

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2068

INTRODUCER: Judiciary Committee, Ethics and Elections Committee, and others

SUBJECT: Early Voting

DATE: March 31, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Under the bill, a supervisor of elections may request that the Division of Elections authorize additional early voting sites if a supervisor deems that the statutorily permitted sites are not adequate to provide voters with the opportunity to conveniently utilize early voting. The supervisor must make the request at least 180 days prior to the first statewide election for which the proposed locations will be used as early voting sites, except for the 2006 election, in which case the request must be made 90 days prior to the primary election. A supervisor's request must include his or her reasons for making a request and supporting documentation, a description of the locations and premises for the proposed sites, and a county map that identifies the locations of the proposed additional early voting sites. The bill also provides that the proposed locations must be geographically located so that all voters are given an equal opportunity to vote early, insofar as is practicable.

The bill also gives the supervisor of elections the discretion to establish the times of day at which an early voting site will open and close, but it retains the requirement in existing law that early voting be provided for 8 hours per weekday and 8 hours in the aggregate each weekend at each site during the early voting period.

This bill substantially amends section 101.657, Florida Statutes.

II. Present Situation:

Early Voting

Currently, a Florida elector may vote early at the main office of the supervisor of elections or at a branch office of the supervisor – if the branch office has been a full-service facility for at least

one year prior to the election. A Florida elector may also vote early at a public library or city hall that has been designated as an early voting site by the supervisor.¹

Early voting generally begins on the 15th day before an election and ends on the second day before an election. Early voting is provided for eight hours per weekday and eight hours in the aggregate each weekend at each site. An early voting site may not open before 7 a.m., and must close no later than 7 p.m. on each day of operation.²

The early voting statute provides that if a supervisor designates a city hall or library as an early voting site, “the sites must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable.” In the case of *National Assn. for the Advancement of Colored People, Inc., v. Volusia County Branch*, the association sought an injunction requiring the county to open an early voting site in Daytona Beach, after the county had designated a site at the main office of the elections department. The federal court ruled that the injunction request was moot because the county, after the filing of the action, designated an additional early voting site in the requested location. The court noted that the decision on whether to open additional early voting sites under the statute was within the discretion of the supervisor of elections.³ In a footnote, however, the court further noted that:

[O]nce the decision is made to open an additional site, the statute states that “the sites must be geographically located so as to provide all voters in the county an equal opportunity to cast a ballot, insofar as is practicable. Because of the “equal opportunity” requirement, a supervisor’s decision to open one additional site will often mandate the opening of even more sites, which in turn, will feasibly require more staff, more equipment, and more funding.⁴

Senate Interim Project

An interim project report of the Committee on Ethics and Elections of the Florida Senate noted that voter complaints were made during the 2004 General Election regarding early voting sites.⁵ The complaints revealed that, in some cases, the sites currently permitted for early voting may have limited the ability of supervisors of elections to adequately provide sufficient locations for electors to conveniently utilize early voting. The report noted that many voters requested additional sites for early voting. In addition, the early voting sites that were provided were not always geographically convenient for all voters who desired to cast a ballot early. As written, s. 101.657, F.S., has the effect of limiting the ability of supervisors of elections to provide additional locations for voters to utilize early voting, because it specifies the locations that may serve as early voting sites (i.e., supervisor’s main office, supervisor’s branch office, a library, or a city hall).

¹ Section 101.657(1)(a), F.S.

² Section 101.675(1)(d), F.S.

³ *N.A.A.C.P. v. Volusia County Branch*, 340 F. Supp. 2d 1329, 1330 (M.D. Fla. 2004).

⁴ *Id.* at note 2.

⁵ Committee on Ethics and Elections, The Florida Senate, *Review of Early Voting in 2004 Election Cycle*, Interim Project Report 2006-124 (October 2005), available at

http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-124ee.pdf

III. Effect of Proposed Changes:

This bill implements the recommendations of an interim project titled *Review of Early Voting in 2004 Election Cycle* completed by the Senate Committee on Ethics and Elections in October 2005. The bill authorizes supervisors of elections to request that the Division of Elections (division) of the Department of State approve additional early voting sites when a supervisor concludes that the statutorily permitted sites are not adequate to provide voters with the opportunity to conveniently utilize early voting. A supervisor's request must include:

- his or her reasons for making the request together with supporting documentation;
- a comprehensive description of the locations and premises proposed as additional early voting sites; and
- a map of the county which identifies the locations of the proposed additional early voting sites.

Supervisors must propose locations for these additional sites that are geographically located to provide equal opportunity for all voters in the county to cast a ballot using early voting, "insofar as is practicable." The bill does not define or provide a standard for this particular phrase. This phrase is used in the statute currently with regard to the designation of a city hall or library as an early voting site.⁶ Research for this staff analysis has not identified a court decision specifically interpreting this phrase in the context of the early voting statute. As cited in the Present Situation section of this analysis, however, one federal court has taken note of the fact that the statute's "equal opportunity" requirement may necessitate opening more sites once one additional site is provided.⁷

The bill provides that a supervisor must submit a request for additional early voting sites at least 180 days before the next statewide election for which the proposed locations will be used as early voting sites. The division has 30 days after receipt of the request and proposal to receive public comment on the proposed locations. The division has a total of 60 days after submission of the request and proposal to review and approve or disapprove the request in whole or in part.

In the case of the upcoming 2006 General Election, however, the bill provides that supervisors must make a request and propose additional early voting sites 90 days before the primary election. The division, in this case, shall have 15 days after receiving a supervisor's request to accept public comment and shall have a total of 60 days after the request is submitted to either approve or disapprove the request in whole or in part.

The bill also provides that once a supervisor has received approval from the division to use a location as an early voting site, a supervisor may continue to use this location as an early voting site without further division approval. However, a supervisor must still designate the approved

⁶ See s. 101.657(1)(a), F.S.

⁷ See discussion of *N.A.A.C.P. v. Volusia County Branch*, 340 F. Supp. 2d 1329, 1330 (M.D. Fla. 2004) in the Present Situation section of this staff analysis.

additional location as an early voting site at least 30 days prior to an election and designate an early voting area at the site in accordance with s. 97.021, F.S.⁸

Lastly, the bill provides supervisors of elections with the discretion to select the times of day when early voting sites will open and close during the early voting period. The bill deletes the requirement from existing statute that the sites open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day. However, the bill retains the requirement that early voting be provided for 8 hours per weekday and 8 hours in the aggregate each weekend at each site during the early voting period.

The bill takes effect upon becoming a law.

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:

If a supervisor of elections chooses to request additional early voting sites and those sites are approved by the Division of Elections under the provisions of the bill, the supervisor will likely have to expend funds to open and operate these additional early voting sites.

⁸ Section 97.021, F.S., defines an “early voting area” as “the area designated by the supervisor of elections at an early voting site at which early voting activities occur, including, but not limited to, lines of voters waiting to be processed, the area where voters check in and are processed, and the area where voters cast their ballots.”

VI. Technical Deficiencies:

The bill title does not currently describe the provision of the bill specifying that continued use of a previously approved early voting site does not require submission of a second request for an exception. (See page 3, lines 7-14, of CS/SB 2068.)

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
