

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 721 Harassment of Election Workers

SPONSOR(S): Criminal Justice Subcommittee, Casello

TIED BILLS: IDEN./SIM. BILLS: SB 562

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Leshko	Hall
2) State Affairs Committee	21 Y, 0 N	Skinner	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

A county canvassing board (CCB) is the body that canvasses the vote for an election in that county. The CCB is composed of the supervisor of elections (supervisor), the chair of the board of county commissioners, and a county court judge. Election boards consist of poll workers known as clerks and inspectors that are appointed by the supervisor to conduct an election. Poll workers have a number of statutory duties relating to the conduct of elections.

Florida law contains several provisions prohibiting various forms of threats and harassment. Section 104.0615, F.S., provides that it is a third-degree felony for a person to directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to refrain from acting as a legally authorized election official or poll watcher; or knowingly use false information to induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.

Section 838.021, F.S., provides that it is a second-degree felony to harm, or a third-degree felony to threaten to harm, any public servant, his or her immediate family, or any other person whose welfare the public servant is interested, with the intent to: influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty; or cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

Section 784.048, F.S., provides that it is a first-degree misdemeanor to willfully, maliciously, and repeatedly follow, harass, or cyberstalk another person. However, Florida law does not specifically prohibit a person from intimidating, threatening, coercing, or harassing an election worker with the intent to impede or interfere with the election worker’s official duties or to retaliate against the election worker for the performance of his or her official duties.

The bill creates s. 104.0614, F.S., to prohibit a person from intimidating, threatening, coercing, or harassing an election worker with the intent to impede or interfere with the performance of the election worker’s official duties or with the intent to retaliate against the election worker for performing his or her official duties. A violation of the prohibition is a first-degree misdemeanor. The bill defines “election worker” as a member of a CCB or an individual who is an election official or poll worker in connection with an election conducted in this state.

The bill may have a positive indeterminate impact on jail beds by creating a new misdemeanor offense for harassment of election workers, which may result in more jail admissions.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voter Intimidation or Suppression

Under s. 104.0615, F.S., it is a third-degree felony for a person to:^{1,2}

- Directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to refrain from acting as a legally authorized election official or poll watcher.³
- Knowingly use false information to induce, or attempt to induce, an individual to refrain from acting as a legally authorized election official or poll watcher.⁴

Threats Against a Public Servant

Under s. 838.021, F.S., it is unlawful to harm or threaten to harm any public servant,⁵ his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.
- Cause or induce the public servant to use or exert, or procure the use or exertion of, any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.⁶

A person commits a second-degree felony⁷ if he or she unlawfully harms a public servant or any person whose welfare the public servant is interested, and a third-degree felony if he or she threatens to unlawfully harm such a person.⁸

Stalking

Under s. 784.048, F.S., it is a first-degree misdemeanor⁹ to willfully, maliciously, and repeatedly follow, harass, or cyberstalk another person.¹⁰ The severity of the offense is increased to a third-degree felony if the offender also makes a credible threat to the person.¹¹

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.¹²

¹ A third-degree felony is punishable by up to five years' imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

² S. 104.0615(5), F.S.

³ S. 104.0615(2)(d), F.S.

⁴ S. 104.0615(3)(c), F.S.

⁵ Section 838.014(7), F.S., defines a “public servant” as: 1) any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee; 2) any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or 3) a candidate for election or appointment to any of the officer positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

⁶ S. 838.021(1), F.S.

⁷ A second-degree felony is punishable by a term of imprisonment not exceeding 15 years and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁸ S. 838.021(3)(a)-(b), F.S.

⁹ A first-degree misdemeanor is punishable by up to one year imprisonment and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁰ S. 784.048(2), F.S.

¹¹ S. 784.048(3), F.S.

¹² S. 784.048(1)(a), F.S.

“Cyberstalk” means the following actions when those actions cause substantial emotional distress to the affected person and serve no legitimate purpose:

- Engaging in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or
- Accessing, or attempting to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission.¹³

While current Florida law prohibits various forms of threats and harassment, it does not specifically prohibit a person from intimidating, threatening, coercing, or harassing an election worker with the intent to impede or interfere with the election worker’s official duties or to retaliate against the election worker for the performance of his or her official duties.

Election Workers

County Canvassing Boards

A county canvassing board (CCB) is the body that canvasses the vote for an election in that county.¹⁴ The CCB is composed of the supervisor of elections (supervisor), the chair of the board of county commissioners, and a county court judge, who serves as chair.¹⁵ CCBs are also responsible for filing the county returns for the election of a federal or state officer with the Department of State immediately after certification of the election results.¹⁶

Election Boards

An election board consists of poll workers known as clerks¹⁷ and inspectors that are appointed to conduct an election.¹⁸ The clerk is in charge of and responsible for seeing that the election board carries out its duties and responsibilities.¹⁹ The supervisor of each county must, at least 20 days prior to the holding of any election, appoint an election board for each precinct²⁰ in the county.²¹ The supervisor must conduct training for clerks and inspectors before each election.²² Election boards have a number of statutory duties relating to the conduct of elections, including:

- Attending the polling place by 6:00 a.m. the day of the election.²³
- Arranging the furniture, stationery, and voting equipment.²⁴
- Checking in voters and confirming their identity.²⁵
- Overseeing the casting of ballots by eligible voters.²⁶
- Counting the ballots cast and securing the voting devices against further voting.²⁷
- Proclaiming the results.²⁸

¹³ S. 784.048(1)(d), F.S.

¹⁴ S. 102.141(3), F.S.

¹⁵ S. 102.141(1), F.S. A CCB member will be replaced pursuant to a specified procedure in the Florida Election Code if he or is 1) unable to serve; 2) a candidate who has opposition in the election being canvassed; or 3) is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed.

¹⁶ S. 102.112(1), F.S.

¹⁷ A “clerk” means “[t]he person who is in charge of a polling place during an election. The term also refers to the supervisor or site manager at early voting sites.” Department of State, Division of Elections, *Polling Place Procedure Manual*, available at https://files.floridados.gov/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf (last visited Feb. 1, 2024).

¹⁸ S. 97.021(14), F.S.; see also s. 102.012(1)(a), F.S.

¹⁹ S. 102.012(1)(a), F.S.

²⁰ A “precinct” refers to “geographic areas that local government has divided for election purposes. The voter’s residential address within a particular geographic area determines which issues and offices a voter can vote upon in an election.” Department of State, Division of Elections, *Polling Place Procedure Manual*, available at https://files.floridados.gov/media/703005/adopted-clean-de11_pollplaceprocmanual.pdf (last visited Feb. 1, 2024).

²¹ S. 102.012(1)(a), F.S.

²² S. 102.014(1), F.S.

²³ S. 102.012(4), F.S.

²⁴ *Id.*

²⁵ S. 101.043(1), F.S.

²⁶ S. 102.031, F.S.

²⁷ S. 101.5614(1), F.S.

²⁸ S. 102.071, F.S.

Election boards have “full authority to maintain order at the polls and enforce obedience to [the board’s] lawful commands during an election and the canvass of the votes.”²⁹

Effect of Proposed Changes

The bill creates s. 104.0614, F.S., to prohibit a person from intimidating, threatening, coercing, or harassing an election worker with the intent to impede or interfere with the performance of the election worker’s official duties or with the intent to retaliate against the election worker for performing his or her official duties. A violation of the prohibition is a first-degree misdemeanor.³⁰

The bill defines “election worker” as a member of a CCB or an individual who is an election official³¹ or poll worker in connection with an election conducted in this state.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 104.0614, F.S., relating to harassment of election workers.

Section 2: Provides an effective date of July 1, 2024.

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:

The bill may have a positive indeterminate impact on jail beds by creating a new misdemeanor offense for the harassment of election workers, which may result in more jail admissions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²⁹ S. 102.031(1), F.S.

³⁰ A first-degree misdemeanor is punishable by up to one year imprisonment and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

³¹ The Florida Election Code mentions “election officials” but does not specifically define the term. However, the term appears to be used to refer to clerks, inspectors, deputy sheriffs serving at a precinct, and certain personnel within supervisors of elections’ offices.

See s 102.014(1), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed language from the bill that prohibits a person from *attempting* to intimidate, threaten, coerce, or harass an election worker.
- Reduced the penalty from a third-degree felony to a first-degree misdemeanor.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.