

STORAGE NAME: h1645.ree.doc
DATE: February 13, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
RULES, ETHICS & ELECTIONS (PRC)
ANALYSIS**

BILL #: HB 1645
RELATING TO: Elections
SPONSOR(S): Representative(s) Crow

TIED BILL(S):

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

- (1) RULES, ETHICS & ELECTIONS (PRC)
- (2) FISCAL RESPONSIBILITY COUNCIL
- (3) PROCEDURAL & REDISTRICTING COUNCIL
- (4)
- (5)

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I. SUMMARY:

HB 1645 amends several provisions in the Florida Election Code (Code) relating to voting and elections, proposing to codify recommendations made by the Secretary of State's Select Task Force on Voting Accessibility (Task Force) in its final report, dated January 14, 2002. The Task Force recommended numerous changes and additions to Florida law to provide additional voting accessibility for persons having a disability.

The bill requires the following:

1. that all forms used in the registration and voting process be available in alternative formats, upon request;
2. that all voting machines and systems, including voting by absentee ballot, be fully accessible to all voters, regardless of ability or disability, so that all voters may cast a secret, independent, and verifiable ballot;
3. that all polling places, regardless of the function of the building in which they are housed, be fully accessible to persons with disabilities;
4. the creation of the "Disability Advisory Council" within the Department of State to look specifically at issues relating to voting accessibility for persons with disabilities; and
5. encouraging the use of closed captioning and descriptive narratives in television broadcasts by candidates, political parties and political committees.

HB 1645 is effective July 1, 2002, except as otherwise provided in sections of the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

HB 1645 will require state and local government to make significant changes to the registration and voting process in each county to make voting more accessible to disabled persons.

B. PRESENT SITUATION:

Article VI, s. 1, Fla. Const., provides in part, “[A]ll elections by the people shall be by direct and secret vote.” Section 101.041, F.S., implements this constitutional mandate and provides:

In all elections held on any subject which may be submitted to a vote, and for all or any state, county, district, or municipal officers, the voting shall be by secret, official ballot printed and distributed as provided by this code, and no vote shall be received or counted in any election, except as prescribed by this code.

Under current law, persons with disabilities have no uniform method for casting an absolutely direct and secret ballot. The Code provides that persons with disabilities be given assistance at the polls when casting a ballot.

Sections 101.051(1)-(3), F.S. provide, in part:

(1) Any elector applying to vote in any election who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of two election officials or some other person of the elector's own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, to assist the elector in casting his or her vote. Any such elector, before retiring to the voting booth, may have one of such persons read over to him or her, without suggestion or interference, the titles of the offices to be filled and the candidates therefor and the issues on the ballot. After the elector requests the aid of the two election officials or the person of the elector's choice, they shall retire to the voting booth for the purpose of casting the elector's vote according to the elector's choice.

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1).

(3) Any elector applying to cast an absentee ballot in the office of the supervisor, in any election, who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of some person of his or her own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, in casting his or her absentee ballot.

If a voter having a disability is given assistance at the polls he or she may not in every instance be casting a secret ballot, as directed by the above constitutional and statutory provisions.

The Task Force was composed of 21 (twenty-one) citizens, appointed by Katherine Harris, Florida Secretary of State, on August 13, 2001. The Task Force was co-chaired by Senator Richard Mitchell and Representative Larry Crow.

The Task Force held five meetings from September, 2001, to January, 2002. Two meetings were held in Tallahassee and one each in Tampa, Orlando, and West Palm Beach. Testimony and comments were taken from a variety of persons and the public.

The Secretary of State charged the Task Force with the following purposes:

To ascertain the obstacles persons with disabilities face in voting in Florida's elections;

To develop and implement solutions for overcoming these obstacles;

To devise a mandatory training program for all elections officials and poll workers that includes instruction from persons with disabilities; and

To propose a funding mechanism for the recommended changes.

For purposes of defining "accessibility," in the context of persons having a disability, the Task Force looked at different stages of the election process, including:

1. Registering to vote;
2. Getting to and from the polling places;
3. Getting in and out of the polling places;
4. Utilizing the voting systems certified by the Department of State;
5. Having access to and participating in election information gathering, such as candidate forums and campaign advertising; and
6. Participating in candidate forums, political action committees, and candidate activities.

C. EFFECT OF PROPOSED CHANGES:

See "Section by Section" analysis below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 97.021, F.S., to include a definition of "alternative formats" to mirror the definition contained in the American with Disabilities Act of 1990.

Section 2. Renumbers remaining sections in s. 97.021, F.S.

Section 3. Creates s. 97.026, F.S., to require that all forms used in the Florida Election Code be available in alternative formats. If possible, such forms will be made available via the Internet.

Section 4. Amends s. 97.061, F.S., to delete a reference to the “Declaration to Secure Assistance” prescribed in s. 101.051, F.S.

Section 5. Creates s. 97.1035, F.S., to require that all supervisors of elections certify to the Department of State that all branches of the supervisor’s office have a TTY/TDD device and that all supervisor’s staff are trained to use such devices.

Section 6. Amends s. 98.065, F.S., relating to registration list maintenance, to clarify that the term “nondiscriminatory” as used in that section also applies to persons having a disability.

Section 7. Creates s. 98.122, F.S., relating to closed captioning and descriptive narrative in television broadcasts. This section requires all candidates, political parties and political committees to use closed captioning and descriptive narrative in all television broadcasts or file a statement with the Department of State detailing the reasons for not doing so. It provides rulemaking authority to the Department for enforcement.

Section 8. Amends s. 100.361, F.S., relating to municipal recall, to require that all petitions for recall and all related forms be made available in alternative formats.

Section 9. Amends s. 100.271, F.S., relating to citizen initiatives, to require that a proposed amendment and related documents be made available in alternative formats.

Section 10. Amends s. 101.001, F.S., relating to precincts and polling places. It requires that all entrances, polling areas, paths of travel and exits be accessible in accordance with ss. 553.501-553.513, F.S. (Florida Americans with Disabilities Accessibility Implementation Act).

Section 11. Amends s. 101.017, F.S., to require the Bureau of Voting Systems Certification (D.O.S.) to cooperate and consult with the Disability Advisory Council (as created in s. 101.018, F.S.).

Section 12. Creates s. 101.018, F.S., to establish the Disability Advisory Council within the Department of State. Provides that the Council shall be comprised of nine members appointed by the Secretary of State and prescribes its duties.

Section 13. Amends s. 101.031, F.S., to provide in the “Voter’s Bill of Rights” that a voter has the right to cast a secret, independent and verifiable vote, regardless of ability or disability.

Section 14. Repeals ss. 101.051(4)(5), F.S., that require a person to complete a “Declaration to Secure Assistance” before receiving assistance in voting.

Section 15. Deletes s. 101.51, F.S., relating to the 5-minute time limit for which a person is allowed to occupy a voting booth (A voter was permitted additional time if he or she gave a sufficient reason).

Section 16. Creates s. 101.56062, F.S., relating to standards for accessible voting systems. It requires that each voting system selected and used for local, state or federal elections be accessible and usable by all voters, including voters having a disability. Among the things a voting system must accomplish are:

- a voting system must provide a tactile or speech input device or both;
- a voting system must provide a method by which voters can confirm any tactile or audio input by having the capability of audio output;

- any controls which are needed for voters with visual impairments must be discernible tactilely without actuating the keys;
- any voting system that uses visual perception must be capable of being adjusted to a minimum of 14 point font size to a maximum of 20 point font size;
- all controls must be operable with one hand including operability with a closed fist, and the force to operate such controls cannot exceed five pounds of force; and
- any audio ballots must provide the voter with certain functionalities such as which candidates are available in a particular race and how many candidates may be selected in a race.

The bill clarifies that currently certified voting systems are not decertified but requires a county or municipality to purchase or lease additional systems that comply with this section.

The bill directs that the state standards regarding accessibility be maintained so that the state is eligible to receive any federal funds that may be available.

Section 17. Amends s. 101.655, F.S., relating to supervised voting by absent electors. It deletes the requirement that an elector who requests assistance in voting complete a "Declaration to Secure Assistance" Oath. (Conforming amendment to Section 4.)

Section 18. Creates s. 101.622, F.S., to require that absentee voting be available to voters with a disability. It requires the Department of State to provide absentee ballots in alternative formats that allow all voters to cast a secret, independent and verifiable absentee ballot without another person's assistance.

Section 19. Amends s. 101.71, F.S., to require supervisors to move a polling place (not less than 30 days before an election) that does not comply with the polling place accessibility requirements created in s. 101.715, F.S.

Section 20. Amends s. 101.71, F.S., effective September 2, 2002 (This is the same amendment as in Section 19 but with an earlier effective date).

Section 21. Substantially rewords s. 101.715, F.S., relating to accessibility to polling places for persons having a disability. The requirements for all polling places include:

- all polling places must be accessible and usable by persons having a disability;
- all polling places must have at least one voting system that meets all of the accessibility standards in s. 101.56062, F.S.;
- all polling places must comply with ss. 553.501-553.513, F.S. (Florida Americans with Disabilities Accessibility Implementation Act); and
- all polling places must have at least one parking space assigned to persons having a disability; and sufficient lighting and unobstructed paths of travel to the polling place.

The bill requires the supervisor of elections to survey each polling place for compliance with these requirements (using rules adopted by the Department).

The bill provides standing to any citizen to sue the board of county commissioners in circuit court to require that a polling place be discontinued, or failing an acceptable substitute or submission of a building permit to correct deficiency, and to require that the deficiency be corrected within reasonable time set by court.

The Department is required to adopt rules to establish penalties for counties that fail to comply (in addition to any penalties that may be prescribed by the court).

Provides for exemptions for polling places in limited circumstances.

Section 22. Amends s. 102.014, F.S., to add training for poll workers on issues of etiquette and sensitivity toward persons having a disability. The Department is required to develop a mandatory program to be conducted by each supervisor of elections for his or her poll workers.

Section 23. Repeals s. 104.031, F.S., relating to a false declaration to secure assistance in preparing a ballot. (Conforming amendment to sections 4 and 17).

Section 24. Deletes in s. 104.20, F.S., the first degree misdemeanor penalty for remaining in a voting booth for an extended period of time (Conforming amendment to section 15.)

Section 25. Amends s. 125.01, F.S. (Conforming amendment to correct a reference in that section to s. 97.021(10), F.S.)

Section 26. Provides an effective date – except as otherwise provided in the bill, it shall take effect July 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

The Department of State reports that the fiscal impact on state government will be substantial but is indeterminate at this time. The Division of Elections is unable to determine the cost of all forms to be made available in all alternative formats, but it has determined that to provide its eighty forms in Braille alone would be in excess of \$200 per form per printing. Cost would vary depending on the number of pages of the form, layout times requested and other factors of which the Division may not be aware. It is estimated that one additional full time Document Specialist (pay grade 14) will be required to implement and manage the production of forms in alternative formats with increases in expenses for production of alternative formats and training material for poll worker training.

Additional expenses would be incurred in travel expenses for the testing and certification of any new voting systems equipment introduced by a vendor to meet the requirements of HB 1645. *There is no current voting system in production that complies with the requirements of this bill.* Travel costs for the Disability Advisory Council are based upon the bill's requirement that at least four of the nine members must meet certain categories of persons with disabilities. Additionally, Council members may be required to travel out of state for evaluation of such voting equipment. Travel for these individuals with special needs is normally higher than for persons without special needs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

The Department of State reports that the fiscal impact on local governments will be substantial but is indeterminate at this time. While most county polling places are accessible in one form or another and meet ADA requirements, there is no way to determine the cost to make "all" polling places accessible to persons with disabilities. Many polling places throughout Florida would have to be changed, because churches, which are exempt from some provisions of the ADA, often serve as polling places. Additionally, many counties would be required to purchase TTY/TDD equipment and install analog telephone lines. With 67 main offices and over two-thirds of those counties having one or more branch offices, the cost would have to be determined by each telephone company.

The Division of Elections cannot estimate the cost of installing this equipment, necessary lines or the cost for training individuals on the equipment.

Additionally, the cost of providing absentee ballots and other ballots in alternative format is not available at this time. For example, Miami-Dade County alone produced over 500 different ballot styles for the 2000 Primary election. HB 1645 would require alternative formats for literally thousands of ballot styles and absentee ballots statewide. The actual number of ballot styles is a small subset of that number. The size of the subset is determined in each election by the nearly random events associated with candidate qualifying.

It is estimated to develop and produce for sale a piece of voting system equipment for each precinct to comply with this bill would approximately \$9,000 per piece of equipment. With an estimated 6,500 precincts in Florida, the cost to either the state or county would be \$58.5 million.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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.

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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:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS & ELECTIONS (PRC):

Prepared by:

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