

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1909 Elections
SPONSOR(S): Committee on Procedures
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections	7 Y, 0 N	Mitchell	Randle
2) Procedures	28 Y, 0 N	Mitchell	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Legislature has made a number of changes to the Florida Election Code, chapters 97-106, Florida Statutes, since the 2000 Presidential Election. For example, following the enactment of the Election Reform Act of 2001, there are only two types of voting machines that may be used in Florida – optical scan machines using marksense ballots and touch screen systems (direct recording equipment or DRE). A number of provisions in the Florida Election Code have lost their usefulness or application following the wholesale changes made during the last 3-4 years.

HB 1909 is designed to make a number of conforming, technical and clarifying changes to the Election Code in the following areas:

- Definitions of election-related terms;
- Uniform Statewide Registration Application;
- Petition process;
- Opening and closing of the polls;
- Submission of party nominees after ballots are printed or machines are programmed;
- Municipal recall;
- Instruction cards that are placed in polling places;
- Poll watchers;
- Ballot specifications;
- Information on constitutional amendments in precincts;
- Printing of a candidate's name on the ballot;
- Mailing ballots upon receipt of a federal postcard applications;
- Election boards for precincts;
- Canvassing board duties;
- Electronic filing and deadlines for campaign reports;
- Purchase of buildings by political parties; and
- Procedures of the Florida Elections Commission.

HB 1909 is effective January 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb10a.pr.doc
DATE: April 15, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Effective September 2, 2002, there are only two types of voting systems currently used in Florida. Optical scan machines that use marksense ballots and touch screen systems (direct recording equipment or DRE). 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. Funding was provided to counties for voting system upgrades based upon the number of precincts in the county as of the 2000 General Election. Because of changes in the way elections are now conducted in Florida, a number of provisions in the Florida Election Code have lost their usefulness or application during the last several years.

Most of the changes in this bill have been offered by the Department of State’s Division of Elections (Department or Division) and affect the way that elections are administered and conducted. Most are technical in nature.

Section 1 Amends s. 97.021, F.S., to change a reference from “paper ballots” to “marksense ballots,” and “tabulating cards” to “supplies,” to conform to current practice.

Section 2 Amends s. 97.052, F.S., to provide that the Uniform Statewide Voter Registration Application must be accepted to update a voter’s signature. Amends s. 99.095, F.S., to provide that the Uniform Statewide Voter Registration Application can be reproduced by the entities described in that section, provided the application is reproduced in an approved format. Those entities include the Department of Highway Safety and Motor Vehicles, voter registration agencies, armed services recruitment offices and qualifying educational institutions.

Section 3 Amends s. 99.0961, F.S., to provide conforming amendments.

Section 4 Amends s. 99.092, F.S., to provide conforming amendments.

Section 5 Substantially rewords s. 99.095, F.S., to provide that candidates who qualify by the petition method may begin collecting petitions after they file an appointment of campaign treasurer rather than an oath indicating that the candidate intends to qualify by the petition method. Petitions must be submitted 28 days prior to the first day of the qualifying period to the appropriate supervisor.

Section 6 Amends s. 99.0955, F.S., to provide that candidates with no party affiliation shall qualify by the petition process set forth in s. 99.095, F.S.

- Section 7 Amends s. 99.096, F.S., to clarify that an executive committee of a minor party shall submit its list of federal candidates to the Department of State and its list of candidates for state, multi-county and county office to the filing officer for those candidates. It also provides that minor party candidates may qualify by the petition process set forth in s. 99.095, F.S.
- Section 8 Amends s. 99.09651, F.S., to provide conforming amendments.
- Section 9 Amends s. 100.011, F.S., to clarify that any elector in line at the official closing of the polls shall be allowed to cast a vote in that election. This change is consistent with the similar provision in the Voter's Bill of Rights contained in s. 101.031, F.S.
- Section 10 Amends s. 100.111, F.S., to provide that a new party nominee's name may not appear on a ballot if a vacancy in nomination occurs after September 15 of the election year. The amendment to the section clarifies that if a new nominee's name is submitted after the ballots have been printed or programmed into the voting machines and the supervisor cannot reprint the ballot or reprogram the machines, the new designee will replace the former party nominee even though the former nominee's name appears on the ballot.
- Section 11 Amends s. 100.141, F.S., to provide conforming amendments.
- Section 12 Amends s. 100.361, F.S. relating to municipal recall and the requirements for petitioning to have a local official recalled. The amendment specifies the minimum font sizes for petitions, the contents of the petitions, that the local clerk must submit petitions to the appropriate supervisor of elections for verification within 5 days of receipt, that the local clerk must certify to the appropriate governing body within 5 days of notice from the supervisor that the required number of signatures were not collected, or if the required number of signatures is collected, the clerk must notify the person being recalled within 5 days of notification by the supervisor. The amendment further clarifies time frames that must be followed during the recall process.
- Section 13 Amends s. 101.031, F.S., to provide that the governing body of a municipality will no longer be required to prepare instructions for electors in municipal elections. The task will be undertaken by the Department of State or the appropriate supervisor of elections.
- Section 14 Amends s. 101.048, F.S., relating to provisional ballots, to change a reference from "paper ballots" to "marksense ballots."
- Section 15 Amends s. 101.131, F.S., to provide that political committees formed to support or oppose an issue on the ballot may have a poll watcher present at each polling place during an election. Also provides that each political party may appoint additional at-large poll watchers to be used as substitutes in case of illness, emergency or vacancy. At least 5 at-large poll watchers, or one additional poll watcher for every 10,000 voters, whichever is greater, may be designated.
- Section 16 Amends s. 101.151, F.S., relating to ballot specifications to change a reference from "paper ballots" to "marksense ballots," and to clarify that the paper used to print such ballots must meet the specifications of the voting system used to read the ballots.
- Section 17 Amends s. 101.171, F.S., to provide the Department of State may provide an explanation of a constitutional amendment *in poster or booklet form* to the supervisors of elections, and that the supervisor shall have the information posted *or available* at each precinct on election day.

- Section 18 Amends s. 101.253, F.S., to provide that a supervisor of elections must do one of three things in the event that a candidate's name is not to appear on the ballot. If the ballots have been printed or the voting machines programmed, the supervisor may 1) substitute the name of the new candidate; 2) reprint or reprogram the ballot; or 3) explain the consequences of voting for the former candidate through notice in the newspaper, notice in each voting booth and inserts with each absentee ballot mailed.
- Section 19 Amends s. 101.5606, F.S., to change a reference from "paper ballot" to "marksense ballot."
- Section 20 Amends s. 101.5608, F.S., to provide conforming amendments relating to marksense ballots.
- Section 21 Amends s. 101.5614, F.S., to provide conforming amendments relating to marksense ballots.
- Section 22 Amends s. 101.572, F.S., to provide conforming amendments.
- Section 23 Amends s. 101.595, F.S., to clarify that each supervisor of election shall report overvotes and undervotes to the Department of State in either the Presidential or Gubernatorial race, whichever is applicable, rather than the first race to appear on the ballot.
- Section 24 Amends s. 101.62, F.S., to provide conforming amendments.
- Section 25 Amends s. 101.694, F.S., to provide that absentee ballots printed for overseas voters shall be printed by the Division of Elections in conjunction with the United States Department of Defense and the United States Postal Service. In addition, the Division shall promulgate a rule addressing such ballot specifications.
- Section 26 Amends s. 102.012, F.S., to provide that a supervisor of elections need only appoint one election board for each precinct.
- Section 27 Amends s. 102.071, F.S., to provide that an election board must post a certificate, rather than a triplicate certificate, at the polls indicating the results of the election. The amendment clarifies the process for delivering election materials to the supervisor's office following the election.
- Section 28 Amends s. 102.111, F.S., to provide that the Elections Canvassing Commission may, at a public meeting, delegate its authority to order recounts to the chief elections officer.
- Section 29 Amends s. 102.141, F.S., to provide that the canvass shall be made from the returns and certificates filed by election inspectors only with the supervisor of elections and no longer with the county court judge. It further provides that unofficial returns must be submitted on forms provided by the Division of Elections. It clarifies that the county canvassing board must order recounts for county and local elections and the Elections Canvassing Commission must order recounts for federal, state and multi-county elections. The amendment makes clarifying changes to reflect the fact that counties are now using marksense ballots (optical scan) or touch screen systems. The amendment provides that unofficial results must be submitted to the Department of State on the *fourth* day, rather than the third day, after an election in which a recount was conducted.
- Section 30 Amends s. 102.166, F.S., to clarify that the county canvassing board must order manual recounts for county and local elections, and that the Elections Canvassing Commission must order manual recounts for federal, state and multi-county elections.

- Section 31 Amends s. 102.168, F.S., to clarify that an election contestant shall file a complaint in circuit court within 10 days after midnight of the date the last board responsible for certifying the official results has certified the results of the election being contested. It further clarifies that the county canvassing board shall be an indispensable and proper party defendant in contests of county and local elections, and that the Elections Canvassing Commission shall be an indispensable and proper party for contests of federal, state and multi-county races.
- Section 32 Amends s. 103.092, F.S., to provide that political parties may solicit and accept funds for the purchase, lease construction or renovation of land and buildings used by the party. The change essentially codifies Division of Elections Opinion 76-27, which states that monies contributed to political parties for the purchase, etc. of buildings are not reportable under chapter 106, F.S.
- Section 33 Amends s. 105.031, F.S., to clarify that write-in school board candidates are not required to pay the qualifying fee set forth in the section.
- Section 34 Amends s. 105.035, F.S., to provide that candidates for certain judicial offices and school boards who qualify by the petition method are not required to file an oath indicating that they intend to qualify by this method, but may begin collecting petitions after they have filed the appointment of campaign treasurer and designation of campaign depository pursuant to s. 106.021, F.S. These changes are consistent with those made in section 3 of the bill.
- Section 35 Creates s. 106.011(17), F.S., to provide a definition of “eliminated candidate” as a candidate “who failed to receive a sufficient number of votes to be certified as the winner of an election or as a run-off candidate in an election.” It clarifies that candidates who have filed an election contest pursuant to s.102.168, F.S., will not be considered eliminated for purposes of receiving contributions and making expenditures solely for the purpose of paying legal fees and costs associated with the election contest.
- Section 36 Amends s. 106.023, F.S., to provide that the execution and filing of the required “Statement of Candidate” does not create the presumption that any violation of chapters 104 or 106, F.S., is “willful,” as the term is defined in s. 106.37, F.S.
- Section 37 Amends s. 106.04, F.S., to provide that committees of continuous existence are subject to fines for late-filing of campaign reports of \$50 per day for each late day.
- Section 38 Amends s. 106.07, F.S., to provide that a campaign report shall be considered timely filed with the filing officer if such report is received within 5 days after the due date. If the report is received within the five day period, but the postmark indicates that the report was mailed after the deadline, it shall be considered late-filed. The change recognizes that sometimes items of mail, mailed through the U.S. Postal Service, are not postmarked, due to machine error or other reasons.
- It also provides for the consideration of mitigating circumstances when the Florida Elections Commission determines fines to be imposed for late-filed campaign reports.
- Section 39 Amends s. 106.0705, F.S., to provide electronic filing requirements for candidates, political committees, committees of continuous existence, state executive committees and any person or organization who is required to file reports under s. 106.071, F.S., who accept contributions or make expenditures in excess of \$10,000. It further provides the procedures for filing such reports by electronic transfer and authorizes the Division of Elections to promulgate rules to implement the electronic filing requirements.

- Section 40 Amends s. 106.075, F.S., to clarify that all persons elected to office must report only *personal* loans exceeding \$500 in value made to the candidate in the 12 months prior to a person's election to office.
- Section 41 Amends s. 106.08, F.S., to provide that candidates may not make expenditures from their campaign accounts for the purpose of receiving or obtaining an endorsement from any person, group or organization.
- Section 42 Amends s. 106.087, F.S., to delete the prohibition against making independent expenditures by committees of continuous existence that accept the use of public funds, equipment, personnel, or other resources to collect dues from its members.
- Section 43 Amends s. 106.09, F.S., to provide that a person may not make a cash contribution in excess of \$100 in the form of a money order.
- Section 44 Amends s. 106.11, F.S., to clarify that candidates and political committees that use a debit card must file a list of authorized persons with the appropriate filing officer rather than exclusively with the Division of Elections.
- Section 45 Amends s. 106.141, F.S., to provide a conforming amendment.
- Section 46 Amends s. 106.25, F.S., to provide that sworn complaints filed with the Florida Elections Commission must be based upon personal knowledge of the complainant.
- It also provides for the limited appearance of the respondent and legal counsel at a probable cause hearing of the Florida Elections Commission.
- Section 47 Repeals unnecessary provisions, ss. 98.181, 101.635, 102.061, 106.085 and 106.144, F.S.
- Section 48 Amends s. 112.312, F.S., to provide a conforming amendment.
- Section 49 Amends s. 189.405, F.S., to provide a conforming amendment.
- Section 50 Reenacts a portion of section 191.005, F.S., in order to incorporate the amendment to s. 105.035, F.S.
- Section 51 Amends s. 582.18, F.S., to provide a conforming amendment.
- Section 52 Provides an effective date of January 1, 2004.

C. SECTION DIRECTORY:

See "Effect of Proposed Changes" above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Ethics and Elections adopted four amendments at its April 10, 2003, meeting. The amendments provide that fines collected by the Florida Elections Commission shall be deposited into general revenue rather than the Elections Commission Trust Fund.

At its April 15, 2003, meeting, the Committee on Procedures adopted the four amendments referred to above.