

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 1, 1998 Revised: 4/21/98 _____

Subject: Election Protests and Contests

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Bradshaw</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>JU</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

Senate Bill 2072 revises the time frames for filing an election protest, requesting a manual recount and filing an election contest to make the tolling of the time contingent on when the results are certified, rather than when the canvassing board adjourns.

The bill eliminates protests of election returns in circuit court and merges the broader provisions of this section into the section dealing with election contests. The bill specifies that a contestant is entitled to an immediate hearing and it authorizes the circuit judge to fashion any orders necessary to investigate, examine, or check each allegation and to prevent or correct any wrong.

Senate Bill 2072 specifies the grounds for contesting an election and specifies conditions under which a statement of the grounds of a contest may not be rejected or dismissed.

The bill codifies that the jurisdiction to hear a contest of the election of a member to either house of the Legislature at any general or special election is vested in the applicable house in accordance with its rules.

This bill substantially amends sections 102.166, 102.167 and 102.168, and creates section 102.171 of the Florida Statutes.

II. Present Situation:

There are several generally used methods for disputing the results of an election. Section 102.166, F.S., provides for two protests of election returns, one to the canvassing board and the other to the circuit court. Additionally, s. 102.168, F.S., provides for a contest of election to be filed in circuit court. In addition to these actions, a candidate or committee may request the county canvassing board to conduct a manual recount. Finally, Art. II, s. 2 of the State Constitution

provides that “[e]ach house shall be the sole judge of the qualifications, elections, and returns of its members.” Therefore, any challenge to a general election for state legislative office is brought according to the rules of the respective house.

Manual Recounts

Under s. 102.166(4)(a), F.S., any candidate whose name appeared on the ballot, any political committee supporting or opposing an issue on the ballot, or any political party whose candidates’ names appeared on the ballot may file a written request for a manual recount. The request is made to the county canvassing board prior to the time the canvassing board adjourns or within 72 hours after midnight of the date of the election, which occurs later. The request must state the reason a manual recount is being requested. The canvassing board has sole discretion on whether to grant a request for a manual recount.

If a manual recount is authorized, at least three precincts and at least one percent of the total votes cast for the candidate or issue being recounted are selected. The person requesting the manual recount selects three precincts to be recounted, and if other precincts are recounted, the canvassing board selects those precincts. If the manual recount indicates an error in the vote tabulation that could affect the outcome of the election, the county canvassing board has the following options: correct the error and recount the remaining precincts with the vote tabulation system; request the Department of State to verify the tabulation software; or manually recount all ballots.

Protest of Election Returns to County Canvassing Board

An elector or candidate who believes the returns of an election are *erroneous* may file a sworn, written protest to the county canvassing board. The protest must be filed prior to the time the canvassing board adjourns or within 5 days after midnight of the date of the election, whichever occurs last. Upon receipt of a written protest, the action the canvassing board takes is dependent upon the type of voting equipment used. When paper ballots are used, the canvassing board must examine the tabulation of the paper ballots. When voting machines are used, the canvassing board must examine the counters on the machines of nonprinter machines, or the printer-pac on printer machines. In counties where electronic or electromechanical voting systems are used, the canvassing board must examine the precinct records and election returns. If clerical errors are found, the canvassing board corrects those errors. If there is a discrepancy which could affect the outcome of the election, the canvassing board is authorized to recount the ballots on the automatic tabulating equipment.

Protest of Election Returns to Circuit Judge

The second method of protest allows any candidate or elector to protest the returns based on charges of *fraud* occurring in either the returns of the election or the practices related to the election. The protest must be filed prior to the time the county canvassing board adjourns or within 5 days after midnight of the date of the election, whichever last occurs. The candidate or

elector filing the protest is entitled to an immediate hearing or to any appropriate relief. The circuit judge is given the authority “to fashion such orders as he or she may deem necessary to ensure that such allegation is investigated, examined, or checked; to prevent or correct such fraud; or to provide any relief appropriate under such circumstances.” [s. 102.166(11)(b), F.S.]

Contest of Election

Under s. 102.168, F.S., a certification of election or nomination of any person to office may be contested in circuit court by an unsuccessful candidate for such office. In addition, taxpayers have standing to contest the outcome of any referendum election. Contests must be filed with the clerk of the appropriate circuit court, together with filing fees, within ten days after midnight of the date the last county canvassing board empowered to canvass the return adjourns.

A contestant is required to set forth the grounds on which the contestant intends to establish his or her right to the office or set aside the result of the election on a referendum. However, the possible grounds for contesting an election are not enumerated. The Florida Supreme Court has held that in addition to fraud, gross negligence and intentional wrongdoing are also valid grounds for successfully contesting an election. *Boardman v. Esteve*, 323 so.2d 259 (Fla. 1976), *cert. denied*, 425 U.S. 967, 96 S.Ct. 2162, 48 L.Ed.2d 791. In addition, the Court has held that a contestant does not have to prove that he or she would have won the election if it were not for tainted ballots. *Bolden v. Potter*, 452 So.2d 564 (Fla. 1984). In *Bolden*, the Court ruled that if substantial fraudulent practices are clearly shown to have occurred, the election must be declared void, for a “[f]ailure to do so will cause the electorate to lose confidence in the electoral process. . . .”

III. Effect of Proposed Changes:

Presently the time frames for requesting a manual recount, filing an election protest and filing an election contest are contingent upon when the canvassing board “adjourns.” If an election is contested or protested, it is feasible that the county canvassing board would need to meet after the results have been certified. By using the word “adjourn,” the time frame for bringing an action may be opened up again inadvertently. The bill seeks to alleviate this potential problem by revising the time frame to eliminate the word “adjourns.”

Senate Bill 2072 provides that a protest of election returns must be filed with the canvassing board prior to the time the canvassing board certifies the results for the office being protested, or within five days after midnight of the date the election is held, whichever occurs last. Similarly, the bill requires that a request for a manual recount must be filed with the canvassing board prior to the time the canvassing board certifies the results for the office being protested or within 72 hours after midnight of the date the election was held, whichever occurs later. Contests must be filed with the clerk of the circuit court within 10 days after midnight of the date the last county canvassing board empowered to canvass the returns certifies the results of the election being contested, or within 5 days after midnight of the date the last county canvassing board

empowered to canvass the returns certifies the results of the particular election following a protest, whichever occurs later.

In an effort to streamline the process by which elections are challenged, the bill eliminates the procedure by which protests of election returns are brought in circuit court and merges the broader provision of the form of action into s. 102.168, F.S., dealing with contests of elections. It is important to note that qualified electors (other than candidates) who are now able to protest an election return in circuit court would not be able to do so under this proposal. Contests are limited to unsuccessful candidates and taxpayers, who are limited to challenging the results of a referendum election. Qualified electors would still be able to file a protest of the returns with the local canvassing board.

Senate Bill 2072 sets forth the grounds for contesting an election, as follows:

- Misconduct, fraud, or corruption on the part of an election official or member of the canvassing board sufficient to change or place in doubt the result of the election.
- Ineligibility of the successful candidate for the nomination or office in dispute at the time of the election.
- Receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election.
- Proof that any elector, election official, or canvassing board member was given or offered a bribe or reward for the purpose of procuring the successful candidate's nomination or election or determining the result on any referendum.
- Any other cause or allegation which, if sustained, would show that a person other than the successful candidate was the person duly nominated or elected to the office in question or that the outcome of the election on a referendum was contrary to the result declared by the canvassing board or election board.

The bill makes it clear that a statement of the grounds of contest may not be rejected, or the proceedings dismissed, for any want of form, if the grounds provided are sufficient to clearly inform the defendant.

The bill provides the procedural guidelines in bringing an election contest. It also provides that the person bringing the contest is entitled to an immediate hearing and that the circuit judge is authorized to fashion such orders as he or she deems necessary to ensure the allegations in the complaint are investigated, examined or checked, to prevent or correct any alleged wrong, and to provide any appropriate relief.

Senate Bill 2072 codifies that the jurisdiction hear any contest of the election of a member to either house of the Legislature, at any general or special election, is vested in the applicable house, as set forth in the State Constitution.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Executive Business, Ethics and Elections:

The amendment changes the time for filing a contest of election to allow a contest to be filed within 5 days after midnight of resolution of a protest, if one has been filed.

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