

COMMITTEE MEETING EXPANDED AGENDA**RULES SUBCOMMITTEE ON ETHICS AND ELECTIONS****Senator Diaz de la Portilla, Chair****Senator Detert, Vice Chair****MEETING DATE:** Wednesday, January 26, 2011**TIME:** 4:00 —6:00 p.m.**PLACE:** *Pat Thomas Committee Room, 412 Knott Building***MEMBERS:** Senator Diaz de la Portilla, Chair; Senator Detert, Vice Chair; Senators Alexander, Dockery, Evers, Gaetz, Joyner, Oelrich, Rich, Richter, Simmons, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 330 Gaetz	Violations of the Florida Election Code; Provides that a candidate who, in a primary or other election, falsely represents that he or she served or is currently serving in the military, commits a violation of the Florida Election Code. Requires that the commission adopt rules to provide for an expedited hearing for complaints filed with the commission. Requires that the Director of the Division of Administrative Hearings assign an administrative law judge to provide an expedited hearing in certain cases, etc.	
		EE 01/26/2011 RC MS GO BC	
2	SB 242 Joyner	Voter Information Cards; Requires that voter information cards contain the address of the polling place of the registered voter. Requires a supervisor of elections to issue a new voter information card to a voter upon a change in a voter's address of legal residence or a change in a voter's polling place address. Provides instructions for implementation by the supervisors of elections.	
		EE 01/26/2011 RC JU BC	

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 Rules Subcommittee on Ethics and Elections

BILL: SB 330

INTRODUCER: Senator Gaetz

SUBJECT: Political speech; military service misrepresentations

DATE: January 19, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Pre-meeting
2.			RC	
3.			MS	
4.			GO	
5.			BC	
6.				

I. Summary:

Senate Bill 330 makes it an administrative violation of the Florida Election Code for candidates to misrepresent the fact that they served, or are currently serving, in the U.S. military; a civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or the administrative law judge (ALJ) hearing the case, as appropriate.

This bill creates Section 104.2715 of the Florida Statutes.

II. Present Situation:

Section 104.271, Florida Statutes, makes it a violation of the Florida Election Code for a candidate to knowingly make a false statement about an opposing candidate in an election, an offense punishable by an administrative fine of up to \$5,000:

Any candidate who, in a primary or other election, with actual malice makes or causes to be made any statement about an opposing candidate which is false is guilty of a violation of this code.¹

This appears to be the only provision in the Code that directly addresses false political speech.

Interestingly, what SB 330 proposes is strikingly similar to the federal Stolen Valor Act, which makes it a crime to falsely represent having been awarded a military honor, declaration, medal,

¹ § 104.241(2), F.S.

badge, etc. There is currently a disagreement among courts in different federal judicial circuits with respect to the constitutionality of that statute.²

III. Effect of Proposed Changes:

Senate Bill 330 subjects candidates to a civil fine of up to \$5,000 for falsely representing in an election that they have served, or are serving, in the nation's military. It provides for the expedited hearing of complaints by the Florida Elections Commission or an ALJ at the Division of Administrative Hearings (DOAH), as appropriate, and further authorizes the Commission to adopt rules to provide for such expedited hearing.

Also worth noting are the facts that any person may file a complaint with the Florida Elections Commission; and, any fine assessed is deposited in the State's General Revenue Fund.

The bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Minimal; may result in some minor, additional revenue from violation penalties.

² See *U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that Stolen Valor Act violates First Amendment free speech rights); *but see*, *U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are *not protected* by the First Amendment). Although *Alvarez* is the only *appellate* decision interpreting the Stolen Valor Act, the U.S. Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits. Indeed, the federal district judge in *Robbins* expressly refused to follow the 2-1 majority decision in *Alvarez*, choosing instead to adopt the dissent's position that *false speech is not entitled* to first amendment protection.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill grants specific penalty power to the administrative law judge at DOAH, to account for the recent First District Court of Appeals decision in *Davis v. Florida Elections Commission*.³

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

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

None.

B. Amendments:

None.

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

³ 44 So.3d 1211 (Fla. 1st DCA 2010) (ALJ has no statutory authority to institute penalties for election violations originating with the Florida Elections Commission) .

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 Rules Subcommittee on Ethics and Elections

BILL: SB 242

INTRODUCER: Senator Joyner

SUBJECT: Voter Information Cards

DATE: January 24, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Seay	Roberts	EE	Pre-meeting
2. _____	_____	RC	_____
3. _____	_____	JU	_____
4. _____	_____	BC	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

The bill requires the voter information card prescribed in statute and furnished by the supervisor of elections to include the address of the polling place. It provides that if an elector's polling place address changes, the supervisor must send the elector a new voter information card. The bill also specifies that the supervisor must provide a voter information card meeting the requirements of this act for any elector who, on or after September 1, 2011, registers to vote, requests a replacement card, or changes their name, address, or party affiliation.

This bill substantially amends section 97.071, Florida Statutes.

II. Present Situation:

Currently, every supervisor of elections must furnish a voter information card to every registered voter in the supervisor's county. The card must contain the following information:

- Voter's registration number;
- Date of registration;
- Full name;
- Party affiliation;
- Date of birth;
- Address of legal residence;
- Precinct number;
- Supervisor's name and contact information; and

- Any other information deemed necessary by the supervisor.¹

Replacement cards are provided free of charge upon verification of the voter's registration, if the voter provides a signed written request for a replacement card.² The uniform statewide voter registration application may also be used to request a replacement card.³ New cards are automatically issued when a voter's name, address, or party affiliation changes.⁴

A survey in 2010⁵ indicated that 61 counties include the polling place address on the voter information card. The following six counties did not include the polling place address on the voter information card: Glades, Jefferson, Madison, Orange⁶, Taylor and Volusia.

III. Effect of Proposed Changes:

The bill requires the voter information card to include an elector's polling place address. It also provides that when an elector's polling place address changes, the supervisor must send a new card to the elector. The bill also specifies that the supervisor must provide a voter information card meeting the requirements of this act for any elector who, on or after September 1, 2011, registers to vote, requests a replacement card, or changes their name, address, or party affiliation.

This bill shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹ Section 97.071(1), F.S.

² Section 97.071(2), F.S.

³ Section 97.052(1), F.S.

⁴ Section 97.071(3), F.S.; *see also* s. 97.1031, F.S.

⁵ Unofficial Survey, *Voter Card with Polling Place Address*, conducted by Florida State Association of Supervisors of Elections (February 2010).

⁶ While Orange County does not print the polling place address on the voter information cards, the polling place address is provided on the sample ballots that are mailed out prior to each election. The Orange County Supervisor of Elections office has explained that the office provides the polling place address on the sample ballot instead of the voter information card as the polling place varies for municipal elections and general elections. *See id.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Six counties will be required to issue new voter information cards reflecting the polling place address. While it varies from county to county, the average county cost to print and mail one card is roughly 52 cents.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

⁷ The cost estimate is based on 2009 data provided by the Florida State Association of Supervisors of Elections.