

STORAGE NAME: h1409.prc.doc
DATE: February 14, 2002

HOUSE OF REPRESENTATIVES
PROCEDURAL & REDISTRICTING COUNCIL
ANALYSIS

BILL #: HB 1409
RELATING TO: Elections
SPONSOR(S): Rules, Ethics & Elections, Rep(s). Goodlette and others
TIED BILL(S):

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

- (1) PROCEDURAL & REDISTRICTING COUNCIL YEAS 16 NAYS 0
- (2)
- (3)
- (4)
- (5)

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I. SUMMARY:

Following the 2000 Presidential election, the Legislature enacted comprehensive election reforms, ch. 2001-40, Laws of Fla., effective January 1, 2002. Because Florida is a covered jurisdiction under federal law, the provisions of ch. 2001-40, Laws of Fla., were subject to preclearance by the United States Department of Justice. As of December 17, 2001, all provisions have been precleared except for sections relating to the statewide voter registration database for which the Department has requested additional information.

The provisions of HB 1409 further clarify the revisions to the Florida Election Code adopted in ch. 2001-40, Laws of Fla. HB 1409 makes conforming, technical and other clarifying changes to the Florida Election Code relating to:

- Late Voter Registration;
- Statewide Voter Registration Database;
- Voter Bill of Rights;
- Provisional Ballots;
- Ballot Specifications;
- Voting Systems;
- Instructions to Voters;
- Absentee Ballots and Canvassing Procedures;
- Reports of Voting Problems;
- Poll Worker Training;
- Voter Education;
- Recounts and Processing of Duplicate Ballots; and
- Reporting Requirements for Public Financing of Campaigns.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Amendments enacted in ch. 2001-40, Laws of Fla., include the following:

- **Voting Systems.** Beginning September 2, 2002, all punch card, paper ballot, mechanical lever machines and central-count voting systems may not be used in Florida. Any future system certified for use in the state must employ precinct-count tabulation and offer the voter an opportunity to correct a ballot containing overvotes. Uniform primary and general election ballot designs must be adopted by the Department of State for each certified voting system. Funding is being provided to counties for voting system assistance based upon the number of precincts in the county as of the 2000 General Election. Counties with a population of 75,000 or less will receive \$7,500 per precinct, and counties with populations of more than 75,000 will receive \$3,750 per precinct. Distribution of the funds will occur over a two-year period.
- **Provisional Ballots.** Provisional ballots are available to voters who go to the polls on election day and whose eligibility to vote cannot be determined. Canvassing boards must determine the eligibility of the voter and whether the voter cast the provisional ballot in the proper precinct.
- **Recounts.** Current law requires the same manner of recount to be conducted in each affected jurisdiction. Partial recounts are no longer permitted. An automatic machine recount will be conducted if the margin of victory is $\frac{1}{2}$ of one percent or less. An automatic manual recount of the overvotes and undervotes will be conducted if the margin of victory is $\frac{1}{4}$ of one percent or less. If the margin of victory is between $\frac{1}{4}$ and $\frac{1}{2}$ of one percent, an affected candidate or party is entitled to a manual recount of the overvotes and undervotes if requested in writing no later than 5 p.m. on the second day after the election.
- **Voter Intent.** The statutory standard of voter intent has been clarified for purposes of manual recounts. A vote will count only if there is a "clear indication on the ballot that the voter has made a definite choice." The Department of State is in the process of adopting rules for each certified voting system prescribing precisely what constitutes a

“clear indication on the ballot that the voter has made a definite choice” and for prescribing uniform recount procedures.

- **Certification Deadlines.** County canvassing boards must certify the results of an election seven days after a primary election and 11 days after a general election. The 11-day general election deadline allows sufficient time for the receipt of all overseas ballots, which must be counted up to ten days after the general election for certain races.
- **Second Primary Election.** The second primary will be eliminated for the 2002 election cycle only. With the elimination of the second primary, there are only two elections with respect to the contribution limits set forth in s.106.08(1), F.S. Thus, candidates are limited to receiving \$500 per individual before the primary election and \$500 per individual before the general election, for a total of \$1,000.
- **Military and Overseas Voting.** Several sections were created to facilitate the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act, including late registration, a state write-in ballot, e-mail notification of names to be on the ballot, and electronic submission of absentee ballots and requests from overseas voters.
- **Absentee Ballots.** There are no longer “for cause” requirements for voting an absentee ballot. Registered voters in Florida may cast an absentee ballot without restriction. Persons requesting absentee ballots no longer must provide social security numbers or voter identification numbers. Canvassing boards may process absentee ballots using tabulating equipment up to four days before election day, but no results may be released until after the polls close.
- **Poll Worker Training.** Minimum standards and hourly requirements are provided for the training of poll workers. In addition, the Department of State is now required to adopt a uniform polling place manual to guide the poll workers on procedures to be followed on election day.
- **Voter Education.** The Department of State is in the process of adopting rules with minimum standards for voter education. Each county will be able to receive funds for voter education and poll worker training upon submission to the Department of a detailed description of the education programs to be implemented. The supervisors of elections and the Department must submit post-election reports on the effectiveness of voter education efforts, and the Department must re-examine its voter education rules in light of the information contained in those reports.
- **Voter’s Bill of Rights and Responsibilities.** A Voter’s Bill of Rights and Responsibilities must be posted at each polling place on election day, notifying the voter of the voter’s right to a provisional ballot if his or her registration is in question.
- **Elections Canvassing Commission.** The composition of the Elections Canvassing Commission now consists of the Governor and two members of the Cabinet. Any vacancy must be filled with an elected official.

- **Election Contests.** The grounds for an election contest have been modified in response to a recommendation made by the Governor's Task Force on Election Procedures. Specifically, s. 102.168(3)(e), F.S., a "catch-all" ground for an election contest, was eliminated. In addition, a circuit judge's broad discretion with regard to crafting subsequent orders following a contest was eliminated.
- **Statewide Voter Registration Database.** The Department of State was authorized \$2 million to develop a statewide voter registration database containing voter registration information from all of the counties. The purpose of the database is to verify the eligibility of voters and to help maintain an up-to-date voter registration list that does not contain convicted felons, deceased persons and those adjudicated mentally incompetent. As of December 17, 2001 the database provisions have not been precleared by the United States Department of Justice, and additional information is being provided to the Department of Justice.
- **Public Financing.** Out-of-state contributions to candidates receiving public financing are no longer counted toward the threshold amounts needed to receive public financing. In addition, such contributions will not qualify as matching contributions.

C. EFFECT OF PROPOSED CHANGES:

- **Late Voter Registration.** Clarifies that late registration for certain persons¹ may take place until 5 p.m. on the Friday before the election *in the office of the supervisor of elections*.
- **Statewide Voter Registration Database.** Provides that state and local government entities must provide information and access to data for the statewide voter registration database to the Department of State rather than the Florida Association of Court Clerks. Clarifies that a request for county registration information must be made to the local supervisor of elections, while a request for multi-county or statewide registration information must be made to the Department of State.
- **Voter's Bill of Rights.** Amends the Voter's Bill of Rights to clarify that a voter has the right to cast a vote when he or she is in line at the official closing of the polls in that voter's particular county.
- **Provisional Ballots.** Provisional ballots are available to voters who go to the polls on election day and whose eligibility cannot be determined. Section 101.048, F.S., is amended to clarify that an elector casting a provisional ballot must be at the correct precinct. Canvassing boards must examine the provisional ballot envelope and the precinct number to determine the eligibility of the voter and whether the voter cast a provisional ballot in the proper precinct. Provides for a "Voter's Certificate and Affirmation" which will require a voter to provide party registration, current residence and mailing addresses and sign an affirmation recognizing that the voter can be convicted of

¹ Those persons include an individual or accompanying family member who has been discharged or separated from the uniformed services, merchant marine, or from employment outside of the United States after the book closing date for an election and who is otherwise qualified.

a felony and fined up to \$5,000, if he or she commits any fraud in connection with voting in an election.

- **Ballot Specifications.** Amends the specifications for ballots to conform to the governmental reorganization of the Cabinet in 2003. Creates s.101.2512, F.S., to reinstate the provisions in former s. 101.251, F.S., "Candidates Names on the General Election Ballots," which was inadvertently repealed in the 2001 Elections Reform Act.
- **Voting Systems.** Beginning September 2, 2002, all punch card, paper ballot, mechanical lever machines and central-count voting systems may not be used in Florida. Clarifies the requirements for certification of a voting system so that it will properly address overvotes and undervotes. Section 101.5612, F.S., is amended to include testing requirements for optical scan (5 percent random sample required) and touch screen systems (2 percent random sample required).
- **Instructions to Voters.** Clarifies that the supervisors shall provide instructions at each polling place regarding the manner of voting with the county's particular system, including the arrangement of candidates, the questions to be voted on and proper method for casting a ballot.
- **Absentee Ballots and Canvassing Procedures.** Clarifies the procedures for the canvassing of returns involving damaged and duplicate ballots. Requires that no result be released until after the closing of the polls to specify that the closing of the polls means closing of *that particular county's polls*. Requires the election board to verify (rather than count) the number of voted, unused, provisional and spoiled ballots to ascertain whether the number is consistent with the actual number of ballots issued. Amends the canvassing procedures for absentee ballots so that results are not released until after the closing of the polls *in that county* on election day. Clarifies the procedure to be followed if an elector requests an absentee ballot but does not return the absentee ballot or votes in person.

The deadline for the first unofficial set of election returns is changed from the day after an election to the *second day* after an election to allow more time for vote tabulation. The deadline for the second set of election returns is changed from the second day after the election to the *third day* after the election to allow more time for tabulation. Provisional ballots are now included in the first unofficial set of returns.

- **Reports of Voting Problems.** Clarifies that an analysis and report of voting problems submitted by the supervisors of elections to the Department of State must provide the total number of overvotes and undervotes in the first race appearing on the ballot, including the likely reasons for such overvotes and undervotes.
- **Poll Worker Training.** Amends s. 102.014, F.S. for poll worker training so that clerks will be required to undergo a minimum of three hours of training and inspectors would be required to undergo a minimum of two hours of training *prior to each election*. The change requires that the training occur prior to the primary and general election, and not simply during an election year. The first and second primary are considered one election for purposes of this subsection.

- **Recounts.** Requires that a true duplicate be made of any paper ballot that is physically damaged to the point that it cannot be counted by automatic tabulating equipment during a recount.
- **Reporting Dates - Matching Funds Program.** Amends s. 46 of ch. 2001-40, Laws of Fla., relating to the reporting dates in 2002 (with no second primary) to weekly reporting for candidates who are participating in the matching funds program or candidates involved in a race with a participating candidate, so that reports must be filed on a weekly basis preceding the primary election (beginning on the 32nd day preceding the election), in addition to weekly dates before the general election. Section 46 of ch. 2001-40 requires only weekly reporting beginning on the 53rd day prior to the general election.
- **Judicial Qualifying.**– Amends s. 105.031, F.S., to change the qualifying period for judicial candidates. Currently the qualifying period runs from noon of the 50th day to noon of the 46th day before the primary election. The qualifying period is changed to run from noon of the 120th day to noon of the 116th day before the primary election. This coincides with the qualifying period for federal candidates, pursuant to s. 99.061(1), F.S. It also clarifies that school board candidates would not be affected by this change.
- **Miscellaneous.** Repeals unnecessary provisions: s.101.22 (Voting Procedure, Paper Ballots), s.101.5615 (Recounts and Election Contests) and s.101.72 (Voting Booths).
- Provides an effective date.

SECTION-BY-SECTION ANALYSIS:

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|------------|---|
| Section 1. | Amends s. 97.0555, F.S., to require that late registration be conducted in the supervisor of elections office. |
| Section 2. | Amends s. 98.045, F.S., to add a cross-reference to s. 98.0977, F.S. |
| Section 3. | Amends s. 98.0977, F.S., to require state and local government entities to facilitate provision and access to data to the Department of State in order to compare information in the statewide voter registration database to other databases (criminal and death records). |
| Section 4. | Amends s. 98.0979, F.S., relating to distribution of the statewide voter registration database information so that counties must provide only their county's information and the Department of State must provide any multi-county and statewide information. |
| Section 5. | Amends s. 101.031, F.S., relating to the Voter's Bill of Rights to clarify that a voter has the right to cast a vote when he or she is in line at the official closing of the polls. |

- Section 6. Amends s. 101.048, F.S., to clarify that an elector casting a provisional ballot must be at the correct precinct; provides for an affirmation on the provisional ballot certificate; amends the provisional ballot certificate to require party registration, current address and other relevant information that will help the local supervisor determine eligibility.
- Section 7. Amends s. 101.151, F.S., relating to specifications for ballots to allow for the governmental reorganization of the Cabinet in 2003.
- Section 8. Creates s. 101.2512, F.S., to reinstate s. 101.251, F.S., "Candidates Names on the General Election Ballots," which was inadvertently repealed in the 2001 Elections Reform Act.
- Section 9. Amends s. 101.5601, F.S., to correct references in the short title of s. 101.5601 "Electronic Voting Systems Act."
- Section 10. Amends s.101.5606, F.S., to clarify the requirements of a voting system involving overvotes and undervotes.
- Section 11. Amends s. 101.5608, F.S., relating to procedures that must be followed by an elections official to provide instruction to a voter when the voter makes an error or spoils his ballot.
- Section 12. Amends s. 101.5611, F.S., to clarify the instructions that are given to electors regarding the manner of voting for the system used in that county. The section no longer requires an instructional model. Without this change and in counties with touch screen voting, each precinct would be required to have an additional touch screen, significantly raising costs.
- Section 13. Amends s. 101.5612, F.S., to clarify the testing requirements for tabulating equipment so that touch screens and optical scan systems are included.
- Section 14. Amends s. 101.5614, F.S., to clarify the procedures for the canvassing of returns involving damaged and duplicate ballots; amends the requirement that no result be released until after the closing of the polls to specify that the closing of the polls means closing of that particular county's polls.
- Section 15. Amends s. 101.5614, F.S., to clarify the procedures for canvassing the returns to require the election board to verify (rather than count) the number of voted, unused, provisional and spoiled ballots to ascertain whether the number is consistent with the actual number of ballots issued.
- Section 16. Amends s. 101.595, F.S., to clarify what must be included in the report from the supervisors of elections to the Department of State regarding overvotes, undervotes, and related voter problems.

- Section 17. Amends s. 101.68, F.S., to clarify the canvassing procedures for absentee ballots so that results are not released until after the closing of the polls in that county on election day.
- Section 18. Amends s. 101.69, F.S., to clarify the procedure to be followed if an elector requests an absentee ballot but does not return the absentee ballot or votes in person.
- Section 19. Amends s. 102.014, F.S., to clarify the number of hours required for poll worker training. Clerks would be required to undergo a minimum of three hours of training and inspectors would be required to undergo a minimum of two hours of training prior to each election. The change requires that the training occur prior to the primary and general election, and not simply during an election year. The first and second primary are considered one election for purposes of this subsection.
- Section 20. Amends s. 102.141, F.S., to clarify the deadline for the first unofficial set of election returns from the day after an election to the second day after an election to allow more time for vote tabulation. Includes provisional ballots in the first unofficial set of returns; allows for duplicate ballots in the returns, amends the deadline for the second set of election returns from the second day after the election to the third day after the election to allow more time for tabulation. Requires that a true duplicate be made of any ballot that is physically damaged to the point where it cannot be counted by automatic tabulating equipment during a recount.
- Section 21. Amends s.102.166, F.S., to clarify the period within which to request a manual recount from 5 p.m. the second day after the election to 5 p.m. on the third day to allow more time for tabulation; amends the manual recount procedures to provide that any duplicate ballots prepared shall be compared with the original ballot to ensure correctness.
- Section 22. Amends s. 46 of ch. 2001-40, Laws of Fla., to clarify the reporting dates in 2002 (with no second primary) to weekly reporting for candidates who are participating in the matching funds program or candidates in a race with a participating candidate.
- Section 23. Amends s. 105.031, F.S., so that the qualifying period for judicial office begins at noon of the 120th day, and ends at noon of the 116th day before the primary election.
- Section 24. Repeals unnecessary provisions: s. 101.22 , F.S.,(Voting Procedure, Paper Ballots), s. 101.5615, F.S., (Recounts and Election Contests) and s. 101.72 (Voting Booths; requiring one voting booth per 125 registered electors).
- Section 25. Provides an effective date upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not applicable.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

There is no additional rulemaking authority provided in this bill.

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Ch. 2001-40, Laws of Fla., provided the Department of State with new rulemaking authority to implement provisions relating to uniform ballots for each certified voting system; safeguards for counting votes at precinct, central and regional locations; procedures for sorting overvotes and undervotes; voter intent; recount procedures; late registration for overseas citizens; state write-in ballots; electronic transmission of voting materials; voter education; and development of a polling place manual.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON HOUSE RULES, ETHICS & ELECTIONS:

Prepared by:

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AS REVISED BY THE PROCEDURAL & REDISTRICTING COUNCIL:

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