

## House Bill No. 1323

An act relating to rulemaking authority of the Department of State (RAB); amending s. 20.10, F.S.; authorizing the department to adopt rules to administer laws conferring duties upon it; amending s. 99.061, F.S.; authorizing the department to prescribe rules for filing papers to qualify as a candidate for federal, state, county, or district office; amending s. 101.161, F.S.; providing for ballot initiatives to be numbered in the order of filing or certification and as provided by department rule; amending s. 101.62, F.S.; authorizing the department to adopt rules for preparing and mailing absentee ballots to electors who are overseas; amending s. 106.07, F.S.; authorizing the department to adopt requirements for filing campaign treasurers' reports; amending s. 106.22, F.S.; providing for rules prescribing requirements for filing complaints of voter fraud and for investigating those complaints; amending s. 106.23, F.S.; requiring that requests for advisory opinions by the Division of Elections be submitted in accordance with department rule; amending s. 120.54, F.S.; authorizing the department to prescribe rules under which a state agency may incorporate materials by reference in adopting an agency rule; amending s. 267.061, F.S.; providing additional duties of the Division of Historical Resources with respect to protecting and administering historical resources; authorizing the division to issue certain permits; requiring that the division adopt rules for issuing permits and administering the transfer of certain objects; amending s. 872.05, F.S.; authorizing the department to adopt procedures for reporting an unmarked human burial and determining jurisdiction of the burial; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 20.10, Florida Statutes, is amended to read:

20.10 Department of State.—There is created a Department of State.

- (1) The head of the Department of State is the Secretary of State.
- (2) The following divisions of the Department of State are established:
  - (a) Division of Elections.
  - (b) Division of Historical Resources.
  - (c) Division of Corporations.
  - (d) Division of Library and Information Services.
  - (e) Division of Licensing.
  - (f) Division of Cultural Affairs.

(g) Division of Administration.

(3) The Department of State may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of law conferring duties upon the department.

Section 2. Effective January 7, 2003, section 20.10, Florida Statutes, as amended by section 4 of chapter 2000-258, Laws of Florida, is amended to read:

20.10 Department of State.—There is created a Department of State.

(1) The head of the Department of State is the Secretary of State. The Secretary of State shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor. The Secretary of State shall perform the functions conferred by the State Constitution upon the custodian of state records.

(2) The following divisions of the Department of State are established:

- (a) Division of Elections.
- (b) Division of Historical Resources.
- (c) Division of Corporations.
- (d) Division of Library and Information Services.
- (e) Division of Licensing.
- (f) Division of Cultural Affairs.
- (g) Division of Administration.

(3) The Department of State may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of law conferring duties upon the department.

Section 3. Subsection (9) is added to section 99.061, Florida Statutes, to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(9) The Department of State may prescribe by rule requirements for filing papers to qualify as a candidate under this section.

Section 4. Subsection (2) of section 101.161, Florida Statutes, is amended to read:

101.161 Referenda; ballots.—

(2) The substance and ballot title of a constitutional amendment proposed by initiative shall be prepared by the sponsor and approved by the Secretary of State in accordance with rules adopted pursuant to s. 120.54. The Department of State shall give each proposed constitutional amendment a designating number for convenient reference. This number designation shall appear on the ballot. Designating numbers shall be assigned in

the order of filing or certification and in accordance with rules adopted by the Department of State of the amendments. The Department of State shall furnish the designating number, the ballot title, and the substance of each amendment to the supervisor of elections of each county in which such amendment is to be voted on.

Section 5. Paragraph (a) of subsection (4) of section 101.62, Florida Statutes, is amended to read:

101.62 Request for absentee ballots.—

(4)(a) To each absent qualified elector overseas who has requested an absentee ballot, the supervisor of elections shall, not fewer than 35 days before the first primary election, mail an absentee ballot. Not fewer than 45 days before the second primary and general election, the supervisor of elections shall mail an advance absentee ballot to those persons requesting ballots for such elections. The advance absentee ballot for the second primary shall be the same as the first primary absentee ballot as to the names of candidates, except that for any offices where there are only two candidates, those offices and all political party executive committee offices shall be omitted. Except as provided in s. 99.063(4), the advance absentee ballot for the general election shall be as specified in s. 101.151, except that in the case of candidates of political parties where nominations were not made in the first primary, the names of the candidates placing first and second in the first primary election shall be printed on the advance absentee ballot. The advance absentee ballot or advance absentee ballot information booklet shall be of a different color for each election and also a different color from the absentee ballots for the first primary, second primary, and general election. The supervisor shall mail an advance absentee ballot for the second primary and general election to each qualified absent elector for whom a request is received until the absentee ballots are printed. The supervisor shall enclose with the advance second primary absentee ballot and advance general election absentee ballot an explanation stating that the absentee ballot for the election will be mailed as soon as it is printed; and, if both the advance absentee ballot and the absentee ballot for the election are returned in time to be counted, only the absentee ballot will be counted. The Department of State may prescribe by rule the requirements for preparing and mailing absentee ballots to absent qualified electors overseas.

Section 6. Subsection (9) is added to section 106.07, Florida Statutes, to read:

106.07 Reports; certification and filing.—

(9) The Department of State may prescribe by rule the requirements for filing campaign treasurers' reports as set forth in this chapter.

Section 7. Subsection (11) of section 106.22, Florida Statutes, is amended to read:

106.22 Duties of the Division of Elections.—It is the duty of the Division of Elections to:

(11) Conduct preliminary investigations into any irregularities or fraud involving voter registration or voting and report its findings to the state attorney for the judicial circuit in which the alleged violation occurred for prosecution, where warranted. The Department of State may prescribe by rule requirements for filing a complaint of voter fraud and for investigating any such complaint.

Section 8. Subsection (2) of section 106.23, Florida Statutes, is amended to read:

106.23 Powers of the Division of Elections.—

(2) The Division of Elections shall provide advisory opinions when requested by any supervisor of elections, candidate, local officer having election-related duties, political party, political committee, committee of continuous existence, or other person or organization engaged in political activity, relating to any provisions or possible violations of Florida election laws with respect to actions such supervisor, candidate, local officer having election-related duties, political party, committee, person, or organization has taken or proposes to take. Requests for advisory opinions must be submitted in accordance with rules adopted by the Department of State. A written record of all such opinions issued by the division, sequentially numbered, dated, and indexed by subject matter, shall be retained. A copy shall be sent to said person or organization upon request. Any such person or organization, acting in good faith upon such an advisory opinion, shall not be subject to any criminal penalty provided for in this chapter. The opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

Section 9. Paragraph (i) of subsection (1) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(i) A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes. A No rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws. The Department of State may prescribe by rule requirements for incorporating materials by reference pursuant to this paragraph.

Section 10. Paragraph (p) is added to subsection (3) of section 267.061, Florida Statutes, to read:

267.061 Historic properties; state policy, responsibilities.—

(3) DIVISION RESPONSIBILITY.—It is the responsibility of the division to:

(p) Protect and administer historical resources abandoned on state-owned lands or on state-owned sovereignty submerged lands. The division may issue permits for survey and exploration activities to identify historical resources and may issue permits for excavation and salvage activities to recover historical resources. The division may issue permits for archaeological excavation for scientific or educational purposes on state-owned lands or on state-owned sovereignty submerged lands. The division may also issue permits for exploration and salvage of historic shipwreck sites by commercial salvors on state-owned sovereignty submerged lands. The division shall adopt rules to administer the issuance of permits for all such activities. In addition, the division shall adopt rules to administer the transfer of objects recovered by commercial salvors under permit in exchange for recovery services provided to the state.

Section 11. Subsection (11) is added to section 872.05, Florida Statutes, to read:

872.05 Unmarked human burials.—

(11) RULES.—The Department of State may prescribe by rule procedures for reporting an unmarked human burial and for determining jurisdiction over the burial.

Section 12. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor May 29, 2001.

Filed in Office Secretary of State May 29, 2001.