

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1325 Elections

SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Renner

TIED BILLS: **IDEN./SIM. BILLS:** SB 1160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	15 Y, 0 N, As CS	Toliver	Harrington
2) Justice Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill makes several changes to the Florida Election Code.

Current law only allows the use of voter interface devices to be used to aid persons with disabilities. The bill appears to expand the use of voter interface devices to permit all individuals to use such devices.

Current law requires polls to be open from 7 am to 7 pm on the day of the election. The bill prohibits a court from extending the official closing time of the polls unless extraordinary circumstances exist.

Current law allows the designation of poll watchers by political parties, candidates, and certain political committees. The bill requires polling rooms and early voting areas to be laid out in such a manner as to not impede a poll watcher from observing the operations of a polling place. Additionally, the bill prohibits an election official from obstructing a poll watcher's good faith performance of his or her functions. The bill also prohibits elected officials from being poll watchers.

Current law requires a candidate to pay his or her qualification fee with a properly executed check. The bill allows a candidate to pay his or her qualification fee with a money order, cashier's check, or properly executed check drawn from the candidate's campaign account.

Current law requires the Supervisor to publish a sample ballot in a newspaper of general circulation in the county. The bill allows the Supervisor to forego publication of a sample ballot if the Supervisor mails a sample ballot to each registered elector, or to each household in which there is a registered elector at least seven days prior to an election.

Current law allows any elector requiring assistance to vote by reason of blindness, disability, or inability to read or write to request the assistance of two election officials or some other person of his or her choosing to assist in casting a vote. The bill specifies that a person assisting an elector may read the contents of the ballot in its entirety. The bill revises penalties for violating certain prohibitions relating to assisting voters and adds a prohibition on giving anything of value for providing assistance.

The bill may have a negative fiscal impact on the state and an indeterminate fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Voting Systems

Background

The Florida Election Code¹ requires certain specifications for voting systems² and ballots.³ The term “ballot” is divided into two sub-categories:

- “Marksense ballots” means that printed sheet of papers, used in conjunction with an electronic or electromechanical vote tabulation voting system, containing the names of candidates, or a statement of proposed constitutional amendments or other questions or propositions submitted to the electorate at any election, on which sheet of paper an elector casts his or her vote.⁴
- “Electronic or electromechanical devices” means a ballot that is voted by the process of electronically designating, including by touchscreen, or marking with a marking device⁵ for tabulation by automatic tabulating equipment or data processing equipment.⁶

The Electronic Voting Systems Act (act)⁷ was established “to authorize the use of electronic and electromechanical voting systems in which votes are registered electronically or are tabulated on automatic tabulating equipment or data processing equipment.”⁸ The act requires all voting to be by marksense ballot utilizing a marking device for the purpose of designating ballot selections.⁹ However, persons with disabilities may vote on a voter interface device that meets the voting system accessibility requirements for individuals with disabilities pursuant to the federal Help America Vote Act of 2002 and s. 101.56062, F.S.¹⁰ The term “voter interface device” means any device that communicates voting instructions and ballot information to a voter and allows the voter to select and vote for candidates and issues.¹¹

The Department of State must publicly examine all makes of electronic or electromechanical voting systems submitted to it and determine whether the systems comply with s. 101.5606, F.S., which establishes requirements for approval of systems.¹² Any person owning or interested in an electronic or electromechanical voting system may submit it to the department for examination.¹³ Each certified voting system must include the capability to install accessible voter interface devices in the system

¹ Chapters 97-106, F.S., are known as The Florida Election Code.

² The term “voting system” is defined to mean a method of casting and processing votes that functions wholly or partly by use of electromechanical or electronic apparatus or by use of marksense ballots and includes, but is not limited to, the procedures for casting and processing votes and the programs, operating manuals, supplies, printouts, and other software necessary for the system’s operation. Section 97.021(44), F.S.

³ Section 101.015(1), F.S., sets the standards for voting systems. The Department of State is required to adopt rules establishing the minimum standards for hardware and software for electronic and electromechanical voting systems. Section 101.015(1), F.S.; *see also* Fla. Admin. Rule 1S-5.001. Sections 101.151 and 101.161, F.S., set the specifications for ballots. The Department of State is required to adopt rules prescribing a uniform primary and general election ballot for each certified voting system in accordance with The Florida Election Code. Section 101.151(9), F.S.; *see also* Fla. Admin. Rule 1S-2.032.

⁴ Section 97.021(4)(a), F.S.

⁵ The term “marking device” is defined to mean any approved device for marking a ballot with ink or other substance that will enable the ballot to be tabulated by means of automatic tabulating equipment. Section 101.5603(5), F.S.

⁶ Section 97.021(4)(b), F.S.

⁷ Sections 101.5601-101.5614, F.S., are cited as the “Electronic Voting Systems Act.”

⁸ Section 101.5602, F.S.

⁹ Section 101.56075(1), F.S.

¹⁰ Section 101.56075(2), F.S.

¹¹ Section 97.021(40), F.S.

¹² Section 101.5605(1), F.S.

¹³ Section 101.5605(2)(a), F.S.

configuration that will allow the system to meet certain minimum standards to aid persons with disabilities in the voting process.¹⁴

By 2020, all persons with disabilities must vote on a voter interface device that meets the voter accessibility requirements for individuals with disabilities under the Help America Vote Act of 2002 and s. 101.56062, F.S.¹⁵

Effect of the Bill

The bill appears to expand the use of voter interface devices to all individuals instead of persons with disabilities only.

The bill revises the definition of "marksense ballot" to include sheets of paper used indirectly to designate the elector's ballot selections through the use of a voter interface device.

With respect to any voting system that uses a voter interface device, the bill provides that ss. 101.151, 101.161, 101.2512, 101.2515 101.252, 101.254, F.S., which relate to ballot layout, only apply to the display of candidates and issues on such devices.

The bill amends the Electronic Voting Systems Act to include voter interface devices within the definition of "marking device."

Polls and Poll Watchers

Background

Current law requires polls to be open at 7:00 am on the morning of the election and kept open until 7:00 pm that night.¹⁶

Poll watchers are persons unaffiliated with the administration of the election who monitor the election by observing the conduct of electors and officials at polling places.¹⁷ The following entities may designate one poll watcher for each polling room:

- Political parties;
- Political committees formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot; and
- Candidates.¹⁸

To designate a poll watcher, the listed entities must submit a designation form¹⁹ to the Supervisor within a prescribed timeframe prior to the election.²⁰ Once accepted and approved by the Supervisor, the list of poll watchers is submitted to each election board²¹ and the poll watcher will receive an identification badge to wear in the polling area.²²

Each poll watcher must be allowed within the polling room²³ or early voting site²⁴ to perform their duties.²⁵ Poll watchers must be qualified and registered electors of the county in which they serve.²⁶ A poll watcher is prohibited from:

¹⁴ See s. 101.56062, F.S.

¹⁵ Section 101.56075(3), F.S.

¹⁶ Section 100.011(1), F.S.

¹⁷ Section 101.131, F.S.

¹⁸ Section 101.131(1), F.S.

¹⁹ See DS-DE 125, incorporated by reference by Fla. Admin. Code. R. 1S-2.054.

²⁰ Section 101.131(2), F.S.

²¹ *Id.*

²² Section 101.131(5), F.S.

²³ The term "polling room" is defined to mean "the actual room in which ballots are cast on election day and during early voting."

Section 97.021(28), F.S.

- Coming closer to the election officials' table or the voting booths than is reasonably necessary to perform his or her function;
- Obstructing the orderly conduct of any election;
- Interacting with voters.²⁷

Candidates, sheriffs, deputy sheriffs, police officers, or law enforcement officers are prohibited from being poll watchers.²⁸

A poll watcher may challenge the right of a person to vote by submitting an oath that sets forth the reasons for the poll watcher's belief that the elector is casting a vote illegally.²⁹

Effect of the Bill

The bill prohibits a court from extending the official closing time of the polls unless there is a specific showing or finding of fact that extraordinary circumstances exist to justify the extension.

The bill requires polling rooms and early voting areas to be laid out in such a manner as to not impede a poll watcher from observing the operations of a polling place. Additionally, the bill prohibits an election official from obstructing a poll watcher's good faith performance of his or her functions, so long as that poll watcher is not disrupting the operations of the polling place.

The bill adds elected officials to the list of persons prohibited from being poll watchers.

Payment of Candidate Qualification Fee

Current Situation

Current law requires a person seeking to become a candidate for public office to either pay a qualification fee or qualify by petition.³⁰ If the person opts for the former, he or she must pay the qualification fee with a "properly executed check drawn upon the candidate's campaign account."³¹ If the check is returned by the bank for any reason, the filing officer must immediately notify the candidate.³² The candidate then has until the end of the qualification period³³ to pay the fee with a cashier's check purchased from funds of the campaign account.³⁴

Recent Litigation

The Florida Supreme Court, in *Wright v. City of Miami Gardens*,³⁵ recently declared the statutory requirement that a candidate has until the end of the qualification period to rectify a check returned by a bank unconstitutional. In that case, a candidate for mayor of the City of Miami Gardens had the check he used to pay his qualification fee returned by the bank due to banking error. The candidate was not notified of the bank's erroneous action in time to remedy the defective instrument. The candidate was thereafter disqualified and his name withheld from the ballot. The Court held that the statute "unconstitutionally erects a barrier that is an unnecessary restraint on one's right to seek elective office"

²⁴ The term "early voting site" is defined to mean "those locations specified in s. 101.657 and the building in which early voting occurs." Section 97.021(11), F.S.

²⁵ Section 101.131(1), F.S.

²⁶ *Id.*

²⁷ Section 101.111, F.S.

²⁸ Section 101.131(3), F.S.

²⁹ *Id.*

³⁰ Section 99.061, F.S.

³¹ Sections 99.051(7)(a)1. and 105.031(5)(a)1., F.S.; The Division of Elections in the Department of State has interpreted that phrase to prohibit the use of cashier's checks. *See* 2016 State Qualification Handbook, Division of Elections, Department of State, at pg. 5. *available at* <http://dos.myflorida.com/media/695458/state-qualifying-handbook.pdf> (last visited 3/20/17).

³² Section 99.061(7)(a)1., F.S.

³³ Section 99.061(1)-(2), F.S.

³⁴ Section 99.061(7)(a)1., F.S.

³⁵ *Wright v. City of Miami Gardens*, 200 So. 3d 765 (Fla. 2016).

and severed the portion of the 2011 law that created that process. In so doing, the court reverted the statute back to its pre-2011 form, which allows a candidate 48 hours, notwithstanding the end of the qualification period, after notification of the returned check to pay the qualification fee with a cashier's check.³⁶

Effect of the Bill

The bill allows a candidate to pay his or her qualification fee with a money order, cashier's check, or properly executed check drawn upon funds from the candidate's campaign account. The bill eliminates the portion of the law that the Florida Supreme Court severed in *Wright v. City of Miami Gardens*.³⁷

Sample Ballots

Background

Current law requires the Supervisor to publish a sample ballot in a newspaper of general circulation in the county prior to the day of the election.³⁸ The sample ballot must be in the form of the official ballot as it will appear on election day.³⁹ A Supervisor may send a sample ballot via email to each elector who has provided their email and opted for that service.⁴⁰

Effect of the Bill

The bill allows the Supervisor to forego publication of a sample ballot in a newspaper of general circulation if the Supervisor mails a sample ballot to each registered elector, or to each household in which there is a registered elector at least seven days prior to an election.

Disabled Voters

Background

Current law allows any elector requiring assistance to vote by reason of blindness, disability, or inability to read or write to request the assistance of two election officials or some other person of his or her choosing to assist in casting a vote.⁴¹ However, the person assisting the elector may not be the elector's employer, an agent thereof, or an officer or agent of the elector's union.⁴² Before the elector enters the voting booth, he or she may request that the person or persons assisting him or her read aloud the titles of the offices to be filed, the candidates therefor, and the issues on the ballot without suggestion or interference.⁴³ The elector and anyone assisting him or her may then enter the voting booth to help in the voting process.⁴⁴

It is currently a first degree misdemeanor for a person to do the following:

- Be physically in the voting booth with any elector unless assisting an elector who by reason of blindness, disability, or inability to read or write requests such assistance; or
- Solicit any elector in an effort to provide assistance to vote at a polling place, early voting site, or within 100 feet of those locations.

Effect of the Bill

The bill specifies that a person assisting an elector must read the contents of the ballot in their entirety. The bill prohibits a person from giving anything of value to any elector in an effort to provide assistance to vote. It also, increases the penalties associated with violating the prohibitions relating to assisting

³⁶ *Id.*

³⁷ *Id.*

³⁸ Section 101.20(2), F.S.

³⁹ Section 101.20(1), F.S.

⁴⁰ Section 101.20(2), F.S.

⁴¹ Section 101.051(1), F.S.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

certain voters from a first degree misdemeanor to a third degree felony. In sum, the bill makes it a third degree felony to do any of the following:

- Be physically in the voting booth with any elector unless assisting an elector who by reason of blindness, disability, or inability to read or write requests such assistance;
- Solicit any elector in an effort to provide assistance to vote at a polling place, early voting site, or within 100 feet of those locations; or
- Give an elector anything of value, redeemable in cash, to any elector in any attempt to provide assistance.

B. SECTION DIRECTORY:

Section 1 amends s. 97.021, F.S., relating to definitions for the Florida Election Code.

Section 2 amends s. 99.061, F.S., relating to the method of qualifying for nomination or election to federal, state, county, or district office.

Section 3 amends s. 100.011, F.S., relating to the opening and closing of polls.

Section 4 amends s. 101.051, F.S., relating to electors seeking assistance in casting ballots.

Section 5 amends s. 101.131, F.S., relating to watchers at polls.

Section 6 amends s. 101.151, F.S., relating to specifications for ballots.

Section 7 amends s. 101.20, F.S., relating to publication of ballot form; sample ballots.

Section 8 amends s. 101.5603, F.S., relating to definitions to the Electronic Voting Systems Act.

Section 9 amends s. 101.56075, F.S., relating to voting methods.

Section 10 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies offering voter interface devices may see an increase in requests for such devices due to the authorized expansion of the use of such devices.

D. FISCAL COMMENTS:

The bill may cause a minimal fiscal impact to the Department of State, Division of Elections, because the division may need to alter form DS-DE 125, Designation of Poll Watchers.

Additionally, there might be fiscal impact to local governments associated with locating or altering polling rooms and early voting areas so that those areas would not impede poll watchers from observing the operations of those places.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Art. VII, s. 18 of the State Constitution because it is an election law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Oversight, Transparency & Administration Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments removed the provisions of the bill concerning vote-by-mail ballots and allowed properly executed checks to be used when paying a candidate qualification fee.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.