

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 213 Electronic Voting System Paper Records
SPONSOR(S): Hukill and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1174, PCS/SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Ethics & Elections</u>	<u>(W/D)</u>	<u></u>	<u></u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u>West</u>	<u>Tinker</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 213 would require all certified voting systems to produce a voter-verifiable, permanent paper record (also know as VVPAT) that is suitable for a manual audit and is equivalent or superior to the paper record of a traditional ballot box system. All voting systems must produce a ballot which is available for inspection, verification and correction by the voter before a vote is cast. The bill requires paper ballots to be preserved within the polling place in the manner in which all other paper ballots are preserved for later use in any manual audit. The paper record produced shall be treated as a public record and *shall be the official record for any recount.*

The bill requires prior to certification of the official results of each election that each county canvassing board conduct a random audit of 4% to 6% of the results of votes cast on electronic voting systems in the county.

HB 213 provides that any unauthorized person removing a paper record produced by an electronic voting device from the polling place commits a third degree felony.

This bill will have significant and immediate fiscal impacts as counties will be required to buy new voting equipment. The audit requirement will also have an ongoing fiscal impact on the counties as they pay for audits of every race on the ballot after each election.

This bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower taxes – The bill will cause a significant impact on local government. Some counties may have issued bonds to pay for the touch screen voting systems that were required by legislation enacted after the 2000 election, in addition to using federal HAVA funds. Now many, if not all of these systems may be rendered obsolete by the requirements in the bill. Unless the grants are made available from the state to meet the funding requirements of this legislation, the counties will have to make up the difference from their local budgets. This bill does not make any state funds available.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Since 2002, no punch cards, mechanical lever machines nor central-count voting systems have been used in the state. Current voting systems certified for use in the state must employ precinct-count tabulation, and offer the voter an opportunity to correct a ballot containing any over-votes. The two systems used in Florida are precinct-based optical scan systems, and the more technologically-advanced “direct recording equipment” (DRE) or touch screen systems. Only fifteen counties exclusively use touch screen systems, but those counties contain more than 1/2 of the state’s registered voters (over 5.3 million). The three vendors of touch screen systems are Sequoia, Election Systems and Software, and Diebold.

Several voting rights groups are advocating that there be an auditable paper trail for all voting systems, specifically some form of paper ballot produced by the machines. Several groups favor a conversion to the exclusive use of optical scan systems in Florida. Touch screen systems are currently able to produce ballot images, if required. However, at this time, there is no equipment certified by the State of Florida that will print a paper record for touch screen systems. Any new voting technology would have to be certified by the Department of State before it is used in an election.

With the increased use of touch screen voting systems in the past 5 years, there has been considerable discussion regarding their reliability, accuracy, and security. Supervisors of elections maintain that these systems are a very secure and accurate method of voting while understanding the public’s perception for the need for a paper receipt at the polls.

Impact of Purchase of New Voting Equipment

The bill would require a ballot that is **equivalent or superior to the paper record of a paper ballot box system**. The only systems that meet this requirement and are used in the State of Florida are the optical scan voting system and the AutoMark touch screen ballot marker. The touch screen voting systems now used for disabled voters would not satisfy the requirements of this bill. All current paper record printers for touch screen systems record votes on adding machine-type thermal paper such as the paper pictured below.

The bill would require counties that now use touch screen voting systems to change to an optical scan voting system for the majority of voters. The newly certified AutoMark ballot marking system would be the only touch screen system that would produce the paper ballot required by the bill and also meet the requirements for disabled voters.

- **Optical scan tabulators**

This is the primary voting system that uses the paper ballot required by the bill. In order to meet the requirements of the bill, tabulators would have to be provided for around 3,345 precincts and 283 early voting sites that currently use touch screen voting systems. Using figures provided by Sarasota County to buy systems from Election Systems and Software, Inc. (ES&S), it would cost \$9,375 per precinct and early voting sites, or a total of \$32,550,000 statewide.

- **AutoMark**

There is only one system that is certified and can meet the requirements of both the bill, as to the type of paper needed, and state and federal laws covering disabled voters. This system currently is only certified and available from ES&S and is called AutoMark. According to figures furnished by the Sarasota County Supervisor of Elections, the AutoMark system would cost \$7,450 for each complete system. For one complete system per precinct (Florida has 6,854 precincts¹) the cost of this system would be \$51,063,300. One major obstacle is that 32 of the 67 counties currently use ES&S voting systems. The remaining counties' voting systems may not be compatible with the AutoMark system.

- **Printers and a Voter-Verified Paper Audit Trail (VVPAT) for Touch Screen Systems**

The printers currently available for touch screen voting systems may not meet the requirements of the bill for a ballot that is **equivalent or superior to the paper record of a paper ballot box system**. No VVPAT manufactured or certified meets the requirements of the proposed Department of State rule for VVPAT's. The printer's available for voting systems use a thermal paper on a roll much like an adding machine tape. These are contained in a container that will hold as few as 50 ballots and as many as 250 ballots depending on the length of the ballot and the number of cancelled votes.

The voter's ability to verify their vote is less than ideal. The ES&S system does not have the ability to go back and review your choices once the text has scrolled off the screen. The Sequoia system turns off the touch screen monitor when the paper ballot is printed for you to see. You cannot compare the screen with the paper printout.

Only the Diebold system was demonstrated to have a secure cartridge that can be easily changed when the paper is used up. The Diebold system has a sensor that alerts the touch screen when the paper gets low and will alert the poll worker to change cartridges before another voter starts.

If the printer option is chosen, a printer would have to be added to all touch screens voting systems in the state. To add the current VVPAT's the costs for each system would be:

- Diebold systems - \$500; 29 counties made up of 1,984 precincts
- ES&S systems - \$1,295; 32 counties with 3,490 precincts
- Sequoia systems - \$1,400. 6 counties with 1,585 precincts

The total for the precincts will be about \$7,432,950. This cost is without spares or printers for the early voting sites. The price does not include voting booths.

Impact of Manual Audit Requirements

The bill requires that each county canvassing board conduct an audit of the results of votes cast on electronic voting systems used in the county prior to certification of the official results of each

¹ The number of units required may actually be lower where there are several precincts in one polling place.

election.² The audit must be conducted by randomly selecting by lot at least 4 percent and not more than 6 percent of the electronic voting devices in that county. In addition, the county must compare the results recorded electronically with the results from the official paper records. The result of this comparison by manual audit must be released as a public record by the county canvassing board before the certification of the official results to the department. If the bill had been effective for the 2004 election, it would have meant the hand counting of over 300,000 ballots.

In a Washington State 2004 recount of their Governor's race, the average cost was \$0.36 per ballot. A Clark County, Nevada, audit of 1,268 Sequoia "voter verifiable paper audit trail" VVPAT ballots with 21 races required 320 person-hours at \$15 per hour or \$4,800. The cost per ballot was \$3.79. Using similar figures for Hillsborough County, Florida, an audit of the 2004 general election with all VVPAT ballots would have cost approximately \$110,484.

There have been a number of reported incidents of jammed, non-working and improperly set-up ad-on printers for touch screen systems. In a report issued by the Election Science Institute of a Cuyahoga County, Ohio election, it was found that 9.66% of the ballots from the printers on touch screens were, "destroyed, blank, illegible, missing, taped together or compromised in some way."

Alternative Voting Technology

- **Ballot-on-Demand**

The biggest problem with using optical scan tabulators has been the number of options needed for early voting sites. In a county like Miami-Dade you need to have a separate ballot for each of 749 precincts. You then need to have these available in 3 languages and a different ballot for Republican, Democrat and No party in a primary. To further complicate the situation, the number of races that a voter can vote for in a ballot may be up to 4 pages both side. It is difficult to store and retrieve this number of paper ballots at an early voting site.

The only solution has been the use of touch screen voting systems. If the bill passes a ballot-on-demand system may need to be developed that will allow the voter to come in and for the poll worker to generate and print on a standard printer a ballot for the voter to mark. A scanner will be needed to scan this printed ballot and to record the vote. Diebold says that it has a scanner that can handle an unlimited number of ballot-on-demand type ballots. They said they can produce a ballot-on-demand system that would meet the needs of our larger counties. ES&S is said to have a ballot on demand system used in other states. It is believed that the ES&S ballot-on-demand system will not be compatible with the older ES&S Eagle optical scan tabulators which are currently used in seven counties. These tabulators will need to be replaced after the 2008 election.

- **Vote-by-Mail**

A vote-by-mail election system could potentially satisfy the requirements of the bill and provide a paper record of each vote cast in an election. Under a vote-by-mail system, all ballots would be mailed to the voters and would be paper ballots as is currently done with absentee ballots. The Department of State estimates that a statewide election using traditional election day polling places, early voting and absentee ballots costs roughly \$21 million. Using figures provided from the Martin County Supervisor of Elections for mail ballots, it would only cost roughly \$11 million to conduct a statewide vote-by-mail election. Counties would still be required to provide voting systems that are accessible to the disability community, but could deploy a very small number of such systems in the supervisor's offices.

- **Vote-by-Phone**

² Pursuant to s. 102.112, F.S., returns must be filed by 5 p.m. on the 7th day following a primary election and 5 p.m. on the 11th day following a general election.

The solution that several states are using to meet their disability needs is a vote-by-phone system produced by IVS, LLC. This system would have a disability-friendly phone available at each precinct. The disabled person would enter the precinct and be connected by phone to a central office to vote. The system would then produce a ballot in the central office that could be scanned back into the system and read to the voter. The ballot could then be faxed to the polling place and the voter would insert the ballot into the tabulator. However, such a ballot would not be readable by the optical scan tabulators currently used in Florida.

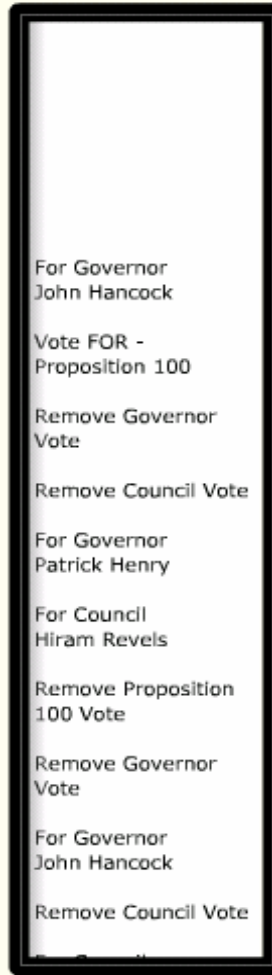
IVS LLC was asked for an estimate to implement its system in the State of Florida. The cost provided was \$1.9 million for set-up and a recurring cost of \$650,000 per statewide election thereafter.

- **New Felony Offense**

The bill makes it a third degree felony for an unauthorized person to remove a paper record produced by an electronic voting device from the polling place. This provision differs from the provisions of s. 104.20 F. S., which only make it a *first degree misdemeanor* to remove any ballot from the polling place before the polls are closed.



Pictures from Election Science Institute analysis of a Cuyahoga County, Ohio election. Count of votes from touch screen printers not permitted under this bill.



An example of a paper ballot audit trail from ES&S equipment.

C. SECTION DIRECTORY:

- Section 1:** Names the act as the "Trust in Elections Act"
- Section 2:** Subsection (3) is added to s. 101.295, F.S., to make it a felony to take a record produced by an electronic voting device out of a polling place.
- Section 3:** Subsection (16) is added to section s. 101.5606, F.S., to require an auditable, correctable paper record that is the official ballot attached to all voting systems.
- Section 4:** Paragraph (b) of subsection (6) of section s. 101.141, F.S., is amended to require a hand audit of 4 to 6 percent of the electronic voting devices used in the county before the certification of the official results to the Department of State.
- Section 5:** Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None

2. Expenditures:

The Governor has requested \$32.5 million to implement a voting system that produces a paper trail. Complete implementation of such a system would likely cost significantly more than this requested amount.

The Criminal Justice Impact Conference has not met to estimate the prison bed impact of this bill. The likely impact, however, is insignificant. The bill creates a new, unranked 3rd degree felony offense. According to the state's criminal sentencing guidelines, unranked 3rd degree felonies rarely require a prison sentence. In addition, it is unlikely that there would be a large number of violations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Generally, counties in Florida are required to fund elections. As such, any amount not covered by appropriations from General Revenue or any other state or federal funding source would have to be covered by the counties. Those impacts cannot be specifically determined at this time, but they could be considerable. A similar proposal by the Governor does not address expenses for such things as voting booths, security covers, ballot transfer cases and necessary software.

The audit requirement of this bill would also impose new fiscal impacts on the counties. Because of the difference in ballot length and uncertain turnout, the total costs cannot be determined. Using data from the last presidential election year (2004), this bill would require a minimum of 300,000 ballots to be audited, with each ballot potentially containing over 30 issues and offices to be audited.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

NONE

D. FISCAL COMMENTS:

SEE ABOVE

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Elections laws are exempt from the mandates requirements of Art. VII, s. 18(a), Florida Constitution.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires that paper ballots be preserved within the polling place in the manner in which all other paper ballots are preserved for later use in any manual audit. It is unclear what this would require. The current practice is to put ballots in a transfer case on election night and transport them to the Supervisor of Election's office. It is unclear if the language of the bill will allow this practice to continue. The language could be understood as requiring the manual audit in the polling place before taking the ballots to the supervisor's office. This language needs to be clarified.

The bill uses a definition for a ballot that is "equivalent or superior to the paper record of a paper ballot box system" which is somewhat unclear. It is recommended to use the definition, or some form, of the "marksense ballot" as defined in s. 101.151, F.S.

The bill makes it a third degree felony for an unauthorized person to remove a paper record produced by an electronic voting device from the polling place. This provision differs from the provisions of s. 104.20 F. S., which only make it a *first degree misdemeanor* to remove any ballot from the polling place before the polls are closed.

D. STATEMENT OF THE SPONSOR

I anticipate amending this bill which may substantially change the analysis.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES