

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1374

SPONSOR: Committee on Ethics and Elections and Senator Carlton

SUBJECT: Elections

DATE: April 3, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bradshaw	Bradshaw	EE	Favorable/CS
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1374 addresses a number of areas highlighted in the 2000 General Election. The bill provides the following:

- Eliminates the second primary election and moves the date of the remaining primary.
- Provides minimum standards for pollworker training and requires the Department of State to prescribe a uniform polling place procedures manual to be made available to each precinct on election day.
- Authorizes state, county and municipal workers to serve as pollworkers, in lieu of their normal work, and encourages the supervisors of elections to develop public-private programs to recruit pollworkers.
- Requires the Department of State to adopt rules prescribing minimum standards for voter education.
- Eliminates punchcard voting systems, paper ballots, mechanical lever machines and central count optical scan voting systems, beginning with the 2002 first primary election. Provides a minimum standard of precinct count tabulation for any voting system.
- Changes the composition of the Elections Canvassing Commission and provides certain restrictions on members of the Canvassing Commission and the county canvassing boards.
- Modifies the grounds for contesting an election.
- Provides for the automatic restoration of ex-felon’s voting rights under certain conditions.
- Requires supervisors of elections to post a voter’s bill of rights and responsibilities at each polling place.
- Requires the supervisors of elections to be elected on a nonpartisan basis.

- Appropriates funds to the Division of Elections to design a real-time statewide voter registration database.
- Provides an appropriation to the Division of Elections to be distributed to counties to implement the provisions of this act.

This bill substantially amends the following sections of the Florida Statutes: ss. 97.021, 97.041, 97.052, 97.053, 97.055, 97.071, 97.1031, 98.015, 98.081, 98.0975, 98.255, 99.061, 99.063, 99.095, 99.103, 100.061, 100.081, 100.111, 100.141, 100.341, 100.361, 101.031, 101.131, 101.151, 101.21, 101.24, 101.252, 101.292, 101.341, 101.43, 101.49, 101.5603, 101.5604, 101.5606, 101.5614, 101.58, 101.62, 101.64, 101.71, 102.111, 102.112, 102.166, 102.168, 103.021, 103.022, 103.091, 103.101, 104.30, 105.031, 105.035, 105.041, 105.051, 105.08, 106.07, 106.08, 106.29, 138.05 and 582.18. The bill repeals the following sections of the Florida Statutes: 100.071, 100.091, 100.096, 101.011, 101.141, 101.181, 101.191, 101.251, 101.27, 101.28, 101.29, 101.32, 101.33, 101.34, 101.35, 101.36, 101.37, 101.38, 101.39, 101.40, 101.445, 101.45, 101.46, 101.47, 101.54, 101.55, 101.56, 101.5609, and 102.012 (7), (8) and (9). The bill creates ss. 101.595, and 102.014, Florida Statutes.

II. Present Situation:

The 2000 General Election for President was one of the closest in the nation's history. Florida was in the forefront of the Presidential contest when it became apparent that the winner in Florida would gain Florida's 25 electoral votes and the Presidency. The litigation that ensued showed that Florida's election laws and procedures need to be revised in a number of areas.

Primary Elections

Florida holds three elections in a nine-week period. The first primary election is held 9 weeks prior to the general election and the second primary election is held 5 weeks prior to the general election. In the early 1980's, the Federal Government sued the State of Florida claiming that the state's system of holding three elections in nine weeks violated the Uniformed and Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. The suit alleged that the nine week span did not provide sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by election day. A federal district court entered a temporary restraining order on November 6, 1980, extending by 10 days the deadline for receipt of the 1980 general election ballots cast pursuant to the federal acts.

In early 1982, the State of Florida and the Federal Government entered into a consent decree covering federal contests. The decree required overseas absentee ballots for the 1982 general election to be counted if the ballots were postmarked by election day and received by the supervisors no later than 10 days after the election. In addition, the decree required that absentee ballots for the 1982 first primary be mailed to overseas electors at least 35 days before the first primary. Finally, the consent decree directed that a plan of compliance be drawn to provide for the mailing of overseas ballots at least 35 days prior to the deadline for the receipt of ballots.

In 1984, the federal district court approved Florida's plan of compliance, which modified the election schedule and resulted in the adoption of Rule 1C-7.013, F.A.C. (subsequently renumbered as 1S-7.013, F.A.C.). This rule required the supervisors of elections to mail

overseas absentee ballots for federal office at least 35 days prior to the election. The rule also provided that, with respect to a presidential preference primary or general election for federal office, an otherwise proper overseas ballot postmarked or signed and dated no later than the date of the election must be counted if received up to 10 days after the election.

In an effort to further facilitate absentee voting by overseas electors, the 1989 Legislature adopted the advance ballot system still in use today. Under Florida's advance ballot system, supervisors of elections mail first primary absentee ballots to qualified overseas electors not less than 35 days before the first primary. Subsequently, the supervisors mail advance ballots for the second primary and general election at least 45 days prior to these elections, followed by regular second primary and general election ballots when they become available. If both ballots for the same election are returned, only the regular ballot is counted.

Pollworker Recruitment and Training

The supervisors of elections appoint pollworkers for election day. Each precinct has one clerk, who is in charge of the precinct, several inspectors and a deputy sheriff. Each member of the election board must be able to read and write the English language and must be a registered voter of the county. The supervisors of elections are required to provide training for clerks, inspectors and deputy sheriffs prior to each first primary, general and special election and only those persons who have completed the training are allowed to serve. If there is a vacancy on election day and no person is available who has had training, a person who has not completed training may serve.

Voter Education

Section 101.031, F.S., requires the Department of State to print instructions to voters and to provide them to counties upon request. Supervisors of elections are required to post two of these instruction cards at each precinct. These notices provide basic instructions to voters. In addition, section 98.255, Florida Statutes, authorizes the supervisor of elections to provide voter education programs and materials as he or she deems appropriate.

Voting Systems

During the 2000 election cycle, there were four types of voting systems in use in the State.

- Forty-one counties used optical scan equipment (26 used a precinct count tabulator and 15 used a central tabulator);
- Twenty-four counties used a punchcard system;
- One county used mechanical lever machines; and
- One county used paper ballots.

Florida has adopted a stringent set of standards for voting systems. Voting systems must meet these standards in a testing process prior to their use in the State of Florida.

Currently, the county commission of each county is responsible for the purchase of voting equipment for that county. The commission, upon consultation with the supervisor of elections,

has the authority to adopt, purchase or otherwise procure voting equipment for the county, as long as the equipment has been approved by the Department of State for use in the state.

The 2000 General Election highlighted a number of problems with voting systems and ballot designs. For example, recounts in counties using punchcard systems indicated a number of problems with “hanging chad.” Likewise, many ballot designs placed Presidential candidates’ names on two columns or pages, apparently confusing many voters and causing them to overvote their ballots.

Elections Canvassing Commission

The Elections Canvassing Commission is composed of the Governor, the Secretary of State and the Director of the Division of Elections. In the event that any member of the Commission is unable to serve, a new member is appointed by the Director of the Division of Elections. The Elections Canvassing Commission is responsible for certifying the results of state and federal elections.

Contests of Elections

Under s. 102.168, F.S., the certification of election or nomination of any person to office, or the result of any question submitted by referendum, may be contested in circuit court by any unsuccessful candidate for such office or nomination or by any elector qualified to vote in the election related to such candidacy, or by any taxpayer, respectively. The statutes articulate the grounds for contesting an election.

Ex-Felons Right to Vote

The restoration of the civil rights of a convicted felon is a form of executive clemency, a power granted by the Florida Constitution to the Governor with the consent of at least three members of the Cabinet. Art. IV, s. 8(a), Fla. Const. The Florida Constitution also specifically bars any person convicted of a felony from being qualified to vote until that person’s *civil rights* have been restored. Art. VI, s. 4(a), Fla. Const. (Senate Joint Resolution 434 has been filed to modify this provision of the Florida Constitution.) Florida Statutes implement the constitutional bar against felons voting by providing that any person convicted of a felony who has not had his or her right to vote restored pursuant to law may not register or vote. s. 97.041(2)(b), F.S.

In contrast, the majority of states automatically restore a convicted felon’s right to vote upon release from imprisonment or completion of the sentence --- including such major states as California, New York, Texas, Ohio, Pennsylvania, and Georgia.

The review process for restoring the civil rights of the majority of felons convicted in a Florida state court is designed to be automatic, and should take place without the need for the individual to file any application or request. Upon final release of a felon from prison or supervision (i.e., probation), the Department of Corrections is required to submit each individual’s name to the Florida Parole Commission. The Parole Commission then reviews specified criteria to determine whether the individual is eligible to have his or her civil rights restored. Florida Rules of Executive Clemency, Rule 9. The specific criteria for eligibility for restoration of civil rights are:

- Completion and satisfaction of all sentences and all conditions of supervision have expired or been completed, including but not limited to, parole, probation, community control, control release, and conditional release;
- No outstanding detainers or pending criminal charges;
- No outstanding pecuniary penalties resulting from a criminal conviction or traffic infraction, including, but not limited to, fines, court costs, restitution, or unpaid costs of supervision;
- No conviction of a capital or life felony;
- Civil rights have not previously been restored in the State of Florida;
- No more than two felony convictions of record;
- The applicant must be a citizen of the United States;
- If convicted in a court other than a Florida state court, the applicant must be a legal resident of Florida; and
- The applicant was not a public official who, during his or her term of office, committed a criminal offense for which he or she was subsequently convicted.

Florida Administrative Code, Title 27, Appendix (Florida Rules of Executive Clemency, Rule 9.A). If determined eligible and if no member of the Board of Executive Clemency objects to the restoration of civil rights, the Clemency Coordinator, pursuant to an executive order signed by the Board, is supposed to issue a certificate restoring the individual's civil rights (without the specific authority to own, possess or use firearms) without a hearing.

The review process typically takes anywhere from 8-12 months to complete, but can be accelerated by the individual if he or she contacts the Board directly and files an application for clemency.

An individual's civil rights are often not automatically restored because he or she fails to meet the requirements under Rule 9A. Such an individual must either petition the Board for restoration or may be precluded altogether from having the rights restored (i.e., those convicted of capital offenses, persons with more than 2 felony convictions, etc.).

Persons convicted of felonies in courts located outside Florida or in federal courts are required to submit an application to the Board in order to have their civil rights restored, and must meet the same criteria for eligibility described above. There is no automatic process for review.

A felon who has lost his or her civil rights is required to re-register to have his or her name restored to the voter registration books. s. 98.093(4), F.S. At that time, the convicted felon must sign an oath essentially swearing to the fact that his or her right to vote has been restored.

According to a 1998 joint report by Human Rights Watch & The Sentencing Project, over 647,000 convicted felons in Florida have lost the right to register or vote (including 436,900 ex-felons no longer incarcerated or subject to supervision). Frank Davies, "Florida No. 1 in Stripping the Vote," *Miami Herald* (10/23/98); Human Rights Watch & The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, at Part III (www.hrw.org/reports98/vote/). This figure placed Florida first among the states in denying the right to vote because of a criminal record. According to these figures, the disenfranchisement hit black males particularly hard, with an estimated one-in-three voting-age, black men being denied the right to vote because of a felony conviction.

The Florida Department of Law Enforcement ("FDLE"), however, placed the number of disenfranchised felons and ex-felons in Florida at 343,675, not 647,000. FDLE, "Counting Florida's Felons & Ex-Felons (Assessment of Florida Statistics cited in 'Losing the Vote' by Human Rights Watch and the Sentencing Project 1998)" (March, 1999) (Office of Research & Planning). Also, FDLE estimated that 17% of voting-age, black males in Florida were disenfranchised in 1996, not one-in-three as reported.

FDLE's review of the Human Rights Watch & Sentencing Project's joint report identified several problems with the Florida data. One problem is that the report's estimate of 647,000 disenfranchised felons and ex-felons included almost 55,000 individuals on probation with a sentence of "adjudication withheld." Such persons do not lose their right to vote under Florida law. Also, the 647,000 figure fails to account for the fact that over 150,000 ex-felons have had their civil rights *restored*. These two discrepancies alone serve to reduce the number of disenfranchised felons and ex-felons in Florida by over 200,000 persons.

Activities of Election Officials

The county canvassing board is composed of the supervisor of elections, a county court judge and the chair of the board of county commissioners. If any of these officials has opposition in the election being canvassed or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, that member is replaced as provided by statute. There are no prohibitions on the political activities of members of the Elections Canvassing Commission.

Election of Supervisors of Elections

Each of Florida's 67 counties has a supervisor of elections whose responsibilities include voter registration and conducting elections. With the exception of Dade County, each of the supervisors of elections is an elected constitutional officer. Most of the supervisors of elections run on a partisan basis; however, a few supervisors are elected on a nonpartisan basis pursuant to county charter. The supervisor of elections in Dade County is appointed by the County Manager.

Statewide Voter Registration Database

The supervisors of elections in the 67 counties are responsible for receiving voter registration applications and maintaining the voter registration records of the county. The Division of Elections maintains a statewide central database of registered voters in the state; however, this system relies on a quarterly “batch” update and is therefore never current.

III. Effect of Proposed Changes:

Primary Elections

Committee Substitute for Senate Bill 1374 eliminates the second primary election. The bill moves the remaining primary to the second Tuesday following the first Monday in September to assure that the primary will not be the day after Labor Day. This date change will allow 8 weeks between the primary and general election, which should provide sufficient time for overseas ballots to be printed, mailed and returned, without the need to count those ballots 10 days following the general election.

Pollworker Recruitment and Training

The bill creates a new section relating to pollworker training and recruitment. The supervisor of elections in each county will be responsible for training inspectors and clerks according to the minimum standards provided by statute. A clerk is required to receive 4 hours of training biannually in off-election years and two hours of quarterly training in election years, with a minimum of 6 hours of total training. Clerks must demonstrate a working knowledge of the laws and procedures relating to voter registration, voting system operation, and balloting and polling-place procedures, in addition to problem-solving and conflict resolution. An inspector is required to receive at least 2 hours of training biannually in off-election years and 1 hour of quarterly training in election years, with a minimum of three hours total training.

The Department of State is required to prescribe a uniform polling place procedures manual, to be made available in each precinct on election day. The manual, to be used as a guide for pollworkers on election day, must provide specific examples of common problems encountered at the polls and provide specific procedures for resolving those problems.

To increase the available pool of pollworkers, the bill authorizes state, county and municipal workers to serve as inspectors and clerks in lieu of their normal work and encourages the supervisors of elections to develop public-private programs with businesses and the local community to recruit skilled pollworkers.

Voter Education

Committee Substitute for Senate Bill 1374 requires the Department of State to adopt rules prescribing minimum standards for voter education in Florida. Each supervisor is required to implement the minimum standards and is authorized to conduct additional voter education as necessary in the county.

The bill provides that the instructions for voters currently posted at the polls include a list of rights and responsibilities afforded to voters. The form of the Voter's Bill of Rights and Voter Responsibilities is provided in the bill. The bill provides that nothing in the instructions to voters posted at the polls shall give rise to a legal cause of action.

Voting Systems

Committee Substitute for Senate Bill 1374 prohibits the use of punchcard voting systems, paper ballots, mechanical lever machines and central count optical scan voting systems in the state, beginning with the 2002 First Primary Election. The bill maintains the authority for each county to determine which voting system will be used in the county, as long as the system has been certified by the Division of Elections and meets the minimum standards required. Each voting system must provide for a precinct count tabulation system.

The committee substitute requires the Division of Elections to review the voting systems certification standards currently in use in the state to ensure that new technologies are appropriately certified in a timely manner.

To address the problems with ballot design highlighted in the 2000 General Election, the bill requires the Department of State to adopt rules prescribing a uniform primary and general election ballot design for each certified voting system. The rules will provide for uniform ballot instructions and directions, individual race layout and overall ballot layout. In addition, a sample ballot depicting the requirements for the ballot must be included. Current provisions of chapter 101 dealing with ballots are revised or repealed to eliminate confusing language.

Finally, the bill requires each supervisor of elections to review ballots with overvotes and undervotes following each general election and report the number of each to the Department of State, along with the likely reasons for the errors. The Department of State is required to prepare a report using the information from the counties that will show the overall error rate for each system, an identification of problems with the ballot design or instructions which may have contributed to voter confusion, and recommendations for correcting any problems identified.

Elections Canvassing Commission

The composition of the Elections Canvassing Commission is changed from the Governor, the Secretary of State and the Director of the Division of Elections to the Governor and two members of the Cabinet.

Contests of Elections

The bill provides minor modifications to the grounds for contesting the results of an election.

Ex-Felons Right to Vote

The committee substitute maintains portions of the current law disqualifying convicted felons from being eligible to register or vote while incarcerated or under supervision (i.e. parole, probation, community control). However, the bill provides that a non-violent ex-felon's right to vote is automatically restored one year after paying all court costs and court-ordered restitution and completing and satisfying all other non-monetary components of the sentences imposed, unless a majority of the members of the Board of Executive Clemency object. For ex-felons who have committed a forcible felony, the right to vote is automatically restored 5 years after satisfying these conditions, if no objection is made. If a majority of the Clemency Board does object, the convicted felon must petition the Board for restoration of the right to register or vote.

Activities of Election Officials

The bill prohibits a member of the Elections Canvassing Commission or a member of the county canvassing board from rendering any post-election decision in his or her official capacity that may affect the outcome of a race in which he or she publicly endorsed or solicited contributions on behalf of a candidate.

Election of Supervisors of Elections

The bill requires the supervisors of elections to be elected on a nonpartisan basis.

Statewide Voter Registration Database

The committee substitute appropriates \$3 million from general revenue to the Department of State to design a real-time statewide voter registration database.

Assistance to Counties

Funds provided in the FY 2001-2002 general appropriations act are appropriated to the Division of Elections to be distributed to the counties to implement the provisions of this act.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of this bill relating to the restoration of voting rights for ex-felons will not take effect until the adoption of a constitutional amendment modifying Art. VI, s. 4, of the State Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:*Primary Elections*

The elimination of the second primary election should result in a cost savings to the counties statewide of approximately \$5 million every two years.

Pollworker Training

The bill requires the supervisors of elections to make the uniform polling place procedures manual available at every precinct in either hard copy or electronic form. There will be associated printing costs to both the supervisors and the Department of State to produce hard copies of the manual. The amount is indeterminate at this time.

Statewide Voter Registration Database

The bill appropriates \$3 million to the Department of State for the design of a real-time statewide voter registration database.

Assistance to Counties

Funds that are appropriated in the FY 2001-2002 general appropriations acts are appropriated to the Division of Elections to be distributed to the counties to implement the provisions of this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
