

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 Committee on Ethics and Elections

BILL: SB 268

INTRODUCER: Senator Baxley

SUBJECT: Voting Methods

DATE: January 29, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 268, beginning in 2020, mandates that voters with disabilities cast a ballot on a voting system that produces a voter verifiable paper trail (“VVPT”) for canvassing and recount purposes. In the 2018 election cycle, voters with disabilities in four counties — Glades, Jefferson, Miami-Dade, and Palm Beach — still cast ballots on older Direct Recording Equipment (“DRE”) touchscreen voting machines that only recorded the votes *electronically* (no paper).

SB 268 also authorizes the *general* use of such VVPT touchscreen systems by *all* voters, not just those with disabilities. This addresses ongoing concerns of the disability community to be able to cast ballots in the same manner as other voters, and will allow for more cost-effective use of the machines that otherwise would sit idle in many precincts for much of election day.

The bill takes effect upon becoming a law.

II. Present Situation:

A “voting system” is a method of casting and processing votes that consists of electromechanical components and, in many cases, utilizes physical mark-sense ballots. The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system’s operation.¹

The State Division of Elections approves the voting system used in most Florida elections. The Division tests the reliability of both the hardware and software components to make sure that they meet the standards set out in law and rules. Florida’s certification process is among the most comprehensive in the nation.

¹ Section 97.021(45), F.S.

The law currently requires all voting by electors *without* disabilities to be done by marksense ballots that can be electronically tabulated.² Since July 1, 2008, however, counties have been allowed to use touchscreen voting equipment for voters *with* disabilities that tabulates votes electronically, without a VVPAT; *ONLY* voters with disabilities may cast ballots on these accessible voting systems.³ At least one piece of accessible voting equipment must be available at each precinct,⁴ which often sits idle much of the day.

Since authorizing this “dual” voting requirement in 2007, the Legislature has three times delayed targeted statutory implementation dates (to 2012,⁵ 2016,⁶ and 2020⁷), to allow election technology to catch-up with the ability to allow voters with disabilities to cast an independent ballot that is:

- Recorded on paper, for canvassing and recount purposes; and;
- Cast in the same manner as voters without disabilities.

Four Florida counties — Glades, Jefferson, Miami-Dade, and Palm Beach — are still using non-VVPAT legacy systems.⁸ The remaining 63 counties have purchased touchscreen equipment for voters with disabilities that produces a scannable VVPAT, though the printed ballot/ballot card varies in format.⁹

There are currently three state-certified systems for voters with disabilities:

- ES&S AutoMARK¹⁰ (22 counties)
- Dominion ImageCast Evolution¹¹ (16 counties)
- ES&S ExpressVote¹² (25 counties)

² Section 101.56075(1), F.S.

³ Section 101.56075(2), F.S.

⁴ Section 101.56065(2), F.S.

⁵ Ch. 2007-30, s.6, LAWS OF FLA. (codified at s. 101.56075(3), F.S. [2007]).

⁶ Ch. 2010-167, s.5, LAWS OF FLA. (codified at s. 101.56075(3), F.S.[2010]).

⁷ Ch. 2013-57, s.9, LAWS OF FLA. (codified at s. 101.56075(3), F.S. (current)).

⁸ See Fla. Div. of Elections, *2018 Voting Systems – Website Publication* (Sept. 14, 2018 update), available at: <https://dos.myflorida.com/media/695246/voting-systems-in-use-by-county.pdf> (last accessed Jan. 17, 2019)[hereinafter, DOS, *2018 Voting Systems*]. Mike Ertel, Florida’s newly appointed Secretary of State, committed to decertifying Palm Beach County’s vote tabulation system for other reasons by June 1, 2019. Letter from SOS Mike Ertel to Gov. Ron DeSantis (January 17, 2019) (recommending suspension of Palm Beach Co. Supervisor Susan Bucher).

⁹ DOS, *2018 Voting Systems*.

¹⁰ This system marks the same type of optical scan ballot design familiar to voters, effectively serving as an electronic “pen.” Verified Voting, ES&S AutoMARK Description and Instructional Video, <https://www.verifiedvoting.org/resources/voting-equipment/ess/automark/> (last accessed Jan. 2, 2018)[hereinafter, *AutoMARK Web Page*].

¹¹ ImageCast Evolution is a second-generation system similar to AutoMARK in that it marks a typical optical scan ballot using the voter’s electronic selections. Evolution goes a step further, however, by *automatically* forwarding the marked ballot into the tabulator — especially helpful for voters with certain physical limitations.

¹² The ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voter’s choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voter’s choice in each contest. See Verified Voting, ES&S ExpressVote Description and Instructional Video, <https://www.verifiedvoting.org/resources/voting-equipment/ess/expressvote/> (last accessed Jan. 2, 2018)[hereinafter, *ExpressVote Web Page*].

Generally, these systems “mark” a scannable paper ballot — a voter-verifiable paper trail that can be used for canvassing and recount purposes.¹³ AutoMARK and Evolution produce the familiar optical-scan ballot style; ExpressVote produces a ballot card with multiple bar codes at the top corresponding to the voters’ choices. Underneath the bar codes, the card contains the offices or amendments on the ballot, along with the voters’ choices in each contest.

These systems prevent an elector from “overvoting” (selecting more than one candidate per race) and warn or prompt the voter if he or she “undervotes” (completely skips a race). There is a summary review screen at the end of the selection process to allow a voter to go back and make or change a selection.¹⁴ After the ballot is printed on an AutoMARK or ExpressVote system, voters are able to review the ballot for accuracy before depositing it themselves in an optical scanner; the Evolution system automatically deposits the optical-scan ballot into the ballot box for the voter.

III. Effect of Proposed Changes:

SB 268 provides that, for the purpose of designating ballot selections, all voting must be done by marksense ballot using a marking device (i.e., ink pen) or voter interface device (i.e., touchscreen) that produces a voter verified paper trail. By 2020, *all* voters, those with disabilities and those without, will be able to cast *paper ballots* on the *same* certified voting equipment — thereby fulfilling a promise that the Legislature made to the disability community back in 2007.

The bill effectively puts the ExpressVote ballot card on a par with the more familiar optical scan ballot for purposes of canvassing and recounts. This will save millions of dollars in equipment upgrades in the 25 counties currently using ExpressVote for voters with disabilities. In order to meet the 2020 disability implementation deadline, however, the four Florida counties still recording votes on legacy DRE, non-VVPAT touchscreen systems— Glades, Jefferson, Miami-Dade, and Palm Beach — will have to purchase at least one new piece of disability voting equipment per polling place.

Also, allowing *any* elector, not just voters with disabilities, to use touchscreen VVPAT systems will mean fewer idle machines at the polls and possibly shorter lines at certain polling places.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹³ About 2/3 of Florida’s counties (42/67) currently use either the ES&S AutoMark or ExpressVote systems for disabled voters. See Fla. Div. of Elections, *Accessible Voting Equipment by County* (updated Jan. 4, 2018), available at: http://www.flsenate.gov/Media/Videoplayer?EventID=2443575804_2018011067 (last accessed Jan. 10, 2018).

¹⁴ Voters can return to a contest selection *for any reason*, not just because they left a race blank, or undervoted, and change a selection.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local supervisors of elections typically purchase voting equipment using county funds or, occasionally, federal grant money. There is no anticipated impact on state revenues or expenditures.

VI. Technical Deficiencies:

SB 268 maintains a 2020 implementation date relating to disability voting systems *in the body of the Florida Statutes*. This temporal requirement should be moved via technical amendment into the effective date section of the bill, along with conforming changes that eliminate future obsolete and potentially contradictory language in subsections (1) and (2).

VII. Related Issues:

This bill concept (albeit with a different approach and language) passed the full Senate in 2017.¹⁵ It also *initially* passed the Senate Ethics and Elections Committee and Community Affairs Committee in 2018, but ultimately died upon re-referral to Ethics and Elections after picking-up an unfavorable, incidental amendment.¹⁶

¹⁵ See SB 1160 (2017); CS/CS HB 1325 (2017).

¹⁶ See SB 964 (2018); CS/SB 964 (2018), and related history at:

<http://www.flsenate.gov/Session/Bill/2018/00964/?Tab=BillHistory> (last visited January 16, 2019).

VIII. Statutes Affected:

This bill substantially amends section 101.56075 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.
