

# 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 618

SPONSOR: Committee on Ethics and Elections

SUBJECT: Election Administration

DATE: January 24, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	Favorable/CS
2.			AGG	
3.			AP	
4.				
5.				
6.				

## I. Summary:

Committee Substitute for Senate Bill 618 (“the Committee Substitute”) contains primarily technical revisions to a number of election administration provisions adopted in the Florida Election Reform Act of 2001.

Some of the more important changes in the committee substitute are as follows:

- Adopts procedures for poll workers to affirmatively confirm a person’s registration status if the person’s name is not on the precinct register, to address U.S. Department of Justice preclearance concerns.
- Insures that any person whose name is not on the precinct register is entitled to vote a provisional ballot even if the poll worker confirms that the person is not registered in the county, but the person maintains otherwise.
- Modifies the offices on the ballot to account for the 2003 Cabinet reorganization --- adding the office of the Chief Financial Officer and removing the offices of Secretary of State, Comptroller, Treasurer, and Commissioner of Education.
- Modifies the dates for canvassing boards to report unofficial election returns to the Department of State, to allow more time for the counting of provisional ballots.
- Eliminates a requirement that an instructional voting model be made available to voters at the precinct, in favor of instruction by poll workers.
- Modifies the circumstances and the manner under which a defective absentee ballot must be duplicated.
- Removes a requirement that supervisors provide one voting booth for each 125 registered voters in the county.
- Moves the qualifying date for judicial candidates from July back to May.

The Committee Substitute amends sections: 97.021, 97.0555, 98.045, 98.0977, 98.0979, 101.031, 101.048, 101.151, 101.5601, 101.5606, 101.5608, 101.5611, 101.5612, 101.5614, 101.595, 101.68, 101.69, 102.014, 102.141, 102.166, and 105.031 of the Florida Statutes, and Section 46, chapter 2001-40, of the Laws of Florida. The Committee Substitute also repeals sections 101.22, 101.5615, and 101.72, Florida Statutes, and creates sections 101.2512 and 101.475, Florida Statutes.

## II. Present Situation:

The Florida Election Reform Act of 2001 (Ch. 00-40, Laws of Fla.) (“the Act”), adopted in the wake of the 2000 U.S. Presidential election, fundamentally changed the way elections are administered in the State of Florida. It has been widely heralded as the most significant piece of election legislation ever adopted in Florida, and a model for other state legislatures seeking to enact serious election reforms.

## III. Effect of Proposed Changes:

The Committee Substitute makes a number of technical changes to the Act, and clarifies, modifies, or amends language to insure a smooth transition to the new administrative procedures for the 2002 elections.

Section 1. Amends s. 97.021, F.S. Conforming; revises the general definition of provisional ballot to harmonize with section 10, moving the substantive criteria for issuing a provisional ballot into a newly-created section of Florida law.

Section 2. Amends s. 97.0555, F.S. The Act provides that individuals in the military or overseas citizens, and their accompanying family members, may register to vote until 5 p.m. on the Friday before the election. This is an exception to the 29-day, book-closing deadline. The Committee Substitute modifies this exemption to require persons registering late to do so *in the office of the supervisor*, since mail registrations may not reach the supervisor in time for processing.

Section 3. Amends s. 98.045, F.S. Adds a missing cross-reference involving the new statewide voter registration database.

Section 4. Amends s. 98.0977, F.S. The Act creates a statewide voter registration database, which has yet to be precleared by the U.S. Justice Department. The Committee Substitute replaces a statutory reference to the “Florida Association of Court Clerks” with the “Department of State,” thereby insuring that state and local government agencies (such as FDLE, county court clerks, etc.) provide information and data access to the *Department* for purposes of operation of the database.

Section 5. Amends s. 98.0979, F.S. The Act makes information in the statewide voter registration database available to the public to the same extent as county voter registration records. CS/SB 618 provides that a request for non-confidential information in *multicounty* or *statewide* races must be made to the Division of Elections; requests in single county races can be made to the

local supervisor of elections. Supervisors are only required to provide information about their own county.

Section 6. Amends s. 101.031, F.S. The Act adopts a Voter's Bill of Rights and Responsibilities to be posted at the polls. The Committee Substitute clarifies language in the Voter's Bill of Rights portion, identifying the voter's right to cast a ballot if he or she is in line when the polls *in that county* are closing.

Section 7. Amends s. 101.048, F.S. The Act adopts the use of provisional ballots at the polls for certain persons whose eligibility to vote is in question. However, in order for the vote to count, the person must have cast his or her provisional ballot in the proper precinct. The Committee Substitute clarifies the term "precinct" in connection with canvassing board procedures relating to provisional ballots, and modifies the Provisional Ballot Voter's Certificate to alert the voter to criminal penalties for committing fraud in an election. It also further details the precise procedure for filling out a provisional ballot.

Section 8. Amends s. 101.151, F.S. Modifies the offices listed on the ballot to take account of the cabinet reorganization effective in January, 2003; eliminates the offices of Secretary of State, Comptroller, Treasurer, and Commissioner of Education, and adds the office of Chief Financial Officer; removes and clarifies language to insure that the order of offices applies to both primary and general election ballots, as applicable; removes a duplicative provision in Florida law concerning presidential electors of write-in U.S. Presidential candidates.

Section 9. Creates s. 101.2512, F.S. The Act combines several sections of Florida law relating to the form and order of offices on primary and general election ballots. The Committee Substitute essentially re-adopts a provision of law inadvertently repealed in the Election Reform Act [s. 101.251, F.S. (2000)], mandating the printing of certain candidates names on general election ballots.

Section 10. Creates s. 101.475, F.S. The Act clearly provides that a person is issued a provisional ballot if the poll worker cannot determine his or her registration status (i.e. cannot get through to the supervisor's office by telephone, etc.). The Act, however, is silent on whether the poll worker issues a provisional ballot to a person at the polls even if the poll worker determines that the person is not registered to vote in the county. About two-thirds of the supervisors responding to a Senate survey on this issue indicated that they would. The Committee Substitute codifies the supervisors' interpretation. It requires a poll worker to issue a provisional ballot if the person maintains, despite being told that he or she is not registered, that he or she is entitled to vote.

In a related matter, the U.S. Department of Justice precleared the provisional ballot sections of the Act based upon a representation by the State that the practice at the polls for persons not on the precinct register is for poll workers to try to contact the supervisor's office or access a master list of county registrants. The Committee Substitute codifies this practice of requiring the poll worker to make a phone call or access a master list of county voter registrants, to insure uniformity and compliance with the preclearance decision. If the poll worker confirms that the person is registered and in the proper precinct, he or she is permitted to vote; if registered but not in the proper precinct, the person is directed to their correct precinct; if unable to verify the

person's registration status, he or she is issued a provisional ballot; and, if the poll worker determines the person is not registered in the county but the person maintains he or she is eligible to vote, the poll worker issues a provisional ballot.

Section 11. Amends s. 101.5601, F.S. Technical; changes a cross-reference.

Section 12. Effective September 2, 2002, amends s. 101.5606, F.S., as amended by s. 18, ch. 2001-40, Laws of Fla. Clarifying language; adopts correct sentence structure relating to electronic voting systems certifications.

Section 13. Amends s. 101.5608, F.S. Conforms to Section 14 of the Committee Substitute. CS/SB 618 eliminates the need for a poll worker to illustrate voting on an instructional model after a paper ballot is rejected by the automatic tabulating equipment, in favor of requiring the poll worker to provide instruction to the voter.

Section 14. Amends s. 101.5611, F.S. The Act eliminates the following voting systems: hand-counted paper ballots, mechanical lever machines, and central-count optical scan systems. Consequently, forty-one counties are required to upgrade their equipment by September 2, 2002, many choosing to purchase Direct Recording Equipment, ("DRE" or "touch screen"). The Committee Substitute eliminates the need for poll workers to provide instruction to voters at the polling place using an *instructional model*, in favor of providing instruction on the manner of voting and proper method of casting a ballot on the specific voting system in use. Requiring an instructional model at each precinct could increase the overall cost of touch screen systems by \$5,000-\$8,000, per precinct.

Section 15. Amends s. 101.5612, F.S. The Act adopts detailed testing procedures for automatic tabulating equipment, based on recommendations by the Division. CS/SB 618 modifies the random-sample testing requirements for different voting systems, reducing the number of touch screens (DREs) to be tested from 5 percent to 2 percent, or 10 devices, whichever is greater.

Section 16. Amends s. 101.5614, F.S. The Act provides that damaged or defective absentee ballots that need to be duplicated must include all votes where there is a "clear indication on the ballot that the voter has made a definite choice." This section of the Committee Substitute clarifies that in applying this new statutory standard, canvassing boards must utilize the division rule (to be promulgated) for determining what constitutes a valid vote during the *manual recount process*. This will insure more consistent treatment of ballots. The section also clarifies that any elections officer or employee releasing results of the election prior to the closing of the polls *in that county* is guilty of a third degree felony.

Section 17. Effective September 2, 2002, amends s. 101.5614, F.S., as amended by s. 22, ch. 2001-40, Laws of Fla. Technical; deletes unnecessary words and phrases, given the State mandate that all voting systems be electronic or electromechanical.

Section 18. Amends s. 101.595, F.S. The Act requires supervisors of elections to provide the Department of State with a voter error report following each general election. The Committee Substitute clarifies that these reports must include the total number of overvotes and undervotes in the first race on the ballot.

Section 19. Amends s. 101.68, F.S. The Act makes it a third degree felony for an election officer or employee to release the results of the absentee ballot canvass prior to the closing of the polls on election day. The Committee Substitute clarifies that this restriction applies to the closing of the polls *in the county in question*.

Section 20. Amends s. 101.69, F.S. The Act provides that any person who shows up at the polls to vote who has been issued an absentee ballot, and who fails to return the absentee ballot at that time, may vote a *provisional* ballot. To cut down on the need to issue provisional ballots, CS/SB 618 adopts a confirmation procedure for poll workers faced with these circumstances. It requires the poll worker to confirm with the supervisor whether the absentee ballot was received, and only if a determination cannot be made or the voter insists that he or she has not returned the absentee ballot does the poll worker issue a provisional ballot.

Section 21. Amends s. 102.014, F.S. The Act adopts specific training requirements for clerks and inspectors working at the polls --- a certain number of hours of training by a certain deadline. CS/SB 618 modifies the poll worker training schedule. It maintains or increases the *total number* of training hours for clerks and inspectors, depending upon the number of elections in a given year (primary election, special primary election, general election, special election, or presidential preference primary). The Committee Substitute also changes the timing of the training.

Section 22. Amends s. 102.141, F.S. The Election Reform Act is silent on when the county canvassing boards must submit provisional ballot returns. This leaves open the possibility that some counties could send complete or partial provisional ballot returns with their first or second set of unofficial results while others could wait until the final certification deadline (7 days for the primary; 11 days for the general election). In order to foster uniformity, CS/SB 618 moves back the date for county canvassing boards to submit their first set of unofficial election returns to the Department of State, from noon of the day after the election to noon of the *second* day after the election --- and prescribes that all *provisional* ballots be included in these initial returns. To conform, the date for canvassing boards to file a second unofficial set of unofficial returns (in the event of a machine recount) has also been moved back 24 hours, from noon of the second day following the election until noon of the third day.

CS/SB 618 also takes account of the possibility that paper ballots could be physically damaged subsequent to being cast by the voter but prior to a machine recount. It provides that if the automatic tabulating equipment cannot read a physically-damaged ballot during a machine recount, a true duplicate of the ballot shall be made pursuant to the procedures for physically-damaged absentee ballots.

Section 23. Amends s. 102.166, F.S. Conforms to section 22 of the Committee Substitute; moves the deadline for requesting a manual recount back 24 hours, from 5 p.m. of the second day after the election to 5 p.m. of the third day, to account for the delay in the reporting of results by the county canvassing boards authorized in section 22 of the Committee Substitute.

The section also provides that all previously duplicated ballots be compared to the original ballot during the manual recount phase to insure the correctness of the duplicate (moved from s. 101.5615, F.S., repealed).

Section 24. Amends s. 46 of Ch. 2001-40, Laws of Fla. The Act eliminates the second primary for the 2002 election cycle only. For 2002 statewide candidates receiving public financing, this section adds the campaign finance reporting dates for the primary election inadvertently omitted from the Act.

Section 25. Amends s. 105.031, F.S. Judicial candidates currently qualify in July, 46-50 days before the first primary election. Section 105.031(1), F.S. The Committee Substitute moves the qualifying period for judicial candidates from July to May, 116-120 days before the first primary (the qualifying period for federal candidates).

Section 26. Repeals ss. 101.22, 101.5615, and 101.72, F.S. Removes unnecessary provisions relating to voting paper ballots and recounts. With respect to voting booths (s. 101.72, F.S.), the repeal eliminates a requirement that the supervisors of elections provide at least one voting booth or compartment per 125 registered voters in the county. Counties will have the flexibility to acquire the number of voting booths/machines it deems necessary. In counties adopting touch screen systems, this would allow supervisors to allocate one machine per 250 *registered voters*--- the statutory minimum for the old lever machines before the Election Reform Act did away with them.

Section 27. Except as otherwise provided, the Committee Substitute takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Eliminating the requirement that supervisors of elections provide one voting booth or compartment for every 125 registered voters should provide an indeterminate cost savings, particularly in counties using touch screen (DRE) technology that can likely service about 250 registered voters.

Eliminating the requirement that counties using touch screen systems provide an instructional model in favor of instruction by the poll worker may save \$5,000-\$8,000 per precinct.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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