

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1504
 SPONSOR: Senator Mitchell
 SUBJECT: Elections; Poll Accessibility
 DATE: February 21, 2002 REVISED: 02/26/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1504 amends several provisions in the Florida Election Code (“Code”) relating to voting and elections, and codifies recommendations made by the Secretary of State’s Select Task Force on Voting Accessibility in its final report, dated January 14, 2002. The Task Force recommended numerous changes and additions to Florida law to provide additional voting accessibility for persons having a disability.

Specifically, the bill:

1. Requires all forms used in the registration and voting process, including ballots, to be available in alternative formats, upon request;
2. Mandates that all voting machines and systems, including voting by absentee ballot, be fully accessible to all voters regardless of ability or disability, so that all voters may cast a secret, independent, and verifiable ballot;
3. Provides that all polling places be fully accessible to persons with disabilities, regardless of the function of the building in which they are housed;
4. Creates the “Disability Advisory Council” within the Department of State to look specifically at issues relating to voting accessibility for persons with disabilities; and
5. Encourages the use of closed captioning and descriptive narratives in television broadcasts by candidates, political parties, and political committees.

Senate Bill 1504 is effective July 1, 2002, except as otherwise provided in sections of the bill.

The bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 97.021, 97.026, 97.1035, 98.065, 98.122, 100.361, 100.371, 101.001, 101.017, 101.018, 101.031, 101.051(4), 101.051(5), 101.51, 101.56062, 101.662, 101.71, 101.715, 102.014, 104.20, 125.01.

II. Present Situation:

Article VI, s. 1, Fla. Const., provides in part, “[A]ll elections by the people shall be by direct and secret vote.” Section 101.041, F.S., implements this constitutional mandate and provides:

In all elections held on any subject which may be submitted to a vote, and for all or any state, county, district, or municipal officers, the voting shall be by secret, official ballot printed and distributed as provided by this code, and no vote shall be received or counted in any election, except as prescribed by this code.

Under current law, many persons with disabilities have no uniform method for casting an *absolutely* direct and secret ballot.

The Code provides that persons with disabilities be given assistance at the polls when casting a ballot. Sections 101.051(1)-(3), F.S. provide, in part:

(1) Any elector applying to vote in any election who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of two election officials or some other person of the elector's own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, to assist the elector in casting his or her vote. Any such elector, before retiring to the voting booth, may have one of such persons read over to him or her, without suggestion or interference, the titles of the offices to be filled and the candidates therefore and the issues on the ballot. After the elector requests the aid of the two election officials or the person of the elector's choice, they shall retire to the voting booth for the purpose of casting the elector's vote according to the elector's choice.

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1).

(3) Any elector applying to cast an absentee ballot in the office of the supervisor, in any election, who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of some person of his or her own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, in casting his or her absentee ballot.

In addition to allowing a disabled voter to receive assistance in casting a ballot at the polls, Florida law provides that any qualified and registered voter, including a disabled voter, may cast an absentee ballot.¹ This absentee ballot procedure requires voters with certain disabilities to seek third-party assistance in the preparation and casting of the ballot.

¹ Sections 97.021(1), 101.62-101.698, F.S.

The Secretary of State's Select Task Force on Voting Accessibility ("Task Force") was composed of twenty-one citizens, appointed by Katherine Harris, Florida Secretary of State, on August 13, 2001. The Task Force was co-chaired by Senator Richard Mitchell and Representative Larry Crow.

The Task Force held five meetings from September, 2001, to January, 2002. Two meetings were held in Tallahassee and one each in Tampa, Orlando, and West Palm Beach. Testimony and comments were taken from a variety of persons and the public.

The Secretary of State charged the Task Force with the following purposes:

- To ascertain the obstacles persons with disabilities face in voting in Florida's elections;
- To develop and implement solutions for overcoming these obstacles;
- To devise a mandatory training program for all elections officials and poll workers that includes instruction from persons with disabilities; and
- To propose a funding mechanism for the recommended changes.

For purposes of defining "accessibility," in the context of persons having a disability, the Task Force looked at different stages of the election process, including:

1. Registering to vote;
2. Getting to and from the polling places;
3. Getting in and out of the polling places;
4. Utilizing the voting systems certified by the Department of State;
5. Having access to and participating in election information gathering, such as candidate forums and campaign advertising; and
6. Participating in candidate forums, political action committees, and candidate activities.

III. Effect of Proposed Changes:

Section 1. Amends s. 97.021, F.S., to include a definition of "alternative formats" mirroring the definition contained in the American with Disabilities Act of 1990.

Section 2. Creates s. 97.026, F.S., to require that all forms used in the Florida Election Code be available in alternative, disability-friendly formats. If possible, such forms will be made available via the Internet.

Section 3. Creates s. 97.1035, F.S., to require that each supervisor of elections certify to the Department of State that all branches of the supervisor's office have a TTY/TDD device (allows

communication with hearing-impaired individuals), and that all supervisor's staff are trained to use such devices.

Section 4. Amends s. 98.065, F.S., relating to registration list maintenance, to clarify that the term "nondiscriminatory" as used in that section also applies to persons having a disability.

Section 5. Creates s. 98.122, F.S., relating to closed captioning and descriptive narrative in television broadcasts. This section requires all candidates, political parties and political committees to use closed captioning and descriptive narrative in all television broadcasts or file a statement with the Department of State detailing the reasons for not doing so. It provides rulemaking authority to the Department to establish and enforce penalties for failure to file the statement. The scope of this rulemaking likely constitutes an unlawful delegation of legislative authority.

Section 6. Amends s. 100.361, F.S., relating to municipal recall, to require that all petitions for recall and all related forms be made available in alternative, disability-friendly formats.

Section 7. Amends s. 100.371, F.S., relating to citizen initiatives, to require that a proposed amendment and related documents be made available in alternative, disability-friendly formats.

Section 8. Amends s. 101.001, F.S., relating to precincts and polling places. It requires that all entrances, polling areas, paths of travel, and exits be accessible in accordance with ss. 553.501-553.513, F.S. (Florida Americans with Disabilities Accessibility Implementation Act).

Section 9. Amends s. 101.017, F.S., to require the Bureau of Voting Systems Certification (Department of State) to cooperate and consult with the Disability Advisory Council (as created in Section 10 of the bill).

Section 10. Creates s. 101.018, F.S., to establish a primarily advisory body, the Disability Advisory Council, within the Department of State. Provides that the Council shall be comprised of nine members appointed by the Secretary of State and prescribes the terms of its members and the Council's duties.

Section 11. Amends s. 101.031, F.S., to provide in the "Voter's Bill of Rights" that a voter has the right to cast a secret, independent, and verifiable vote, regardless of ability or disability.

Section 12. Repeals ss. 101.051(4), (5), F.S., that require a person to complete a "Declaration to Secure Assistance" before receiving assistance in voting.

Section 13. Amends s. 101.51, F.S., deleting the 5-minute time limit for occupying a voting booth. (A voter is permitted additional time under current law if he or she gives a sufficient reason.)

Section 14. Effective upon becoming law, creates s. 101.56062, F.S., relating to standards for accessible voting systems. It requires that each voting system selected and used for local, state, or federal elections be accessible and usable by all voters, including voters having a disability. Among the things a voting system must provide:

- A tactile or speech input device, or both;
- A method by which voters can confirm any tactile or audio input by having the capability of audio output;
- Any controls which are needed for voters with visual impairments must be discernible tactilely without actuating the keys;
- Any voting system that uses visual perception must be capable of being adjusted to a minimum of 14 point font size to a maximum of 20 point font size;
- All controls must be operable with one hand including operability with a closed fist, and the force to operate such controls cannot exceed five pounds of force; and
- Any audio ballots must provide the voter with certain functionalities such as: which candidates are available in a particular race; and, how many candidates may be selected in a race.

The bill does not de-certify any currently certified voting system, but does require that counties or municipalities effectively retrofit existing systems with additional voting systems or components to comply with these new accessibility requirements. Noteworthy, also, is the fact that no currently certified system or voting system component would meet these new accessibility requirements.

The bill directs that the state standards regarding accessibility be maintained so that the state is eligible to receive any federal funds that may become available.

Section 15. Creates s. 101.622, F.S., to require that absentee ballot procedures and forms permit any voter, including voters with a disability, to cast an absolutely secret, independent, and verifiable ballot.

Section 16. Amends s. 101.71, F.S., to require supervisors to move a polling place (not less than 30 days before an election) that does not comply with the polling place accessibility requirements created in s. 101.715, F.S.

Section 17. Substantially rewords s. 101.715, F.S., relating to accessibility to polling places for persons having a disability. The requirements provide that all polling places must:

- Be accessible and usable by persons having a disability;
- Have at least one voting system that meets all of the accessibility standards in s. 101.56062, F.S.;
- Comply with ss. 553.501-553.513, F.S. (Florida Americans with Disabilities Accessibility Implementation Act); and
- Have at least one parking space assigned to persons having a disability; and sufficient lighting and unobstructed paths of travel to the polling place.

The bill requires the supervisor of elections to survey each existing and newly-designated polling place before the 2002 general election for compliance with these requirements (using the survey adopted pursuant to rule by the Department).

The bill authorizes equitable citizen lawsuits against county commission boards that fail to make polling places accessible after receipt of the survey indicating disability access deficiencies. This is problematic, given that the responsibility for polling places is within the purview of the supervisors of elections and not the county commissions.

The bill also requires the Department to adopt rules to establish penalties for counties that fail to comply or refuse to correct accessibility deficiencies at polling places (in addition to any penalties that may be prescribed by the court). The scope of this rulemaking likely constitutes an unlawful delegation of legislative authority.

Finally, this section of the bill provides for exemptions for polling places in limited, emergency circumstances.

Section 18. Amends s. 102.014, F.S., to add training for poll workers on issues of correctness and sensitivity toward persons with disabilities. The Department is required to develop a mandatory program to be conducted by each supervisor of elections for his or her poll workers.

Section 19. Deletes in s. 104.20, F.S., the first degree misdemeanor penalty for remaining in a voting booth for an extended period of time (Conforming to Section 13 of the bill.)

Section 20. Amends s. 125.01, F.S., to correct a cross-reference.

Section 21. Provides an effective date of July 1, 2002, except as otherwise provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is no current voting system in production that complies with all the disability accessibility requirements of this bill. The Department of State estimates that it would cost approximately \$9,000 per machine/device to develop and produce for sale a piece of voting equipment that does comply. With an estimated 6,500 precincts in Florida and the directive that at least one such device be available in each precinct, the total cost to either the state or county government is **over \$58 million**.

In addition, the Division of Elections will incur additional travel expenses for the testing and certification of any new voting systems equipment introduced by a vendor to meet the new disability requirements.

Travel and per diem expenses for the newly-created Disability Advisory Council are estimated at \$108,000 per year.

The Department of State's fiscal estimate identifies, but fails to quantify, other potentially significant costs, including the cost of:

- *Making all polling places accessible to all disabilities.*

While most county polling places are accessible in one form or another and meet ADA requirements, there is no way to determine the cost to make "all" polling places accessible to persons with disabilities. Many polling places throughout Florida would have to be changed, because churches, which are exempt from some provisions of the ADA, often serve as polling places.

- *Purchasing TTY/TDD equipment for supervisors of elections' offices, including branch offices, and associated staff training costs.*

Many counties would be required to purchase TTY/TDD equipment and install analog telephone lines. With 67 main offices and over two-thirds of those counties having one or more branch offices, the cost would have to be determined by each telephone company.

- *Alternative Voting Forms*

The Division of Elections is unable to determine the cost of all forms to be made available in all alternative, disability-friendly formats, but it has determined that to provide its eighty forms in Braille alone would be in excess of \$200 per form, per printing. Cost would vary depending on the number of pages of the form, layout times requested, and other factors of which the Division may not be aware. It is estimated that one additional full time

Document Specialist (pay grade 14) will be required to implement and manage the production of forms in alternative formats with increases in expenses for production of alternative formats and training material for poll worker training. (The FTE cost is estimated at \$24,650 per year, with other expenses expected to run about \$26,500 per year.)

In addition, the cost of providing absentee ballots and other ballots in alternative format is not available at this time. For example, Miami-Dade County alone produced over 500 different ballot styles for the 2000 Primary election. SB 1504 would require alternative formats for hundreds and potentially thousands of ballot styles statewide. Of course, the number of printed ballots will be reduced from the last election because a number of large counties, such as Miami-Dade, Broward, Hillsborough, etc., have moved to touch screen voting systems that do not require printed ballots.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Ethics and Elections:

Modifies the effective dates in the bill to delay implementation of the voting system disability requirements, polling place accessibility requirements, poll worker training requirements, and disability-friendly voting forms requirement from the 2002 election cycle to the 2004 election cycle; modifies the voting system disability requirements; limits the scope of polling place accessibility requirements to only those portions of the building and grounds at a polling place that are used in the voting process; removes the rulemaking authority of the Division of Elections to adopt penalties for noncompliance with various provisions of the bill; limits the scope of necessary TTY/TDD equipment in supervisors' offices; removes the requirement that persons needing assistance at the polls fill out a Declaration to Secure Assistance; removes the requirement that the contents of a municipal recall petition be provided in disability-friendly formats; reduces the fiscal impact of the bill for voting system disability compliance to approximately \$9 million. (WITH TITLE AMENDMENT)