

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1201

SPONSOR(S): Patterson

TIED BILLS: **IDEN./SIM. BILLS:** SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Ethics & Elections</u>	<u>8 Y, 0 N</u>	<u>West</u>	<u>Mitchell</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u>Mitchell</u>	<u>Tinker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

Since the 2000 General Election, Florida has been a national leader in election reform. The state created a model for the rest of the nation when it passed the Election Reform Act of 2001; the Voter Accessibility Act of 2002; and in 2003, implemented the federal Help America Vote Act of 2002 (HAVA), becoming fully compliant with all federal requirements by 2006.

In 2007, Florida passed a sweeping voting systems standardization bill (HB 537; ch. 2007-30, Laws of Fla.) that requires paper ballots in precincts and early voting sites by July 1, 2008 (with the exception of one touchscreen voting machine in each precinct and early voting site to comply with HAVA requirements). The Department of State (DOS) is currently in the process of implementing this legislation and HB 1201 clarifies certain sections of the Election Code and conforms other sections following the changes made in the 2007 legislation.

While most of the bill is an update to language to conform to changes in the 2007 legislation, some areas are updates to current practices or proposed changes in current law.

HB 1201 is effective January 1, 2009, except as provided therein.

The bill sponsor will likely offer a strike-all amendment at the meeting of the Economic Expansion & Infrastructure Council on April 11, 2008. The strike-all amendment will incorporate two amendments traveling with the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Registration list maintenance forms and procedures are revised to provide for proper and effective notice to voters in an effort to maintain accurate voter registration rolls. In addition, registration list maintenance programs are amended to provide clarification on the process for voters moving both within the state and outside the state. A county supervisor of elections (supervisor) would be able to remove a deceased voter's name from the registration list in the event that the supervisor receives a copy of a death certificate.

The "resign-to-run" law, s. 99.012, F.S., is clarified following a change made in 2007 to provide that while a sitting state officer may run for federal office without having to resign from the state office, a person may not *qualify* to run for two different offices concurrently.

The bill would allow changes to a voter's party affiliation after the book-closing deadline for any non-primary election. For a primary election, any change to a voter's party affiliation after the book closing deadline would be effective at the next election.

Petition signature verification is clarified to address issues that arise when a voter lists an address other than the legal address in the voter registration system. The bill would also allow individuals to submit a petition revocation form directly to a supervisor when a petition revocation form for a citizen initiative has not been submitted and sponsored by a political committee.

Procedures are reorganized to provide clarification to both petitioners and city clerks in the event of a municipal recall. This section also eliminates the prohibition on expenditures for campaigning for or against an officer being recalled until the date the recall election is publicly announced.

The bill clarifies that only a qualified, registered elector or poll watcher of a county may challenge a person's right to vote in that county. It is also proposed that the supervisor be required to provide the election board in the challenged voter's precinct with a copy of the challenge.

The election emergency law, s. 101.733, F.S., is amended to permit a notice of a suspended or delayed election be made in a reasonable manner, rather than requiring publication in a newspaper of general circulation in that affected area. In addition, in the case of an emergency situation that warrants a change in procedure, it provides authority for the Governor to call for a mail ballot election.

Poll worker training requirements are amended to eliminate the required one hour of poll worker training specifically related to issues of sensitivity to voters with disabilities *prior to each election*. The new requirement retains the pollworker sensitivity training, but requires that it be completed *once during an election cycle* (rather than prior to a primary and then prior to a general election).

The bill removes the requirement for a supervisor to provide early voting on a local bond referendum that does not involve a state or federal election. A county, district, or municipality may still opt to provide early voting in these instances, but is not required to do so.

The bill amends s. 102.031, F.S., relating to solicitation activities at the polls. In response to a decision in *CBS Broadcasting, Inc. v. Cobb*,¹ a 2006 ruling from the U.S. District Court, Southern District, the bill clarifies that the terms “solicit” or “soliciting” do not include exit polling.

The bill would require a candidate, political committee or political party to request a recount in cases where the vote was within one-quarter of one percent rather than calling for an automatic recount. If there was a discrepancy, the canvassing board would determine the cause and report the results.

The remaining changes include investigations into candidate petition activities, qualifications to preregister to vote, notification regarding unverified information on voter registration applications, forms of voter identification, changes to the federal candidate oath, secret voting, occupying voting booth alone, voting by electronic or electromechanical methods as it pertains to ballot stubs, and certification of county returns.

C. SECTION DIRECTORY:

Section 1. Amends s. 97.012, F.S., to clarify that the Secretary of State has the authority to conduct preliminary investigations into candidate petition activities.

Section 2. Amends s. 97.041, F.S., to clarify that a person may pre-register to vote on or after one’s 16th birthday (rather than upon receipt of a valid driver’s license.)

Section 3. Amends s. 97.053, F.S., to provide that if the driver’s license number, Florida identification number or the last four digits of a voter’s social security number submitted as part of a completed voter registration application cannot be verified, the applicant must provide evidence to verify the authenticity of the number in question. If the applicant provides the necessary evidence, he or she will be placed on the voter rolls as an active voter. Otherwise, the applicant will be permitted to vote a provisional ballot and will then have until 5 p.m. on the second day following the election to provide the necessary evidence and have the provisional ballot be counted.

Section 4. Amends s. 97.0535, F.S., to conform the section to a change made in 2007 to s. 101.043, F.S., (HB 537; ch. 2007-30, Laws of Fla.) whereby two forms of voter identification required at the polls were eliminated – an employee badge or identification and a buyer’s club identification.

Section 5. Amends s. 97.055, F.S., to provide that a change in a voter’s party affiliation cannot be made after the book closing date prior to a primary election. Any change in party affiliation will be effective for subsequent elections.

Section 6. Amends s. 97.1031, F.S., to provide that an elector may submit a change in party affiliation after the book closing deadline which will be effective for subsequent elections other than a general election. Any changes made after the deadline immediately prior to a general election will be effective for the general election.

¹ 470 F.Supp.2d 1365 (S.D. Fla. 2006).
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Section 7. Amends s. 98.065, F.S., to return list maintenance activities of the supervisors of elections to those in place prior to 2005. If the supervisor receives information that indicates that a voter's legal residence may have changed to an address outside the state, the supervisor shall send an address confirmation final notice to the voter. If the voter does not respond to the address confirmation final notice within 30 days or the notice is returned as undeliverable, he or she must be designated as inactive.

Section 8. Creates s. 98.0655, F.S., to provide for registration list maintenance forms and their contents.

Section 9. Amends s. 98.075, F.S., to require a supervisor to remove the name of a deceased person upon receipt of a copy of the person's death certificate.

Section 10. Amends s. 99.012, F.S., to clarify a change made in 2007 relating to the so-called "resign-to-run" law. The change provides that a person cannot qualify to run for two offices at the same time.

Section 11. Amends s. 99.021, F.S., to make a conforming change to the candidate oath required by section 1 above.

Section 12. Amends s. 99.063, F. S., to move the time to designate a Lieutenant Governor and for them to file from the 9th day to the 10th day following a primary election.

Section 13. Amends s. 99.097, F.S., to provide that if a voter signs an initiative petition and lists an address other than the legal residence where the voter is registered, the petition will not be counted. The voter will be sent a new voter registration application on which to submit a change of address.

Section 14. Amends s. 100.221, F.S., to provide that a county, district, or municipality is not required to provide early voting for a stand-alone bond referendum.

Section 15. Amends s. 100.361, F.S., to clarify the process of municipal recall.

Section 16. Amends s. 100.371, F.S., to provide that a standard petition revocation form may be submitted directly by the voter to a supervisor of elections in certain circumstances. Requires the Division of Elections to adopt rules to implement this provision.

Section 17. Amends s. 101.041, F.S., to provide a technical change eliminating a reference to "printed and distributed" ballot.

Section 18. Amends s. 101.045, F.S., to allow a change in party affiliation. Conforming change for sections 5 & 6 above.

Section 19. Amends s. 101.111, F.S., to provide that a person's ability to vote may be challenged in advance by providing the supervisor with the challenge no sooner than 30 days before an election. A copy of the challenge is then sent to the election board in the challenged voter's precinct because a supervisor has no way of knowing where a voter may vote in a particular election, given the popularity of early voting in Florida.

Section 20. Amends s. 101.51, F.S., to clarify that an election official shall permit an election to enter a voting booth or compartment alone in order to cast a ballot.

Section 21. Amends s. 101.56075, F.S., on July 1, 2008 to clarify that any person on request may vote on a voting system that meets the requirements for individuals with disabilities.

Section 22. Amends s. 101.5608, F.S., to clarify that a voter must place his or her marked ballot into a tabulator rather than a ballot box.

Section 23. Conforming change to s.101.5614, F.S.

Section 24. Amends s. 101.6102, F.S., relating to mail ballot elections. Conforming change to permit mail ballot elections to be called in certain emergency circumstances, as provided in section 25 of the bill.

Section 25. Amends s. 101.733, F.S., relating to election emergencies, to allow the Governor to call for a mail ballot election in a declared state of emergency.

Section 26. Amends s. 102.014, F.S., to eliminate the requirement that one of the three hours of poll worker training conducted prior to each election be dedicated to etiquette and sensitivity related to voters with a disability. The change requires that each supervisor still conduct a uniform program that includes these topics and report that each pollworker has completed the program prior to each election cycle.

Section 27. Amends s. 102.031, F.S., to reflect a recent court decision relating to exit polling and maintenance of good order at the polls. The amendment clarifies that the terms "solicit" and "solicitation" do not include exit polling (i.e., that exit polling is permitted.)

Section 28. Amends s. 102.112, F.S., to clarify that the canvassing board must "compare" the number of persons who voted with the number of ballots counted, rather than having to "reconcile" these figures.

Section 29. Amends s. 102.141, F.S., to have the county canvassing board determine the cause and report the results of any discrepancy in recounts.

Section 30. Effective July 1, 2008, amends s. 102.166, F.S., to change the procedures for manual recounts. It requires a manual recount of the votes cast in a race in the entire jurisdiction of the race, rather than simply the "overvotes" and "undervotes" in a race. It also exempts from the audit provisions of s. 101.591, F.S., any countywide race in which a manual recount has been conducted.

Section 31. Amends s. 103.101, F.S., to make it consistent with a court decision related to reconsideration of candidates and their placement on the presidential preference primary ballot.

Section 32. Amends s. 190.006, F.S., to make uniform the qualifying requirements for community development districts. Similar changes were made in 2007 in HB 537 to streamline qualifying for special district offices.

Section 33. Provides an effective date of January 1, 2009, except as provided therein.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be costs associated with conducting manual recounts, as directed in s. 102.166, F.S. Because one cannot predict the number of races that might require a manual recount in any given election, the cost is indeterminate. Recounts can be labor intensive and costly. The Miami-Dade supervisor of elections estimates a cost of at least \$250,000 to conduct a manual recount in that county.

Department staff indicates that there may be some cost offsets because the bill creates an exemption from audit requirements (found in s. 101.591, F.S.) for countywide races in which a manual recount was conducted.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Election laws are exempt from the mandates provisions of s. 18(a), Art. VII, Fla..Const.

2. Other:

B. RULE-MAKING AUTHORITY:

Section 25 of the bill provides new rulemaking authority to the Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

D. STATEMENT OF THE SPONSOR

None provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At the March 13, 2008, meeting of the Committee on Ethics & Elections, two amendments, offered by the bill sponsor, were adopted with no objection.

Amendment 1 makes several sections of the bill effective July 1, 2008, and one section effective upon becoming a law (acceptance of voter registration applications in s. 97.053, F.S.).

Representative Nehr moved without objection to permit the House Bill Drafting office to make appropriate changes to the bill to incorporate the new effective dates. Amendment 2 conforms the qualifying requirements for community development districts in chapter 190 to the Election Code (s. 99.061, F.S.). Both amendments are travelling with the bill.

The bill sponsor will likely offer a strike-all amendment at the meeting of the Economic Expansion & Infrastructure Council on April 11, 2008. The strike-all amendment will incorporate the traveling amendments described above.