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HOUSE OF REPRESENTATIVES
PROCEDURAL AND REDISTRICTING COUNCIL
ANALYSIS

BILL #: CS/HB 1921
RELATING TO: Voting Systems
SPONSOR(S): Procedural & Redistricting Council, Committee on Rules, Ethics, & Elections and Representative Goodlette
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) RULES, ETHICS, & ELECTIONS (PRC) YEAS 12 NAYS 2
 - (2) PROCEDURAL AND REDISTRICTING COUNCIL YEAS 16 NAYS 1
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 1921 substantially revises Florida's statutory provisions relating to voting systems and ballot design in response to issues raised during the 2000 presidential election.

Specifically the bill:

- Provides that all elections conducted in the State of Florida must be on electronic or electromechanical voting systems certified by the Department of State;
- Requires the use of precinct count tabulating equipment;
- Decertifies the use of voting systems using punch card ballots;
- Provides standards for logic and accuracy testing of voting systems to apply specifically to precinct tabulation systems;
- Creates a no interest loan program to provide funding assistance to counties required to update their voting equipment;
- Requires the Division of Elections to adopt rules providing for a uniform ballot design for each voting system certified in the State; and
- Requires the Division of Elections to provide a report detailing the progress of counties in upgrading their voting systems.

The bill provides that funding for the implementation of this act shall be directed by the General Appropriations Act. The bill provides three separate effective dates. Provisions creating the loan program, testing of tabulation equipment and ballot design shall be effective on July 1, 2001. Funding under the General Appropriations Act is effective July 1, 2001. Provisions requiring the use of electronic or electromechanical voting systems, removal of other voting systems, and references thereto are effective September 2, 2002.

The Procedural & Redistricting Council adopted five amendments to HB 1921 at its meeting held on April 19, 2001, and the bill was made into a council substitute.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Voting Systems

Currently, all mechanical or electronic or electromechanical voting system used by any of the 67 counties in Florida must be certified by the Department of State before they are available for use in any county. Once certified, counties may purchase the system of choice directly from the vendor.

Florida currently uses five different voting systems. They include:

- Punch card system - 24 counties.
- Optical scan system:
 - Precinct count – 26 counties;
 - Central count – 15 counties.
- Machine lever – 1 county.
- Paper ballots – 1 county.

Each county commission is responsible for the purchase of any voting equipment used within the county. The commission, upon consultation with the supervisor of elections, has the authority to adopt, purchase or otherwise procure certified voting equipment for the county. [s. 101.5604, F.S.].

Many of the larger more populous counties, such as Broward, Palm Beach, and Miami-Dade, use punch card voting systems. The low costs associated with the ballot cards used in these systems make them popular for counties with a large voter contingent. However, as evidenced in this past presidential election, they may be susceptible to larger than average error rates when compared to other systems used in Florida.

One factor associated with higher error rates are ballots that contain an “overvote.” An “overvote” is that situation where a voter has mistakenly marked more than one candidate for the same race. In a survey performed by the *Orlando Sentinel* on November 14, 2000, and updated by the *Collins Center for Public Policy*, counties using a precinct count optical scan voting system had the lowest error rate of the systems used in Florida. Those systems using a central count vote tabulation, where the vote is tabulated outside the precinct in which it was cast, had the highest error rates.¹ A precinct count voter tabulation system allows the voter a “second chance” to correct an “overvote”

¹ *Revitalizing Democracy in Florida*. The Governor’s Task Force on Election Procedures, Standards and Technology. March 1, 2001.

ballot before the ballot is tabulated. In counties where the vote tabulation is not done at the precinct level, the voter has no opportunity to correct an "overvote" ballot and therefore is prone to a higher error rate.

Section 101.5612, F.S., provides for the testing of tabulating equipment used in elections. The supervisor of elections is required to hold two pre-election tests and one post-election test, which are open to the public. The purpose of the testing is to ascertain the accuracy of the vote tabulating equipment. The test, known as a "logic and accuracy" test, consists of a preaudited group of ballots that is tabulated by the equipment and then compared to itself at the conclusion of the official vote tabulation. The first test is to be conducted within 10 days of the ensuing election. The second test is to be conducted immediately before the start of official tabulation of the ballots, and the third test conducted immediately after the completion of the vote count. When originally passed, this statute applied to central count tabulating systems. However, with the advancement of technology and the certification of precinct count voting tabulation systems, the statute has not been updated to reflect testing at the precinct level. Consequently, supervisors of elections are performing the required first pre-election test within 10 days preceding the election, but are not performing the second and final tests on precinct count equipment.

Ballot Design

The 2000 presidential election also highlighted a number of problems with ballot designs. For instance, many ballot designs placed Presidential candidates' names on two columns or pages that, by news media accounts and public testimony, confused a number of voters causing them to over vote their ballots.

C. EFFECT OF PROPOSED CHANGES:

To address the problems with voting machines and ballot design, the bill provides for precinct count tabulating voting systems in each county, a voting system loan program, the decertification of punch card voting systems, and uniform ballot design.

Voting Systems

The bill requires the Department of State to certify only those systems, which provide for the tabulation of votes at the precinct level and do not utilize a punch card ballot. Based on the voting systems currently certified this, in effect, requires the use of optical scan precinct count voting systems in each county. The bill, however, provides flexibility to the Department of State to certify systems such as Direct Recording Electronic devices (DRE), more commonly known as touch screen systems, or any other system that may be available as technology advances. Voting by paper ballot will no longer be allowed in Florida.

The bill also provides a voting system loan program to assist counties in the purchase of a precinct count voting system for use in the next general election. The Department is given rulemaking authority to provide for a no-interest loan to any county in need of funding for the purchase of an upgraded voting system. The Department is required to establish criteria to determine priority based funding for certain counties. Any county experiencing a financial emergency, as provided in statute, may petition the Governor for the suspension of any payments due under the terms of the loan.

To minimize the effects of moving to precinct count voting systems, those provisions in the bill affecting such change will be effective September 2, 2002. The remaining provisions, relating to the loan program, testing of tabulating equipment, and ballot design are effective July 1, 2001. This

allows the necessary time needed to purchase new systems for those counties required to upgrade; provides the Department of State time to set up the loan program and administer any needed loans; and provides local communities the flexibility to conduct any elections, which may be upcoming and scheduled.

Ballot Design

The bill also 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.

D. SECTION-BY-SECTION ANALYSIS:

- Section 1. Amends s. 97.021, F.S., relating to the definition of “absent elector”, “ballot” or “official ballot”, “paper ballots”, “electronic or electromechanical devise”, “voting booth” or “booth” and “voting system”, to remove references to a “voting machine” or voting by “paper ballot” to conform. This section also deletes the definition of “voting machines” to conform.
- Section 2. Amends s. 98.471, F.S., relating to the use of precinct registers at the polling place, to remove cross-references to conform.
- Section 3. Amends s. 100.071, F.S., relating to grouping of candidates on primary ballots, to remove references to “voting machines” to conform.
- Section 4. Amends s. 100.361, F.S., relating to municipal recall to remove references to voting machines, to conform.
- Section 5. Amends s. 101.151, F.S., relating to specifications of ballots for primary and general elections. This section is amended for clarity and applies these specifications to ballots for all elections regardless of whether it is a primary or general election. Provides the Department of State with rulemaking authority to prescribe uniform ballots for each voting system it certifies.
- Section 6. Amends s. 101.21, F.S., relating to the payment of ballots used in connection with a municipal election, to remove language relating to voting machines to conform.
- Section 7. Amends s. 101.24, F.S., relating to ballot boxes to remove references to voting machines, to conform.
- Section 8. Amends s. 101.292, F.S., relating to the purchase of voting equipment, to conform.
- Section 9. Amends s. 101.34, F.S., providing the Supervisor of Elections as the custodian of voting systems. Removes reference to voting machines, to conform.
- Section 10. Amends s. 101.341, F.S., relating to the prohibition of a custodian or deputy custodian of “voting machines” from accepting secondary employment or consideration from a business entity that is associated with the sale, preparation, maintenance, or repair of

voting equipment. The amended section expands this prohibition to custodians of a voting system as opposed to the more narrow distinction of a voting machine.

- Section 11. Amends s. 101.43, F.S., relating to the use of substitute ballots during times when official ballots have not arrived. The section is amended to remove references to voting machines to conform.
- Section 12. Amends s. 101.49, F.S., relating to the oath required of a voter whose signature differs from that on the registration book. This section makes clarifying changes and removes reference to "voting machines" to conform.
- Section 13. Amends s. 101.5603, F.S., providing for touch screen systems as an electronic or electromechanical voting system as defined and deleting references to the piercing of ballots for purposes of marking a ballot to conform.
- Section 14. Amends s. 101.5604, F.S., to require counties to use precinct tabulation voting systems.
- Section 15. Amends s. 101.5606, F.S., to provide that electronic or electromechanical voting systems may not be certified by the Department of State unless the system:
- Rejects a blank ballot;
 - Is a precinct count tabulation system;
 - Does not use a punch card ballot.
- Section 16. Creates s. 101.56062, F.S., to provide for a voting system loan program. The no-interest loan program is to be administered by the Department of State to provide financial assistance to counties in need of funding for the purchase of upgraded voting systems. The Department is given rulemaking authority to make and administer the loan program and to provide criteria to determine priority based funding for counties. Counties, which experience a financial emergency, may petition the Governor for the suspension of any payments due under the terms of the loan.
- Section 17. Amends s. 101.5607, F.S., relating to the requirement that the Department of State maintain voting system information manuals and software, to remove a cross reference to conform.
- Section 18. Amends s. 101.5608, F.S., to provide a process when a vote tabulation device has rejected a ballot.
- Section 19. Amends s. 101.5612, F.S., to provide standards for logic and accuracy testing of electronic and electromechanical voting systems for precinct tabulating equipment.
- Section 20. Amends s. 101.5614, F.S., relating to the canvassing of returns. This section is amended to remove provisions relating to the tabulation of votes at a central or regional site and instead, allow the Department of State authority to adopt rules for providing the necessary safeguards.
- Section 21. Amends s. 101.58, F.S., relating to the observation of an election by a deputy appointed by the Department of State, to remove use of the term voting system and equipment in lieu of references to voting machines to conform.

- Section 22. Amends s. 101.64, F.S., relating to the Voter's Certificate found on an absentee ballot to amend the "for cause" reasons for voting by absentee. This change reflects the change from "voting machines" to "voting systems" found in the bill to conform.
- Section 23. Amends s. 101.71, F.S., relating to the location of a polling place, to remove references to voting machines to conform.
- Section 24. Amends s. 101.75, F.S., providing municipalities authority to move a scheduled election if it conflicts with one being held by the county, to remove the term "voting machines" and use "voting systems" to conform.
- Section 25. Amends s. 102.012, F.S., relating to inspectors and clerks conducting elections, to provide the time the election board must arrive at the election precinct to set-up for the election and remove a reference to voting machines to conform.
- Section 26. Amends s. 102.021, F.S., relating to the compensation of inspectors, clerks, and deputy sheriffs, to change a cross-reference to conform.
- Section 27. Amends s. 102.141, F.S., relating to county canvassing boards, to remove references to counters on voting machines to conform.
- Section 28. Amends s. 102.166, F.S., relating to the protest of an election, to remove language relating to voting machines to conform.
- Section 29. Amends s. 103.101 to remove the ballot design depicted in statute regarding Presidential Preference Primaries.
- Section 30. Amends s. 104.30, F.S., relating to the unlawful possession and tampering of voting equipment, to remove references to voting machines and use the terms "system", "equipment", or "component" to conform.
- Section 31. Amends s. 138.05, F.S., relating to the format of a ballot used by the clerk of the circuit court, to remove language relating to voting machines to conform.
- Section 32. Repealing ss. 101.141, 101.181, 101.191, and 101.5609, F.S., relating to ballot form, effective July 1, 2001.
- Section 33. Repealing ss. 101.011, 101.27, 101.28, 101.29, 101.32, 101.33, 101.35, 101.36, 101.37, 101.38, 101.39, 101.40, 101.445, 101.45, 101.46, 101.47, 101.54, 101.55, and 101.56, F.S., relating to voting machines and paper ballots.
- Section 34. Requires the Division of Elections to provide a report by November 15, 2001, detailing the progress of counties in upgrading voting systems.
- Section 35. Providing funding be directed by the 2001-2002 General Appropriations Act.
- Section 36. Providing effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

The bill creates a loan program to be administered by the Department of State to assist counties with the purchase of voting systems. To that extent, this bill will have a fiscal impact on the State. The General Appropriations Act directs funding for the loan program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may have an economic impact to the extent the private sector provides printing, parts, or maintenance to voting systems.

D. FISCAL COMMENTS:

The fiscal impact on counties who procure loans under the provision of the Voting System Loan Program is indeterminate due to various factors including the individual size and term of the loan secured and the ability of the individual counties to service the debt.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates of Article VII, section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Election laws are exempt from the mandates of Article VII, section 18 of the Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Election laws are exempt from the mandates of Article VII, section 18 of the Florida Constitution.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to the Division of Elections in s. 101.151, F.S., relating to ballot design and s.101.56062, F.S., relating to the Voting System Loan Program.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Procedural & Redistricting Council adopted five amendments to HB 1921 at its meeting held on April 19, 2001, and the bill was made into a council substitute:

Amendment #1: Conforming amendment to remove language relating to ballot design in municipal recall elections.

Amendment #2: Clarifies that a voting system must be able to produce vote totals in electronic format in addition to printed format as currently provided, in order to be certified.

Amendment # 3: Provides a process under s. 101.5608, F.S., for the rejection of a ballot by a vote tabulation device.

Amendment #4: Removes references to dedicated teleprocessing lines for transmitting ballot results.

Amendment #5: Requires the Division of Elections to provide a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 15, 2001, regarding the progress counties have made towards upgrading their respective voting systems.

VI. SIGNATURES:

COMMITTEE ON RULES, ETHICS, & ELECTIONS:

Prepared by:

R. Michael Paredes

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AS REVISED BY THE PROCEDURAL AND REDISTRICTING COUNCIL:

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