

# 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.)

BILL: CS/SB 822

SPONSOR: Committee on Ethics and Elections and Senator Carlton

SUBJECT: Elections; conducting elections and ascertaining the results

DATE: March 11, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bradshaw</u>	<u>Bradshaw</u>	<u>EE</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 822 revises the time frames for filing an election protest, a request for manual recount, and an election contest 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.

Committee Substitute for Senate Bill 822 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.

Finally, the bill eliminates the requirement that the election board be composed of a specific number of persons and requires that a deputy sheriff be present at each polling place, rather than each precinct, during the voting hours.

This bill substantially amends ss. 102.012, 102.031, 102.166, 102.167, 102.168, and creates s. 102.171, Florida Statutes.

## II. 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 protests, an election contest, and the common law remedies of quo warranto and mandamus. These remedies are available for all elections, with the exception of state legislative races. 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.

### *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).

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

Any candidate or elector qualified to vote in the race in question 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). 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).

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

The second method of protest allows any candidate or elector qualified to vote in the race in question 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. 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.

The county canvassing board, or the Elections Canvassing Commission, 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 specific 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.

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

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.

### *Election Boards and Deputy Sheriffs*

Each precinct is required to have one or two election boards, each composed of one clerk and three inspectors. In addition, a deputy sheriff is required to be at each precinct during the hours of voting. Because the number of voters at each precinct varies, there may be a need for the election board to be composed of either more or fewer persons. Also, many times smaller precincts are housed together at the same polling place. There may not be a need for each of these precincts to have its own deputy sheriff, so long as there is at least one deputy available at the polling place.

### III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 822 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. Committee Substitute for Senate Bill 822 provides 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.

Committee Substitute for Senate Bill 822 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, elector, or taxpayer 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.

Committee Substitute for Senate Bill 822 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.

Finally, the bill eliminates the requirement that the election board be composed of a specified number of persons and requires there to be a deputy sheriff at each polling place, rather than each precinct. These provisions will allow the supervisors of elections to determine the number of election workers needed at each precinct and polling place, depending on the number of voters and history of voter turnout.

#### **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:**

Pursuant to a series of public hearings held by the Florida House of Representatives Election Reform Committee in 1997, the House staff produced an interim project entitled, *Election Contests and Recounts*.

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, House 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, the majority of which have been incorporated into this bill and its House counterpart.

**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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