

# VISAGE REPORT: Florida Senate Bill 90

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**LOOK  
AHEAD  
AMERICA**  
**THE VOTER INTEGRITY PROJECT**

## A Brief History of the Project

While a guest on the John Fredericks radio show, Look Ahead America's Executive Director Matt Braynard debated Fredericks regarding the merits of Georgia's election reform bills, specifically GA Senate Bill (S.B.) 241 and GA House Bill (H.B.) 531. In summary, Fredericks argued that the bills at least did something to counter the integrity issues. He argued that enacting at least does something over doing nothing, and that therefore Matt's criticisms seemed unrealistic as "perfect is the enemy of the good." Conversely, Braynard observed that Fredericks either had not read the full bills or at least not given them a proper analysis as they made some things worse and remained largely toothless in terms of stopping any serious voter integrity concerns.

The full 17-minute debate is online at <https://www.youtube.com/watch?v=eWWXQx4WWwc>

Given the length, complexity, number, and legalese of most state-proposed bills, we realized that few people, including radio hosts, have the time or inclination to read these bills, let alone understand them properly and recognize their impacts.

Therefore, in order to get real reforms that would address the major weaknesses in voting that the 2020 General Election exposed, we realized that we needed to review the bills brought before state legislators, summarize them, and rank them according to our six proposed objectives for voter integrity.

## Voter Integrity Summary, Analysis, Grading and Evaluation (VISAGE) Report Method

The Voter Integrity Summary, Analysis, Grading and Evaluation (VISAGE) Report has four major components: Summarizing the overall bill, Analyzing each section of the bill, Grading each section of the bill using Look Ahead America's six objectives for voter integrity reform, and Evaluating the overall bill. We do this as opposed to taking these bills at sheer face value.

Using Look Ahead America's six objectives for voter integrity reform, our Research Group grades the bill with a letter ranking from A to F in each of the following areas:

1. Thumbprint Authentication of Absentee Ballots.
2. Mandated and Public Voter List Hygiene.
3. Ban on the Use of "Black Box" Voting Equipment.
4. Appointment of a Citizens Elections Supervisory Committee.
5. Creation and Sufficient Funding for a Dedicated Voter Fraud Investigation Division within the State's Attorney General's Office.
6. Equitable Distribution of Private Contributions to Election Operations.

You can find additional information about our six objectives at our website:  
<https://lookaheadamerica.org/integrity/>

We then take the bill and weigh it using these criteria, giving it an overall evaluation.

While we plan to do this eventually with all the bills before the states, the total count of all bills relating to election integrity currently totals 1,143 for all 50 states. Given our resources at the moment, we need to focus on the larger, more impactful ones.

To help us tackle the sheer scale of this work, we need additional volunteers to assist us in reviewing the various bills before congress.

You can assist us with this project by signing up at <https://lookaheadamerica.org/volunteer/>

## Summary of FL S.B. 90

Although we summarize this forty-page bill below, one can find all the details of this bill for themselves at <https://www.flsenate.gov/Session/Bill/2021/90>

The current Florida state S.B. 90, tentatively titled “Election Administration” and first introduced by Republican state Senator Dennis Baxley of District 12 on 3 February 2021, results from the contentious 2020 General Election in order to reform many issues with elections that occurred in the nearby state of Georgia and other American states.

The changes would modify parts of *Florida Statutes Title IX, Electors and Elections Voting Methods and Procedure*, Chapters 97-104, Sections 101.62, 64, 65, 68, and 69, and 104.0616.<sup>1</sup> Chapters 97-99 are the recent additions to this bill.

Once passed, most violations will remain classified as first-degree misdemeanors.

The bill’s provisions specifically target all aspects of the vote-by-mail process:

1. Prohibits the elections supervisors from mailing, delivering, or otherwise providing vote-by mail ballots to a voter unless they have requested one.
2. Requires requests to include additional identifying information regarding the requesting voter.
3. Requires elections supervisors to record mismatched signatures when discovered on the voter’s certificate.

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<sup>1</sup> [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0100-0199/0101/0101.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0101/0101.html)

4. Requires the canvassing board to use the most recent signature of a voter on vote-by-mail ballots when verifying ballot signatures or a cure affidavit.
5. Prohibits the display of party and partisan information on the outside of the vote-by-mail ballots, return, and secrecy envelopes.
6. Limits who a voter may designate to pick-up their vote-by-mail ballot to immediate family.
7. Likewise, limits the possession of extra ballots to the voter's immediate family.
8. Likewise, prohibits any person from distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing a vote-by-mail ballot of another person.
9. Allows the canvassing of ballots to begin as soon as the public testing of automatic tabulating equipment completes.
10. Requires voters to re-request a vote-by-mail ballot bi-annually by limiting the duration of ballot requests for all elections held through the end of the calendar year to last until the next regularly scheduled general election.

## Analysis of the FL S.B. 90 Sections

The changes to each specific statute section appear below:

### Section 97

97.029 relates to settlement actions and consent decrees.

Subsection 1 states that when a civil action is filed relating to any provision of the Election Code, several things must happen. First, when settlement negotiations begin, written notification must be given to the President of the Senate (hereinafter PS), the Speaker of the House of Representatives (hereinafter SH), and the Attorney General (hereinafter AG).

Further, any proposed settlement, consent decree or order that would nullify, suspend, or conflict with the Election code must be reported in writing to the PS, SH, and AG. Written notice must be given to the PS, SH and AG at least 10 days before the order is made final. Essentially the legal case is no longer valid.

97.0291 prohibits the use of private funds for election related expenses. Election agencies may not solicit, accept or use any money, grants or services from a nongovernmental entity. The

sole exception allows for the donation and acceptance of space to be used for polling or early voting.

97.052 appears to reword the law relating to attestations of felons who have had their voting rights restored. This section appears to just streamline the form to say “I affirm that I am not a convicted felon or, if I am, my right to vote has been restored.” This seems to be a simple streamlining of the attestation.

97.0525 relates to the online voter registration webpage. The original law stated that the state “shall establish” a secure website for registration. The change now reads “shall establish *and maintain*”. This section further specifies what a comprehensive risk assessment of the online voter registration system will entail. This includes load testing and stress testing the site, screening for malware, evaluation of database infrastructure to protect against cyberattack, and identifying any anticipated threats.

97.051 relates to acceptance of registration as being valid only after authenticity checks. This amendment adds that the registration must be validated not only for first time registration but any name changes, address changes and changes in party affiliation.

97.057 states that the Department of Highway Safety and Motor Vehicles must assist the Department of State in regularly identifying changes of address on driver’s license and ID cards. The Department of State must report each change to the supervisor of elections who must, in turn, change the voter records. This section added a lot of “musts” to the law making those departments affirmatively responsible for the updates.

97.0575 relates to third-party voter registration organizations. A third-party organization must deliver the registration to the supervisor of elections in the county in which the applicant resides within 14 days of completing the application but not after the registration closes. The third-party must alert the registrant that they might not deliver said application within 14 days and that the registrant may deliver the application in person or by mail. The third-party must also tell the applicant how to register online. The wording throughout this section repeatedly confirms that the application must be delivered to the county in which the applicant resides.

97.1031 relates to change of address, name and party affiliation. When an elector changes address, they must now provide the last 4 digits of his or her SSN, Florida DL or ID number for verification. When seeking to change party affiliation or to change names the voter must submit a voter registration application.

## Section 98

98.0981 relates to reports and live turnout data. On election day, the supervisor of elections shall report live turnout data on their website and update is at least once per hour. This will be used to create and maintain a real-time statewide turnout dashboard that can be viewed by the public.

## Section 99

99.021 relates to candidates' party affiliations and doesn't have any impact on voter integrity.

## Section 101

101.051 deals with electors seeking assistance. This adds wording to include drop boxes.

101.545 adds wording that requires all election materials to be retained for a minimum of 22 months after an election. This matches [52 U.S.C. § 20701](#).

101.5614 subsection (4)(a) relates to canvassing of returns. It requires that any duplicating of damaged ballots must be done in an open and accessible room.

## Section 101.62

### *"Request for vote-by-mail ballots"*

This change intends to catch address changes, deaths, and other changes in eligibility. One can still make requests in person or in writing.

101.62 relates to request for vote-by-mail (hereinafter VBM) ballot requests. The request may be made in person or in writing. The request is sufficient to receive VBM for all elections through the end of the calendar year of the next regularly scheduled general election. This seeks to amend the current law which allowed the request to be active through the calendar year of the *second* ensuing general election.

101.62 (1) addresses the duration of vote-by-mail requests, voter identification methods, and only allows for sending these upon request.

101.62 (1)(a) changes the current law, which allows mail-in-voting through two election cycles, or once every four years. This proposed section limits the duration of eligibility for voting by mail.

Mailed ballot requests would only last through the calendar year of the next general election and would include any election held through that year. In other words, voters must make new requests every election year, or once every two years. One can make the request in person, by telephone, or in writing to the supervisor's office, *or* if directly instructed by the elector, a member of the elector's immediate family, or the elector's legal guardian to mail to an elector's address on file.

Any request to mail a ballot to an address other than the elector's address on file must be made in writing and signed by the elector, except for a uniformed service voter or an overseas voter.

101.62(1)(b) adds further identification requirements for requesting VBM ballots. While the current statute requires the elector's address and date of birth, the proposed law will also require the elector's FL driver's license number, FL identification card number, or the last four digits of the elector's social security number. It further specifies that a supervisor *may not* provide a VBM ballot unless a request has been made that meets the identification requirement. This section would appear to add an additional layer of security for proper identification of electors. This amends that law to require that all voters disclose their own Florida driver's license numbers or identification cards, or the last 4 digits of their social security number. This provision replicates other states' new ID laws, including Georgia's.

101.62 (1)(d) states that elections supervisors may not send out ballots without (a) a specific valid request, and (b) if it does not meet identification requirement.

Any first-class mail sent by the supervisor to the elector upon request and returned as undeliverable may be considered canceled.

101.62(3) specifies that for each returned VBM ballot, the supervisor *shall* record whether the voter's certificate contains a signature that does not match the signature in the registration books or precinct register. This appears to be an entirely new requirement rather than an amendment from a previous statute.

101.62(3)(a) moves a paragraph of text to Subsection (3)(c).

101.62(3)(b) states that signature matching must occur. The election supervisor must record in the registration books or precinct register each instance of a vote-by-mail ballot where the signature does not match the certificate. A majority of the canvassing board must vote that an elector's signatures do not match beyond a reasonable doubt.

Any elector or candidate who believes that a vote-by-mail ballot should not qualify due to a defect on the voter's certificate or the cure affidavit may file a protest with the canvassing board, but only before someone removes the ballot from the mailing envelope. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark "rejected as illegal" across the face of the envelope. Any cure affidavit, the envelope, and the ballot in the envelope must have the same preservation methods as an official ballot.

101.62(3)(c) moved the paragraph out of Subsection (3)(a). The law would keep the requirement that updated information be available in electronic format every day by 8 a.m., from 60 days before a primary election until 15 days after the general election. The law would continue to require sending ballots via non-forwardable, return-if-undeliverable mail to the elector's address on file.

101.62(4) changes the wording for more specificity on who may pick-up a VBM ballot in order to limit unlawful canvassing of ballots. The previous law allows any person to pick up 2 additional ballots per election.

This proposed change specifies that voters may only designate immediate family members to pick up their ballots, and this requires a signed affidavit from the voter which matches the most current one on file. It defines immediate family member as “the elector’s spouse or the parent, child, grandparent, grandchild, or sibling of the elector or of the designee’s spouse”). Designees’ responsibilities would not change from current responsibilities, and it still accommodates last-minute emergency requests for ballots (i.e., hospitalized electors).

101.62(7) makes an exception for expressly authorized voters with disabilities, overseas voters or for local referenda, a county, municipality, or state agency may not send a VBM ballot unless requested in a manner authorized. Amendments to this statute does not affect VBM requests made prior to the enactment of this bill through the end of 2022.

### Section 101.64

#### *“Delivery of vote-by-mail ballots; envelopes; form”*

The provision intends to thwart vandals from destroying ballots of the opposition party prior to tabulation.

101.64 (1)(b) states that the mailing envelope for VBM ballots must bear the absent elector’s name as well as any encoded mark used by the supervisor’s office.

101.64 (1)(c) states that the outside of the ballot and secrecy and mailing envelopes may not display party affiliation or any other partisan information.

101.64 (6) requires that the outside of the ballot, return mailing envelope, and secrecy envelope may not display party affiliation or any other partisan information.

### Section 101.68

#### *“Canvassing of vote-by-mail ballot”*

This section furthers the goal of transparency in the use and reliability of equipment used to tally mail-in votes. Testing procedures already have regulations under 101.5612(2).

101.68(1) the VBM ballot, once verified, must be recorded in the registration record. During the signature comparison, the supervisor may not use any knowledge of the political affiliation of the voter whose signature is subject to verification.

101.68 (2)(a) states that the canvassing of VBM ballots may begin upon completion of the public testing of automatic tabulating equipment but no later than noon on the day following



the election. The current statute specifies that the canvassing may begin at 7 a.m. on the 22<sup>nd</sup> day before the election. This amendment appears to remove the specifics of the 22 days prior to election day. Also, this subsection removes a line relating to allowing early vote counting.

This provision actually expands the amount of time supervisors have to tabulate mail-in ballots, from 22 days to approximately 35-40 days (the time frame for testing).

101.68(c)(1) requires the *most recent* signature of the elector for comparing and validating a ballot signature.

## Section 101.69

### *“Voting in person; return of vote-by-mail ballot”*

101.69 (2)(a) allows electors to return VBM ballots in drop boxes. Drop boxes must be geographically located to provide all voters equal opportunity to cast ballots, if practicable. Secure drop boxes may only be used during early voting and must be monitored in person by an employee of the supervisor’s office when the drop box is accessible for deposit of ballots.

101.69(2)(b) states that the drop box sites must be designated at least 30 days before an election. The site may not be moved except as approved to correct a violation of this subsection.

101.69(2)(c)(1) states that on each day of early voting, all drop boxes must be emptied at the end of early voting hours and all ballots retrieved must be returned to the supervisor’s office.

101.69(2)(c)(2) says that for drop boxes located at the supervisor’s office the ballots must be retrieved before the monitoring employees end their daily monitoring.

101.69(2)(c)(3) requires employees to comply with chain of custody of ballots found in 101.015(4).

101.69(3) subjects the supervisor to a civil penalty of \$25,000 for any drop box left accessible contrary to this provision. This appears to be in response to chain of custody issues found in other states. The inclusion of the substantial fine creates personal responsibility on the part of the supervisor for abiding by these laws.

## Section 102

102.031 relates to electioneering and solicitation. It mandates that drop box locations are under the same prohibitions against electioneering and soliciting as other voting locations.

102.166(4) states that a duplicate ballot may be made if the voter intent is clear but may not be made if the intent is unclear. An observer must be allowed to observe the duplication of ballots

in a way that they can see the markings being made. The duplicates must be clearly labeled duplicate and the duplication must happen in the presence of at least one canvassing board member. If an observer makes a reasonable objection to a duplicate the ballot must be presented to the canvassing board for determination of validity. The board must document the serial number of the ballot in the board's minutes. If it is determined to be valid it must be counted. If the duplicate is invalid it must be rejected and a proper duplicate must be made and counted.

102.072 states that beginning at 7 p.m. election day, the supervisor must, at least once every hour while actively counting, post the number of VBM ballots that have been received and the number of VBM ballots that remain uncounted.

102.141 states that the names of the canvassing board members must be published on the supervisor's website upon completion of the logic and accuracy test.

102.141 (4)(2)(a) states that during county canvassing board meetings, each political party and each candidate may have one watcher able to view, directly or on a display screen, ballots being examined for signature matching and other processes.

## Section 104.0616

### *"Vote-by-mail ballots and voting; violations"*

This proposal conforms the violations penalties to the changes made to Section 101, discussed above. Violations would remain first-degree misdemeanors.

104.0616(2) states that any person who distributes, orders, requests, collects, delivers or otherwise physically possesses a vote-by-mail ballot of another person, not including a ballot belonging to an immediate family member (not including the recognized exceptions), commits a first-degree misdemeanor.

## Date of effect and retroactive application

The act shall take effect upon becoming law. Even if an elector has made a valid VBM request, then that request would apply through the end of the year; the elector will need to affirmatively resubmit a vote-by-mail ballot request following the effective date of this act in order to receive a vote-by-mail ballot for the 2022 Primary and General Election.

## Grading FL S.B. 90

We graded the bill against the six voter integrity policy objectives from Look Ahead America's

voting integrity reform initiatives designed to minimize or eliminate vulnerabilities in our election system. Given that FL S.B. 90 primarily deals with VBM issues, most of its objectives do not apply to this proposed legislation.

### 1. Thumbprint Authentication of Absentee Ballots.

FL S.B. 90 does not implement a thumbprint authentication system, and Florida does not currently have such a system. It relies upon signature authentication only, which allows for much discretion and judgment within the supervisors' offices.

However, the act would require the use of updated signatures and a record of mismatched signatures. More importantly, it requires the use of specific identification – driver's licenses, state identification cards, and the last four digits of a social security number – for each ballot.

Therefore, while the act does not specifically use thumbprint identification as a means of authentication, at least it provides a step in the right direction of the authentication process. We still maintain that two-factor authentication, such as using signature verification and biometrics by including thumbprints, would provide better protection against voter fraud.

**Grade: D**

### 2. Mandated and Public Voter List Hygiene.

Currently, Florida statutes require supervisors of elections to conduct comprehensive list maintenance at least once during every odd-numbered year, but not less than 90 days before a federal election per *F.S. 98.065*. The Florida Department of State, Division of Elections, Bureau of Voter Registration Services provides support for supervisors with voter registration and removal. <https://dos.myflorida.com/elections/about-us/>

While it requires re-submitting requests for vote-by-mail ballots bi-annually, which could help to clear the rolls of ineligible absentee voters, and it does not go far enough in terms of our objectives.

Additionally, this bill added the requirement that the Elections Board and the agencies in charge of State ID and driver's license work together to update addresses and voter rolls, but it does not include any of the proposed cross-checking with national databases.

**Grade: D-**

### 3. Ban on the Use of "Black Box" Voting Equipment.

FL S.B. 90's proposed legislation does not tackle the issue of software and hardware use. The choice of equipment is still up to each individual county supervisor.

**Grade: F**

#### 4. Appointment of a Citizens Elections Supervisory Committee.

The issue of elections oversight extends beyond the scope of this legislation, but FL S.B. 90 does not make any such provisions. It could have done so with the signature verification subsections.

**Grade: F**

#### 5. Creation and sufficient Funding for a Dedicated Voter Fraud Investigation Division within the State's Attorney General's Office.

Again, the issue of elections oversight extends beyond the scope of this legislation, but FL S.B. 90 does not make any such provisions. Florida's Attorney General office currently does not have such a division. Aside from recording such discrepancies in a book, no referrals for prosecution, investigations, or legal actions occur despite making note of them. In other words, this seems akin to hiring a mall cop with no legal authority to observe and report, instead of hiring a real police officer to follow proper procedures.

However, this bill does take a positive step in holding Elections Supervisors financially liable for failing to adhere to election laws.

**Grade: D**

#### 6. Equitable Distribution of Private Contributions to Election Operations.

The bill explicitly prohibits private contributions to election operations, with the small exception of allowing the use of a location for polling activities.

**Grade: A+**

## Evaluation of FL S.B. 90

First of all, Florida deserves applause for efforts to make their elections more secure and laws easier to understand. That said, only real meaningful efforts will make an impact, and the rest will seem like political theater in terms of addressing the underlying problems.

Nevertheless, critics have called this bill the “death knell” for mail-in voting.<sup>2</sup> Some have even referred to this and other voter integrity laws as voter suppression and “Jim Crow,”<sup>3</sup> although such criticisms themselves inherently have racist undertones (i.e. Blacks don’t have IDs, Latinos don’t know how to get to the polls). In Florida, some critics have stated “the system works so why change it?”<sup>4</sup> Of course, it didn’t work perfectly, and the vulnerabilities in other states will likely spread into Florida if the state does nothing to stop them. Opponents of S.B. 90 also have pointed out that these changes would effectively clear the voter rolls of millions of already registered voters in Florida.

Our review of the bill debunks these baseless criticisms. The changes outlined in S.B. 90, all fairly minor changes to the law, aim to make voting more secure and streamlined. They consider the vulnerabilities in other states, and make them harder to exploit. Voters can still vote by US mail, a service available to all citizens, and so it doesn’t appear to limit legitimate legal voters’ access.

This bill, if passed, makes a positive impact and furthers the goal of mail-in ballot integrity by limiting opportunity for abuse. Supervisors could easily implement these changes.

If anything, the bill does not go far enough, but given the alternative of maintaining the status quo, it at least provides a step in the right direction.

While the use of more current signatures would aid in authentication, signature comparison still leaves much of the authentication process to human and untrained opinions and judgments. Fingerprint ID in conjunction with signature verification would provide two-factor authentication. The bill also fails to address prosecuting false voting attempts aside from making an entry in a book, and it fails to state who does the verification of such signatures.

The bill draws its biggest strengths from the requirement of state identification limiting designation of ballot collection to immediate family only, and most of all, stopping private contributions to election operations.

Therefore, we consider FL S.B. 90 a rather mixed bag. While admittedly better than doing nothing, it also failed to address two of our six criteria for significant voter reforms while only getting a D in three other areas, yet it gets an A+ in terms stopping private contributions. To us, it seems that the bill concedes many points before it gets out the gate as these will likely scale back in the final bill. As bills often require compromise, bills should come out the gate much bolder and encourage stricter penalties for violations, more serious roll sanitization, and better oversight beyond incredibly subjective criteria as signature matching by untrained

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<sup>2</sup> <https://www.sun-sentinel.com/opinion/commentary/fl-op-com-ss-prem-bousquet-republican-tactics-suppress-vote-20210312-pjxi24kyfbcwpl445rczrz4pda-story.html>

<sup>3</sup> <https://floridianpress.com/2021/04/fried-calls-floridas-S.B.-90-a-new-jim-crow-law/>

<sup>4</sup> <https://www.miamiherald.com/opinion/editorials/article249316825.html>

professionals. Aside from a perfect score on the final area, the bill fails or comes close to failing in the rest, with an overall D rating. It's a pass, but barely.

## Summary

While FL S.B. 90 does something to address voter integrity – arguably better than doing nothing – the voters of Florida are deserving of higher standards from their elected officials in addressing voter fraud and election integrity.