional ballot is determined not to match the signature on file, the supervisor must attempt to notify the elector by email, text message, and phone call, and provide

directions to the cure affidavit and accompanying instructions on the supervisor's website. In addition, the supervisor must provide by first-class mail the same notice and instructions to voter's with non-matching signatures up until the day before the election, after which the supervisor must only send the email, text, and phone notification.

Voter Registration and Signature Updates

If a voter's provisional ballot is validated following the submission of a cure affidavit, then the local supervisor of elections must make a copy of the affidavit, affix the copy to a voter registration application, and immediately process it as a request for a signature update.

If a voter's cure affidavit is not accepted to validate the voter's provisional ballot, then the supervisor must mail a voter registration application to the voter including a copy of the voter's current signature on file in the registration books.

Polling Places

The bill requires early voting sites to provide sufficient non-permitted parking to accommodate the anticipated amount of voters using the site, in addition to existing requirements that the site be geographically located to provide all voters in the county with an equal opportunity to cast a ballot.

The bill enlarges the "no solicitation" buffer zone surrounding a polling place from a 100-foot radius to a 150-foot radius from the polling place. The bill bans a landowner, operator, or lessee of the polling place from prohibiting solicitation of voters on the property, so long as the solicitation takes place outside the 150-foot buffer zone. Disruptive and unruly persons may be removed from the polling place to outside the buffer zone.

Ballot Form and Production

The bill permits polling places, in addition to early voting sites, to employ a "ballot-on-demand" system to print individual ballots for voters.

The bill requires the Department of State to adopt rules requiring the ballot title to be followed by ballot instructions either centered across the top of the ballot or in the leftmost column of the ballot. If the instructions are in the leftmost column, no individual races may also appear in that column, unless it is the only column on the ballot.

The bill also requires all ballots to use oval vote targets, except when a voter uses a "voter interface device" to produce a completed paper ballot. A voter interface device is a voting machine that displays the candidates and ballot questions and permits a voter to input his or her vote. The bill bans such devices from being used to tabulate votes. All vote tabulation must be based on a subsequent scan of the marked paper ballot that must be produced by the voter interface device.

Ballot Security

The bill requires the Department of State to adopt minimum security standards for voting systems that include, at a minimum:

- Detailed procedures to create a complete written record of the chain of custody of ballots and

paper outputs from voting systems;
- Procedures for the transport of ballots, including a description of the method and equipment used and a detailed list of all individuals involved in the transport; and
- Ballot security measures, including a requirement that all ballots be kept in a locked room until they are needed for canvassing.

Primary Elections

The bill moves the date for the primary election back to 11 weeks before the general election, rather than 10 weeks before the general election.

Canvass of Returns

The bill permits a candidate, political party official, political committee official, or an authorized designee of any of these persons, to observe the duplication of any damaged vote-by-mail ballot. Such duplication is sometimes necessary to permit the vote to be counted.

The bill authorizes county canvassing boards to begin the canvass of vote-by-mail ballots on the 22nd day before an election, rather than the 15th day as current law provides.

The bill imposes public notice requirements on county canvassing boards prior to meetings during which absent voters' ballots and provisional ballots are to be canvassed. Members of the canvassing board and all clerical help must wear identification badges during any period in which the board is canvassing votes or engaging in other official duties.

Recounts of Overvotes or Undervotes

The bill requires any hardware or software used to identify and sort overvotes and undervotes to be capable of doing so while simultaneously counting votes in multiple races.

The bill prohibits the Department of State from adopting rules that authorize the use of any electronic or electromechanical reading device to review a hybrid voting system ballot that is produced using a voter interface device and that contains both machine-readable fields and machine-printed text of the contest title and voter selections, unless the printed text is illegible.

Contest of Elections

The bill prohibits a circuit court hearing an election contest from reviewing or considering any evidence other than the signature of the voter in the registration records, the signature on the respective voter's certificate or cure affidavit, and any supporting identification that the voter submitted with the cure affidavit. The court's review is restricted to determining whether the canvassing board abused its discretion in making its decision.

Willful Violations by Supervisors of Elections

The bill prohibits any supervisor who willfully violates any provision of the Florida Election Code from receiving the special qualification salary pursuant to section 145.09(3) for a period of 24 months from the time of the violation. Section 145.09(3), Florida Statutes, provides an additional $2,000 per year special qualification salary for each supervisor of elections who meets certification requirements

established by the Florida Division of Elections of the Department of State.

Voting Booth Selfies

The bill permits a voter to photograph his or her own ballot inside a polling place or early voting area. No other photography is permitted in the polling place or early voting area.

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