

**STORAGE NAME:** h0281a.jud

**DATE:** March 22, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIARY  
ANALYSIS**

**BILL #:** HB 281

**RELATING TO:** Election protests and contests

**SPONSOR(S):** Representative Detert and Others

**COMPANION BILL(S):** SB 822(i)

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

- (1) ELECTION REFORM (PRC) YEAS 8 NAYS 0
  - (2) JUDICIARY YEAS 9 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

HB 281 revises the time-frames for filing an election protest, request for manual recount and election contests to make the tolling of the time-frame contingent upon when the results are certified, rather than when the canvassing board "adjourns". In addition, the bill eliminates protests of election returns in circuit court, and deletes the provisions prescribing the form of the protest of election returns to circuit judge, to conform.

This bill merges the broader provisions of the section of the statutes dealing with protests of election returns in circuit court into the section of the statutes dealing with election contests. To that end, 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.

HB 281 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 for want of form. The bill also provides for service of a complaint upon the defendant and any other person named therein, and provides a time-frame for filing an answer or response thereto.

This bill codifies that jurisdiction to hear a contest of the election of a member to either house of the Legislature is vested in the applicable house in accordance with its rules.

This bill does not appear to have a significant fiscal impact on any state or local government.

This bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Under current law, there are several methods by which a person may dispute the result of an election. There are two types of election protest, an election contest, and the common law remedies of quo warranto and mandamus. The aforementioned remedies are available for all elections, with the exception of elections to state legislative office. Article III, section 2 of the Florida Constitution states in pertinent part 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 would need to be brought according to the rules of the appropriate house.

Although the term "canvass" is not defined for purposes of the Florida Election Code, Black's Law Dictionary defines "canvass" as "[t]he act of examining and counting the returns of votes cast at a public election to determine authenticity". [Black's Law Dictionary (6th ed. 1990)]. The counting and canvassing process in any Florida election begins at the close of the polls when the precinct election inspector turns the election materials, including ballot boxes, registration books and other records, over to the relieving election board who, in turn, count the ballots. [ss. 102.012, 102.061-102.071, F.S. (1997)]. All returns must be delivered to the county canvassing board no later than noon of the day following an election. [s. 102.141(3), F.S. (1997)]. The county canvassing board is composed of the supervisor of elections; a county court judge, who acts as the chair; and the chair of the board of county commissioners. [s. 102.141(1), F.S. (1997)].

The canvass, except the canvass of absentee electors' returns, is made from the returns and certificates of the inspectors as signed and filed by them with the county court judge and supervisor, respectfully. The county canvassing board is prohibited from changing the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate. [s. 102.141(3), F.S. (1997)]. No vote may be declared invalid or void if there is a clear indication of the voter's intent, as determined by the County Canvassing Board. [ss. 101.011(2)(4), 101.5614(5), F.S. (1997)]. Likewise, if an elector over-votes an office, or if it is impossible for the canvassing board to determine the voter's intent, the board cannot count those races, but will count those names that are properly marked. [s. 101.5614(6), F.S. (1997)]. Upon completion of the canvass of absentee ballots and the returns and certificates, the canvassing board prepares certificates of election. [s. 102.151, F.S. (1997)].

Canvassing boards must determine the legality or illegality of absentee ballots according to criteria set forth in existing statutes, established case law, and the legal opinion and advice of their legal counsel. Any ballot deemed to be illegal by a canvassing board is marked "rejected as illegal" across the face of the envelope and the envelope is not opened. Any elector or candidate may challenge the legality of an absentee ballot prior to the opening of the ballot by filing a protest with the canvassing board specifying the precinct, the ballot, and the reason the protester believes the ballot to be illegal. A challenge based on a defect in the voter's certificate may not be accepted after the ballot has been removed from the mailing envelope. [s. 101.68(2)(c), F.S. (1997)].

A statewide canvass of the votes cast in the election of any federal or state officer is made by the Elections Canvassing Commission, which is comprised of the Governor, Secretary of State, and the Director of the Division of Elections. Any county returns not received by the Department of State by 5:00 p.m. of the seventh day following an election are ignored, and the results shown by the returns on file are certified. [s. 102.111(1), F.S. (1997)]. The Elections Canvassing Commission does not have the authority to look beyond the county returns and therefore, any returns which are so irregular or false so that the true vote is unable to be determined will not be included in the canvass. [s. 102.131, F.S. (1997)].

The supervisor of elections issues certificates of election to those individuals who have been certified by the county canvassing board and, the Department of State issues certificates of election to those individuals who have been certified by the Elections Canvassing Commission. Certificates of election are considered prima facie evidence of the nomination or election of such person. [s. 102.155, F.S. (1997)].

In conducting the county canvass, the county canvassing board has the authority to order a recount of the returns from any precinct if there are omissions or obvious errors in the returns. Before canvassing such returns, the canvassing board examines the counters on the machines or the

tabulation of the ballots cast in the precinct to determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the counters of the machines or the tabulation of the ballots cast, the counters of such machines or the tabulation of the ballots cast is presumed to be correct and the votes are canvassed accordingly. [s. 102.141(3), F.S. (1997)].

### **Mandatory Recount**

In the event the returns for any office or proposition reflect that an election was decided by a margin of one-half of one percent or less of the total vote cast for such office or proposition, the canvassing board must order a recount of the votes cast for such office or measure. However, in races for elective office, any candidate or candidates defeated or eliminated from contention within the statutory margin, may request in writing that the recount be waived. If the recount is not waived, the recanvass or recount proceeds in the same manner described above for correcting errors at the county canvass level.

One member of the canvassing board must be present at all times, until the canvass of the returns is completed. The counters and tabulations are compared with the returns of the election and any discrepancy found will be resolved in favor of the totals shown on the counters and the original tabulations. The votes are then recanvassed accordingly. Prior to any recount of ballots on automatic tabulating equipment, a logic and accuracy test must be conducted. Also, each duplicate ballot is compared with the original ballot to ensure correctness of the duplicate. [s. 102.141(4), F.S. (1997)].

### **Request for Manual Recount**

Under section 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 must be filed with the county canvassing board prior to adjournment of the canvassing board, or within 72 hours after midnight of the date of the election, whichever occurs last. [s. 102.166(4)(b), F.S. (1997)]. A request for a manual recount must state the reason the request is being made. [s. 102.166(4)(a), F.S. (1997)]. The canvassing board has sole discretion in whether to grant a request for a manual recount. [s. 102.166(4)(c), F.S. (1997)]. In fact, the Florida Supreme Court has held that there is no reason to require a recount unless there is a positive and clear claim, allegation or assertion that such a recount will change the result of the election. McQuagge v. Conrad, 65 So.2d 851 (Fla. 1953).

If the canvassing board authorizes a manual recount, each candidate involved is notified and the board must manually recount at least three precincts and at least one percent of the total votes cast for such candidate or issue. [s. 102.166(4)(c), F.S. (1997)]. The individual requesting the manual recount chooses the three precincts to be counted and if other precincts are to be counted, the canvassing board selects them. If the recount indicates an error which could affect the outcome of the election, the canvassing board must correct the error, recount the remaining precincts, and request the Department of State to verify the tabulation software. [s. 102.166(5)(a)(b), F.S. (1997)]. As an alternative, the canvassing board may manually recount all of the ballots. [s. 102.166(5)(c), F.S. (1997)].

### **Protest of Election Returns - County Canvassing Board**

Any qualified elector or candidate who believes the returns of any general or primary election are erroneous may file a sworn, written protest against the canvass. [s. 102.166(1), F.S. (1997)]. As one court concluded, "[s]ection 102.166, Florida Statutes (1977), appears to be geared exclusively to the protest of election returns. Election returns are defined as: 'The report made to the board of canvassers of the number of votes cast for each candidate, . . .'" Flack v. Carter, 392 So.2d 37, 39 (Fla. 1st DCA 1980). Such a protest must be filed with the appropriate canvassing board prior to the time the canvassing board adjourns or within five days after midnight of the date the election is held, whichever occurs last. [s. 102.166(2), F.S. (1997)]. Upon receiving 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. [s. 102.166(3)(a), F.S. (1997)]. In counties where voting machines are used, the canvassing board must examine the counters on the machines of nonprinter machines, or the printer-pac on printer machines. If there is a discrepancy, the counters of such machines are presumed correct. [s.

102.166(3)(b), F.S. (1997)]. When electronic or electromechanical equipment is used, the canvassing board must examine the precinct records and election returns. Clerical errors may be corrected by the canvassing board and if there is a discrepancy which could affect the outcome of an election, the board may recount the ballots on the automatic tabulating equipment. [s. 102.166(3)(c), F.S. (1997)]. If a recount is conducted on automatic tabulating equipment, a logic and accuracy test must be conducted first. [s. 101.5615, F.S. (1997)].

The rights of all parties to appeal to the court for protection against error are preserved. Petit v. Adams, 211 So.2d 565 (Fla. 1968).

### **Protest of Election Returns - Circuit Court**

The second method of protest allows any candidate or elector to protest the returns based on charges of fraud occurring in either the tabulating of the ballots or in other practices related to the election. However, under the analysis set forth by the First District Court of Appeals in Flack v. Carter, it would follow that a protest brought under this section of the statutes is for fraud in the way the votes were tabulated. Protests of this nature are made to a circuit judge in the area where the fraud is alleged to have occurred. However, if it is alleged that fraudulent returns or practices exist in more than one county, venue for the protest may be in any such county. [s. 102.166(11), F.S. (1997)].

The protest must be filed within five days after the election or before the canvassing board has adjourned, whichever occurs last. [s. 102.166(11)(a), F.S. (1997)]. Under current law, any candidate or elector presenting such a protest is entitled to an immediate hearing or to any appropriate relief. The circuit judge is afforded wide latitude in establishing whether fraud actually occurred and in granting relief when fraud is established. The 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. (1997)].

### **Election Contests**

Under section 102.168, F.S., a certification of election or nomination of any person to any office may be contested in circuit court by an unsuccessful candidate for such office, except in the case of a general election for state legislative 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 returns adjourns. Venue for contesting a nomination or election or the results of a referendum is in the county either where the contestant qualified or where the question was submitted for referendum. If the election or referendum covers more than one county, venue lies in Leon County circuit court. [s. 102.1685, F.S. (1997)].

The county canvassing board, or the Elections Canvassing committee if applicable, is the party defendant, and the successful candidate is an indispensable party to any action brought to contest the election or nomination of a candidate. [s. 102.168, F.S. (1997)]. Although contests, as well as protests under section 102.166(11), F.S., are filed in circuit court, there is no stipulation under section 102.168, F.S. for an immediate hearing.

By statute, 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 submitted referendum. [s. 102.168, F.S. (1997)]. Nonetheless, the possible grounds for contesting an election are not provided in the Florida Election Code. The Florida Supreme Court has held that fraud, gross negligence and intentional wrongdoing are among the valid grounds for successfully contesting an election. Boardman v. Esteva, 323 So.2d 259 (Fla. 1976), *cert. denied*, 425 U.S. 967, 96 S.Ct. 2162, 48 L.Ed.2d 791. A contestant does not have to prove that he or she would have won the election, but 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. . ."

As a general rule, elected officials are presumed to perform their duties in a proper and lawful manner and therefore, the burden of proof is on the contestant to establish that ballots have been irregularly cast. Id. at 567. Upon finding a contestant to be entitled to an office, the court must issue a judgment

to that effect, and where an adverse party has been certified and has taken office, a decree of ouster must be issued. Similarly, if a judgment is entered setting aside a referendum, the election is declared void. [s. 102.1682, F.S. (1997)]. Unlike the latitude afforded to judges in framing relief for those individuals filing protests in circuit court, the statutes do not grant this latitude to judges hearing contests of elections.

The Florida Election Code is silent with respect to any appeal procedure for election contests. The Florida Rules of Appellate Procedure do provide, however, that any party who feels aggrieved by a final decision, order, judgment, or decree may appeal the final judgment. [Fla.R.App.P. 9.110].

### **Quo Warranto and Mandamus**

An election contest is purely a constitutional or statutory proceeding, there being no right at common law to contest any public election, except by way of quo warranto to test the validity of the election, or mandamus to compel the performance of a ministerial duty on the part of election officials. [21 Fla. Jur.2d, Elections §138]. In Florida, the remedy of quo warranto has been specifically preserved in section 102.169, F.S. Therefore, nothing in the Florida Election Code will be construed to abrogate or abridge any remedy that may exist by quo warranto; the statutory contest proceeding set forth in section 102.168, F.S., is considered an alternative and cumulative remedy.

Black's Law Dictionary, (6th ed. 1990) defines "mandamus" as "the name of a writ which issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers . . . commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived . . ." In election law, a writ of mandamus is used to compel the recounting of ballots cast in an election in cases where there has been a failure to make a proper count, tally, or return of the votes as required by law. State ex rel. Millinor v. Smith, 107 Fla. 134, 144 So. 333 (Fla. 1932). Stated another way, the legal predicate for mandamus to compel a recount of the ballots cast in an election is the demonstrated failure of the inspectors and clerks of an election to perform some continuing, mandatory, legal duty that rests upon them and governs their procedure for making the county, or some inaccuracy shown to have occurred in the making of the returns that they have already made.

There is no time frame specified in the statutes within which to bring a proceeding in quo warranto or mandamus. Nonetheless, the doctrine of laches would operate as a bar to the claim in a court of equity. State ex rel. Pooser v. Wester, 126 Fla. 49, 170 So. 736 (Fla. 1936). In addition, the Florida Supreme Court has held that "[e]xtraordinary relief, such as quo warranto, will not be granted where it plainly appears, that though [the] complainant may be ordinarily entitled to relief, granting of such relief will result in confusion and disorder and will produce injury to [the] public which outweighs [the] individual right of complainant to have relief." Id. at 738.

#### **B. EFFECT OF PROPOSED CHANGES:**

Under current law, 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 period for bringing an action may be opened up inadvertently.

HB 281 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 5 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, on the other hand, 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.

This bill eliminates the procedure by which protests of election returns are brought in circuit court and merges the broader provisions of this form of action into section 102.168, F.S., dealing with contests

of elections. Qualified electors (other than candidates) who are now able to protest an election return in circuit court related to a candidacy (alleging fraud), would not be able to do so under HB 281. Only an unsuccessful candidate could challenge the certification of election or nomination of a person to office; taxpayers being limited to challenges of the results of referendum elections. This provision, while limiting the causes of action afforded to electors other than candidates, may also help to reduce frivolous lawsuits. Qualified electors would still be able to file a protest of the returns with their local canvassing board.

HB 281 bill codifies the grounds for contesting an election:

- Misconduct, fraud, or corruption on the part of any election official or any 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 in money, property, or any other thing of value for the purpose of procuring the successful candidate's nomination or election or determining the result on any question submitted by referendum; or
- 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 question submitted by referendum was contrary to the result declared by the canvassing board or election board.

The bill clarifies that a statement of the grounds of contest may not be rejected, or the proceedings dismissed, for any want of form provided that the grounds of contest set forth in the statement are sufficient to clearly inform the defendant of the particular proceeding or cause for which the nomination or election is being contested.

HB 281 sets forth specific procedural guidelines in bringing an election contest. Under the bill, a copy of a complaint must be served upon the defendant, and any other person named therein, in the same manner as in other civil cases under the laws of this state. The defendant has 10 days in which to file an answer after being served the complaint.

This bill entitles any candidate or elector who brings an election contest in circuit court to an immediate hearing. The court is afforded discretion in limiting the time consumed in taking testimony, with a view to the circumstances of the matter and the proximity of any succeeding primary or other election. A circuit judge to whom a contest is presented, is given the express authority to fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked; to prevent or correct any alleged wrong; and to provide any relief appropriate under the circumstances.

HB 281 codifies that the jurisdiction to 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 mandated by the State Constitution. The bill makes a distinction, however, between primary elections in which only those qualified who are registered members of the political party holding the primary may vote (otherwise referred to as a "closed" primary), and primary elections in which all qualified electors, regardless of party affiliation, may vote (otherwise referred to as an "open" primary).

Prior to January 5, 1999, Florida law provided for a closed primary system whereby votes are cast by voters having the same party affiliation as the candidate. As a result, where only one party holds a primary and there is no opposition in the general election, the outcome of that primary decided who would occupy the office.

At the 1998 general election, the electors approved an amendment to Article VI, section 5, Florida Constitution, which provided all qualified voters, regardless of party affiliation, the opportunity to vote in a primary election if two conditions are met: 1) all candidates in the primary have the same party

affiliation; and 2) the winner will have no opposition in the general election for the office sought. These changes effectively create an "open" primary under the circumstances noted above.

HB 281 provides that when a primary is "closed", jurisdiction to hear a contest of a nomination may rest in the appropriate circuit court. [See generally, Merrill v. Dade County Canvassing Board, 300 So.2d 28 (Fla. 3rd DCA 1974), wherein the court exercised jurisdiction over a contest involving a primary election for legislative office.] In contrast, jurisdiction to hear a contest of a nomination of a person for the office of member of either house of the Legislature which is the result of an "open" primary (see above paragraph for the conditions necessary to open a primary) is vested in the appropriate house. It must be noted however, that even when a primary or special primary election is "open" it cannot be assumed that in every instance the winner will be **elected** at that primary; where there are more than two candidates and one candidate does not garner a majority of the votes, the ultimate winner will be decided at the general election. Notwithstanding, the bill would vest jurisdiction to hear a contest of a **nomination** of any person for the office of member of either house of the Legislature at an "open" primary or special primary election with the applicable house.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not applicable.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/ associations to conduct their own affairs?

Not applicable.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Qualified electors who are now able to protest an election return in circuit court related to a candidacy (alleging fraud), would not be able to do so under HB 281. Only an unsuccessful candidate could challenge the certification of election or nomination of a person to office; taxpayers being limited to challenges of the results of referendum elections.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.



(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. STATUTE(S) AFFECTED:

Amending ss. 102.166, 102.167, and 102.168, F.S.; creating 102.171, F.S.

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Minimal. Can be handled with current staff.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are specifically exempt from the provisions of s. 18, Art. VII, Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Not applicable.

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

Not applicable.

V. COMMENTS:

HB 281 is the product of recommendations made by the staff of the Committee on Election Reform, which were presented in the 1997 Interim Project report entitled, *Election Contests and Recounts*.

In February of 1997, the Florida House of Representatives, Committee on Election Reform, conducted public hearings throughout the state, giving the citizens of Florida a forum to express their views and offer suggestions on election reform. One area of concern among those testifying regarded the methods by which outcomes of elections are determined and validated in Florida, as well as the ways in which the

results of an election might be disputed and potentially overturned. As a result of the public hearings, the staff of the House Committee on Election Reform was charged with reviewing current and historical provisions of the Florida Statutes specifically relating to election recounts and contests.

After a thorough review of the methods for processing challenges to elections used by the various states and consideration of input solicited from the Division of Elections, the Florida State Association of Supervisors of Elections and those citizens who had expressed an interest in this issue at the public hearings, staff concluded that Florida's legal mechanisms for contesting and recounting election results are generally in line with the major policy considerations set forth by election experts. Therefore, a comprehensive reform was not proposed. Certain procedural changes were recommended and the majority of those recommendations have been incorporated into this bill.

**By the Staff of the Committee on Judiciary.** It is unclear how the service of process and hearing provisions of Section 3 of the bill (creating s. 102.171(6) and (7), F.S.) will work together. Paragraph (6) provides for a 10 day response to the initial complaint, with added provisions for the contents of the answer and the penalty for failure to timely file such answer. Paragraph (7) confers on a complainant the right to an immediate hearing. Holding an immediate hearing may not allow the defendant to prepare for and present its case, even in summary fashion. This issue may be resolved by clarifying that the right to a hearing attaches at a certain time after filing the complaint, and if the date of hearing and date of filing an answer were sequenced, the parties, the court, and the interests of justice might be better served.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**Amendment No. 1:** This amendment clarifies that one of the grounds for contesting an election is ineligibility of the successful candidate for the nomination or office in dispute. The amendment removes the qualification that the ineligibility asserted be at the time of the election.

**Amendment No. 2:** This amendment clarifies that any contest of a primary or special primary election for the office of state legislator in which all qualified electors may vote ("open primary") and the recipient of the most votes is deemed to be elected according to applicable law (no run-off), falls under the jurisdiction of the applicable house of the Legislature.

*The Committee on Judiciary adopted two amendments which are traveling with the bill. The first amendment allows an elector qualified to vote in an election which could be the subject of an election contest by a candidate to contest the same election. The second amendment gives such an elector the right to an immediate hearing on the election contest.*

VII. SIGNATURES:

COMMITTEE ON ELECTION REFORM:

Prepared by:

Dawn K. Roberts

Staff Director:

Dawn K. Roberts

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson

Staff Director:

Don Rubottom