

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7013 (PCB EES 13-01) Florida Election Code

SPONSOR(S): Appropriations Committee, Ethics & Elections Subcommittee, Boyd

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics & Elections Subcommittee	12 Y, 0 N	Davison	Marino
1) Appropriations Committee	25 Y, 0 N, As CS	Kramer	Leznoff
2) State Affairs Committee			

SUMMARY ANALYSIS

The table below summarizes the current law regarding early voting requirements, absentee ballots, county canvassing boards and legislatively proposed ballot summaries, as well as the effects of the proposed changes in the bill:

ISSUE	CURRENT LAW	EFFECTS OF PROPOSED CHANGES
EARLY VOTING DAYS §101.657	<ul style="list-style-type: none"> • 8 days required • Begins on the 10th day before and ends on the 3rd day before an election • Early voting not permitted on the Sunday before the general election 	<ul style="list-style-type: none"> • 8 days minimum, 14 days maximum • Begins on the 15th day before and ends on the 2nd day before an election • Early voting optional at the supervisor of elections' discretion on the Sunday before the general election
EARLY VOTING HOURS §101.657	<ul style="list-style-type: none"> • 48 hours minimum, 96 hours maximum • At least 6 but no more than 12 hours per day • No 7 a.m. to 7 p.m. restriction • No requirement that all sites in a county be open on the same days or for the same amount of time 	<ul style="list-style-type: none"> • 64 hours minimum, 168 hours maximum (72 more hours than under current law) • At least 8 but no more than 12 hours per day • No 7 a.m. to 7 p.m. restriction • No requirement that all sites in a county be open on the same days or for the same amount of time
EARLY VOTING SITES §101.657	Early voting may be offered at city halls, public libraries, main or permanent branch offices of supervisors of elections.	Expands currently authorized sites to include fairgrounds, civic centers, courthouses, county commission buildings, stadiums, and convention centers
REGISTERING TO VOTE §97.0555	Individual discharged or separated from uniformed service or accompanying family member may register to vote until 5pm on Friday before election (rather than 29 days before election).	Also authorizes individual or accompanying family member who returned from military deployment or activation to register to vote until 5pm on Friday before election.
ABSENTEE BALLOTS §101.68	An absentee ballot is rejected and not counted if the voter does not sign the Voter's Certificate or the signature does not match the signature on record	Provides a mechanism to "cure" unsigned absentee ballots by requiring the supervisor of elections to reissue absentee ballot if elector completes affidavit. If the voter correctly completes and submits the reissued absentee ballot, the ballot will be counted assuming all other requirements are met.
CANVASSING BOARDS §102.141	Provides that county canvassing board is composed of supervisor of elections, county court judge and chair of board of county commissioners.	Provides for alternate members of a county canvassing board. Requires the results of all early voting and absentee ballots that have been canvassed and tabulated by the end of the early voting period to be uploaded to the county's election management system by 7pm on day before election.
LEGISLATIVE BALLOT SUMMARIES §101.161	<ul style="list-style-type: none"> • No word limit on summaries • Allows multiple summaries in a joint resolution • Allows full text of an amendment to be placed on the ballot instead of a summary • Attorney General authorized to rewrite a summary if a court invalidates the legislature's summaries 	<ul style="list-style-type: none"> • Applies a 75-word limit to the first of multiple summaries in a joint resolution, while any remaining summaries would not be subject to a 75 word limit • Allows full text of amendment to be placed on the ballot instead of a summary. • Applies a 75-word limit to joint resolutions containing only one summary • Does not apply a 75-word limit to summaries rewritten by the Attorney General

This bill does not appear to have a direct fiscal impact on state government, local governments, or private parties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Early Voting

A. Early Voting Days

Current Situation

Prior to the enactment of CS/CS/HB 1355 in 2011, counties were required to offer between 12 and 14 days of early voting in an election that contained a state or federal race, beginning on the 15th day before an election and ending on the 2nd day before the election.¹ Early voting on the Sunday before the general election was optional at the discretion of the supervisor of elections.

Current law requires 8 days of early voting in an election that contained a state or federal race, beginning on the 10th day before the election and ending on the 3rd day before the election.² Thus, early voting is not allowed on the Sunday before the general election.

Effect of Proposed Changes

This bill increases the number of days available for early voting by requiring a minimum of 8 days and allowing up to a maximum of 14 days, beginning on the 15th day before an election that contains state or federal races and ending on the 2nd day before the election. Early voting *must* be offered each day from the 10th day before an election that contains state or federal races through the 3rd day before the election. Early voting *may* be offered, at the discretion of each county's supervisor of elections, on the 15th, 14th, 13th, 12th, 11th, or 2nd day before an election that contains state or federal races. As such, early voting on the Sunday before the general election may be offered at the discretion of each county's supervisor of elections, but is not required.

B. Early Voting Hours

Current Situation

Prior to the enactment of CS/CS/HB 1355 in 2011, the law required counties to offer 96 hours of early voting, including 8 hours on each weekday and a total of 8 hours on each weekend during the authorized early voting period.³ Early voting was allowed only between 7 a.m. and 7 p.m., and all early voting sites in a county had to be open on the same days during the same hours.⁴

Currently, early voting must be offered for no less than 6 hours and no more than 12 hours per day, which means that 48 hours of early voting is required but up to 96 hours is allowed at the discretion of each county's supervisor of elections.⁵ The law does not require early voting during specified hours or require all early voting sites in a county to be open on the same days for the same hours.

Effect of Proposed Changes

This bill increases the number of hours available for early voting by requiring counties to offer early voting for a minimum of 64 hours and allowing early voting for a maximum of 168 hours during the early voting period. Early voting must be offered for no less than 8 hours (instead of 6 hours required under current law) and no more than 12 hours per day at each site during the early voting period. However, the bill does not require early voting during specified hours or require all early voting sites in a county to be open on the same days for the same hours.

C. Early Voting Sites

Current Situation

¹ § 101.657(1)(d), F.S. (2010).

² § 101.657(1)(d), F.S.

³ §101.657(1)(d), F.S. (2010).

⁴ *Id.*; § 101.657(1)(c), F.S. (2010).

⁵ § 101.657(1)(d), F.S.

Counties are allowed to have early voting at city halls, public libraries, and main or permanent branch offices of supervisors of elections.⁶ In order for a county to utilize a permanent branch office of a supervisor of elections as an early voting site, the office must have been used for at least a year prior to the election as a permanent facility of the supervisor.⁷ These were also the permissible early voting sites before the enactment of CS/CS/HB 1355 in 2011.⁸

Effect of Proposed Changes

This bill expands the types of sites at which early voting may be held by adding fairgrounds, civic centers, courthouses, county commission buildings, stadiums, and convention centers to the currently permissible early voting sites.

Late Voter Registration for Military Personnel and their Family Members

Current Situation

In order for a person to be eligible to vote in a Florida election, the person must be:

- At least 18 years of age;
- A citizen of the United States;
- A legal resident of the State of Florida;
- A legal resident of the county in which that person seeks to be registered; and
- Registered to vote pursuant to the Florida Election Code.⁹

An applicant for registration must mail or hand deliver a voter registration application to the county supervisor of elections' office, the Florida Division of Elections, a driver's license office, a voter registration agency,¹⁰ or an armed forces recruitment office.¹¹ In addition, third-party registration organizations may collect and deliver applications.¹²

In order to be eligible to vote, an applicant's completed application must be received or postmarked before the registration book closing for an election, which must occur 29 days before an election.¹³ However, an individual or accompanying family member who has been discharged or separated from the uniformed services, Merchant Marine, or employment outside the territorial limits of the United States, who shows sufficient documentation, may register at their local supervisor of elections office until 5:00 p.m. on the Friday before the election. This exception applies only to an individual or accompanying family member who has been "discharged or separated."¹⁴

Effect of Proposed Changes

This bill allows military personnel and accompanying family members who have returned from a military deployment or activation, and who are otherwise eligible to vote, to register to vote after book closing if sufficient documentation is provided showing evidence of qualifying for late registration. This bill also changes the reference to "Merchant Marine" in the late registration statute¹⁵ to "United States Merchant Marine" for clarification purposes.

Canvassing Board Alternates and Uploading Elections Results

Current Situation

A. Alternates to the Canvassing Board

A county canvassing board serves to provide oversight to ensure the integrity of the electoral process. A canvassing board's responsibilities include: canvassing¹⁶ all ballots cast in an election, including absentee and provisional ballots;

⁶ § 101.657(1), F.S.

⁷ *Id.*

⁸ Ch. 2011-40, Laws of Fla.

⁹ § 97.041(1)(a), F.S.; A person who has been adjudicated mentally incompetent or a person who has been convicted of a felony may not vote until his or her right to vote has been legally restored. § 97.041(2), F.S.

¹⁰ § 97.021(41), F.S., defines "voter registration agency" as any office that provides public assistance or serves persons with disabilities, a center for independent living, or a public library.

¹¹ § 97.053(1), F.S.

¹² § 97.0575, F.S.

¹³ § 97.055, F.S.

¹⁴ § 97.0555, F.S.

¹⁵ *Id.*

¹⁶ Canvassing is the process of examining ballots for authenticity. Absentee ballots are canvassed by comparing the signature of the elector on the voter's certificate with the signature of the elector in the registration books to determine whether the elector is duly registered in the county. § 101.68(1), F.S. Provisional ballots are canvassed by reviewing the information provided in an elector's Voter's Certificate and Affirmation, any written evidence provided by the person casting the ballot pursuant to § 101.048(1), F.S., any other evidence presented by the supervisor of elections, and, in the case of a challenge, any evidence presented by the challenger

certifying election results and reporting them to the Department of State;¹⁷ determining when counting errors have occurred and correcting them; ordering¹⁸ and conducting recounts for candidate races with results within one-half of a percent or less and for ballot measures that are approved or rejected by one-half of a percent or less; employing clerical help to assist with the work of the board as it deems necessary; and filing a report with the Division of Elections on the conduct of the election once the official results are certified to the Department of State.¹⁹

Under current law, each county canvassing board is composed of the supervisor of elections; a county court judge, who acts as chair; and the chair of the board of county commissioners.²⁰ In the event any member of the canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member is to be replaced as follows:

- a. If no county court judge is able to serve or if all are disqualified, the chief judge of the judicial circuit in which the county is located appoints as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board will meet and elect a chair.
- b. If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners appoints as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. However, the supervisor acts in an advisory capacity to the canvassing board.
- c. If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners appoints as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.
- d. If a substitute member cannot be appointed as provided above, the chief judge of the judicial circuit in which the county is located appoints as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.²¹

Under current law, the members of the canvassing board sometimes experience stress and fatigue due to long hours near the election. In addition, there are sometimes scheduling conflicts with members of the canvassing board.

B. Reporting Election Results

Under current law, the canvassing board is required to report all early voting and tabulated absentee ballots to the Department of State within 30 minutes after the polls close on election-day. Thereafter, with the exception of provisional ballot results, the canvassing board is required to update results to the Department of State every 45 minutes until all results have been reported.²² However, current law does not address when the canvassing board must begin to upload, into each county's internal database, the results of early voting or absentee ballots. Some counties begin uploading before election-day in order to ensure equipment is functioning properly and to make counting less burdensome on election-day. However, some counties do not begin the upload process before election-day.

Effect of Proposed Changes

This bill requires the appointment of two alternate members to each county canvassing board in order to alleviate the stress, fatigue, and scheduling conflicts with members of the canvassing board. The chief circuit judge must appoint a qualified county court judge as an alternate, and the chair of the board of county commissioners must appoint a qualified member of the board of county commissioners as an alternate. If all county court judges or members of the board of county commissioners are unable to serve or are disqualified, an alternate must be appointed using the procedures provided in s. 102.141, F.S.

to determine if the person voting the provisional ballot was entitled to vote at the precinct where the vote was cast and that the person had not already cast a ballot in the election. § 101.048(2)(a), F.S.

¹⁷ To certify an election, a county canvassing board must make and sign duplicate certificates containing the total number of votes cast for each person nominated or elected, the names of persons for whom such votes were cast, and the number of votes cast for each candidate or nominee. For offices for which the candidates or nominees have been voted for in more than one county, one of the certificates must be immediately transmitted to the Department of State, and the second copy must be filed in the supervisor's office. § 102.151, F.S.

¹⁸ While the Secretary of State is responsible for ordering recounts in federal, state, and multicounty races, the county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. § 102.141(7), F.S.

¹⁹ § 102.141, F.S.

²⁰ § 102.141(1), F.S.

²¹ *Id.*

²² § 102.141(4), F.S.

If a member of a county canvassing board is unable to serve in a meeting, the chair of the canvassing board designates one of the two alternate members to serve during the meeting. During any meeting of a canvassing board, two of the three members then serving must agree on any decision or determination. An alternate member of the canvassing board may be present, observe, and communicate with the three members serving on the county canvassing board during a meeting, but the alternate may not vote in the board's decisions or determinations.

This bill also requires each supervisor of elections to upload into the county's election management system, by 7 p.m. the day before the election, the results of all early voting and absentee ballots that have been canvassed and tabulated by the end of the early voting period. These results cannot be made public until the close of polls on election-day.²³

Absentee Ballots without Signatures

Current Situation

When a voter casts his or her vote using an absentee ballot, the ballot must be placed in the mailing envelope provided with the ballot and the voter must sign the Voter's Certificate on the back of the envelope.²⁴ An absentee ballot is rejected and not counted if the voter does not sign the Voter's Certificate or the signature does not match the signature on record.²⁵

Effect of Proposed Changes

This bill provides a mechanism to "cure" unsigned absentee ballots by requiring the supervisor of elections, prior to the canvassing of absentee ballots pursuant to section 101.68(2), F.S., to accept a completed and verified affidavit from an elector who did not sign the voter's certificate. If a voter submits a completed and verified affidavit from a voter who did not sign the Voter's Certificate, the supervisor of elections must reissue the absentee ballot. If the voter correctly completes and submits the reissued absentee ballot, the ballot will be counted assuming all other requirements are met. In order to cure an unsigned absentee ballot, the voter must provide identification to the supervisor of elections and complete an Absentee Ballot Affidavit in substantially the following form:

ABSENTEE BALLOT AFFIDAVIT

I,, am a qualified voter in this election and a registered voter of County, Florida. I do solemnly swear or affirm that I requested, voted, and returned the absentee ballot and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years. I understand that my failure to sign this affidavit provides that my absentee ballot will remain rejected.

...(Voter's Signature)...

...(Address)...

...(City/State)...

Legislative Ballot Summaries

Current Situation

Florida Constitution

Article XI of the Florida Constitution provides the following methods for amending the State Constitution:

- 1) Joint resolution passed by 3/5 of the membership of each house of the Legislature;
- 2) Initiative petition;
- 3) Proposal by the Constitution Revision Commission;
- 4) Proposal by the Taxation and Budget Reform Commission; or
- 5) Proposal by a constitutional convention.

²³ §§ 101.5614(9), 101.657, & 101.68(2), F.S.

²⁴ § 101.65, F.S.

²⁵ § 101.68(2)(c), F.S.

A proposed amendment to or revision²⁶ of the constitution, or any part of it, must be submitted to the electors at the next general election held more than 90 days after the joint resolution or the report of the revision commission, constitutional convention, or taxation and budget reform commission proposing it is filed with the Secretary of State, unless, pursuant to law enacted by 3/4 of the membership of each house of the Legislature and limited to a single amendment, it is submitted at an earlier special election held more than 90 days after such filing.²⁷

Once during the tenth week, and once during the sixth week immediately preceding the week in which the election is held, each proposed amendment, with notice of the date of the election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.²⁸ The Department of State ensures compliance with this constitutional requirement by overseeing publication of the ballot title, ballot summary, and amendment text in newspapers throughout the state.

Unless otherwise specifically provided for elsewhere in the constitution, if the proposed amendment is approved by a vote of at least 60% of the electors voting on the measure, it is effective as an amendment to the constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.²⁹

With respect to joint resolutions of the Legislature proposing an amendment or revision, the constitution does not:

- 1) Contain explicit requirements governing the form or manner in which amendments or revisions proposed by joint resolution appear on the ballot. Specifically, the constitution does not require a joint resolution proposing an amendment or revision to contain a title or ballot summary or limit the length of either, nor does the constitution contain an explicit requirement regarding the accuracy or content of ballot titles, summaries, or the text of proposed amendments;
- 2) Limit the number of proposed amendments or revisions the Legislature may place on a ballot;
- 3) Limit proposed amendments or revisions to a single subject; or
- 4) Otherwise limit the subject matter of a proposed amendment or revision.

Statutory Requirements

Section 101.161, F.S., establishes requirements regarding the form and manner in which amendments or revisions to the Florida Constitution appear on the ballot. That section requires each joint resolution that proposes a constitutional amendment or revision to include one or more ballot statements in order of priority. Each ballot statement must consist of a ballot title, by which the measure is commonly referred to, not exceeding 15 words in length, and either a ballot summary that describes the chief purpose of the amendment or revision in clear and unambiguous language, or the full text of the amendment or revision. In 2000, after the court invalidated a legislative ballot summary that had been approved by the voters,³⁰ the Legislature exempted legislatively proposed ballot summaries from the statutory 75-word limit that currently applies to ballot summaries of constitutional amendments proposed by other methods.³¹

Legal challenges to one or more ballot statements in a joint resolution must be filed within 30 days after the joint resolution is filed with the Secretary of State. Unless otherwise provided in the joint resolution, if a court finds that all ballot statements are defective and further appeals are declined, abandoned, or exhausted, the Attorney General must, within 10 days, prepare and submit to the Department of State a revised ballot title or ballot summary that corrects the deficiencies identified by the court. Any legal challenge to a revised ballot title or ballot summary must be filed within 10 days after the revised ballot title or ballot summary is submitted to the Department of State.

A ballot statement that consists of the full text of an amendment or revision must be presumed by a court to be a clear and unambiguous statement of the substance and effect of the amendment or revision, providing fair notice to the electors of the content of the amendment or revision and sufficiently advising electors of the issue upon which they are to vote.

By December 31, 2013, state voting systems must allow for the placement on ballots of the full text of constitutional amendments.³²

²⁶ An "amendment" amends one section of the constitution, while a "revision" amends one or more articles of the constitution. Art. XI, s. 1, Fla. Const.; "The function of a section amendment is to alter, modify or change the substance of a single section of the Constitution containing particularized statements of organic law....The function of an article revision is to restructure an entire class of governmental powers or rights, such as legislative powers, taxation powers, or individual rights." *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976).

²⁷ Art. XI, s. 5(a), Fla. Const.

²⁸ Art. XI, s. 5(d), Fla. Const.

²⁹ Art. XI, s. 5(e), Fla. Const.

³⁰ *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000) (invalidating the amendment after approval by voters).

³¹ Ch. 2000-361, Laws of Fla.

³² § 101.56075, F.S.

Effect of Proposed Changes

The bill applies a 75-word limit to the first of multiple summaries in a joint resolution, while any remaining summaries are not subject to a 75-word limit. If the joint resolution contains only one ballot summary, that ballot summary is subject to a 75-word limit. The bill specifies that the 75-word limitation does not apply to any ballot summary revised by the Attorney General to correct deficiencies identified by a court.

B. SECTION DIRECTORY:

Section 1 amends s. 97.0555, F.S., authorizing individual returning from military deployment or activation and accompanying family member to register to vote until Friday before election.
Section 2 amends s. 101.161, F.S., specifying the length of certain ballot summaries in joint resolutions of the legislature; specifying that the length of a ballot summary revised by the Attorney General is not limited.
Section 3 amends s. 101.657, F.S., revising the list of permissible sites for early voting; revising the number of days and hours for early voting.
Section 4 amends s. 101.68, F.S., revising what a canvassing board may consider an illegal absentee ballot.
Section 5 amends s. 102.141, F.S., revising canvassing board membership; requiring supervisor or elections to upload certain canvassed election results into a county's election management system by 7pm on day before election.
Section 6 provides an effective date.

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: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision does not apply to this bill because subsection 18(d) of Article VII, Fla. Const., explicitly exempts election laws from the provision.

2. Other: None

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 21, 2013, the Appropriations Committee adopted four amendments. The amendments:

- Authorized an individual or accompanying family who has returned from a military deployment or activation from the uniformed services to register to vote until 5pm on Friday before an election.
- Increased the required minimum number of early voting hours per day from 6 hours per day to 8 hours per day.
- Amended s. 101.68, F.S. to provide that an absentee ballot that is not signed will not be considered illegal if the supervisor has received a completed and verified affidavit from the elector.
- Amended s. 102.141, F.S. to allow for alternate members of a county canvassing board and to require the results of all early voting and absentee ballots that have been canvassed and tabulated by the end of the early voting period to be uploaded to the county's election management system.

This analysis reflects the bill as amended.