

# 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: CS/CS/SB 3004

SPONSOR: Judiciary Committee, Ethics and Elections Committee and Senator Cowin

SUBJECT: Elections; Election Administration; Electronic Campaign Finance Filing

DATE: April 13, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rubinas</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>ATD</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

The bill primarily contains numerous conforming, technical, and clarifying changes to the Florida Election Code recommended by the Division of Elections (“the Division”), stemming from Florida’s overhaul of its election administration system originating with the passage of the Florida Election Reform Act of 2001.

The bill provides for changes in the following key areas:

- Imposes additional restrictions on complaints made to the Florida Elections Commission (FEC), in the following manner:
  - Provides that complaints must be based on the personal knowledge of the complainant;
  - Provides that the FEC can only investigate those issues specifically contained in the complaint;
  - Provides that if the complainant fails to allege all violations in the complaint, he or she is barred from doing so subsequently. (Section 52 of the bill, amending s. 106.25, F.S.)
- Provides that moneys currently designated for deposit into the FEC Trust Fund will be redirected into General Revenue for funds collected for late filing fees, certain reimbursements for election assessments, and fines against any state or county executive committee. (Sections 50, 51, 53 of the bill, amending s. 106.07, s. 106.141, and s. 106.29 of the Florida Statutes)
- Postpones requirements which became law in 2002 that the Secretary of State provide various forms and text via the Internet.

Other substantive provisions include:

- Creates a mandatory electronic campaign finance report filing system for all persons, individuals and groups, currently required to file such information with the Division. (Section 36)
- Prohibits candidates from making expenditures from their campaign account for the purpose of receiving or obtaining an endorsement from any person, group, or organization. (Section 38)
- Authorizes tighter controls over voting system vendors to prevent the use of uncertified voting system components or upgrades, and creates criminal penalties for violations. (Sections 15-16)
- Provides that the filing of the Statement of Candidate shall not create a presumption that a violation of Chapter 104 or 106, Florida Statutes, is a “willful violation.”
- Provides for additional poll watchers at precincts by permitting floating “at large” poll watchers that would have access to all precincts.
- Reduces the fine for late-filed reports by committees of continuous existence from \$500 per day to \$50 per day for each day late and requires any fines so collected be deposited into the General Revenue Fund rather than the Elections Commission Trust Fund.
- Creates a new section within the reporting requirements of s. 106.07, Florida Statutes, to require treasurers, when making expenditures for goods and services with multiple components, to report the primary purpose of the expenditure. Primary purpose is that purpose, including integral and directly related components, which comprises 80 percent of the expenditures.
- Requires moneys collected for fines against any state or county executive committee to be deposited into the General Revenue Fund instead of the Elections Commission Trust Fund.
- Requires any reimbursements for election assessments by persons qualifying for office by the alternative method be deposited into the General Revenue Fund instead of the Elections Commission Trust Fund.
- Candidates no longer would be personally liable for paying fines for late-filed reports.
- Requires fines for late-filed candidate or political committee reports be deposited into the General Revenue Fund instead of the Elections Commission Trust Fund and to permit consideration of mitigating circumstances when determining fines to be imposed by the Florida Elections Commission.

This bill provides numerous technical changes, including:

- Definitions of election-related terms;
- Uniform Statewide Registration Application;
- Candidate petition process;
- Opening and closing of the polls;
- Submission of party nominees after the ballots are printed or the voting machines are programmed;
- Instruction cards that are placed in polling places;

- Poll watchers;
- Ballot specifications;
- Information on constitutional amendments in precincts;
- Printing of a candidate's name on the ballot;
- Mailing ballots upon receipt of a federal postcard application;
- Election boards for precincts; and,
- Canvassing board duties.

The bill is effective upon becoming a law, except as provided therein.

This bill creates an unnumbered section, amends s. 22, Ch. 02-281, Laws of Florida and substantially amends, creates, or repeals the following sections of the Florida Statutes: 97.021, 97.052, 98.181, 99.095, 99.0955, 99.096, 100.011, 101.031, 101.048, 101.049, 100.111, 101.131, 101.151, 101.171, 101.253, 101.294, 101.295, 101.5606, 101.595, 101.6103, 101.62, 101.635, 101.64, 101.68, 101.6923, 101.694, 101.697, 102.012, 102.061, 102.071, 102.111, 102.141, 102.166, 102.168, 105.031, 105.035, 106.011, 106.023, 106.04, 106.07, 106.0705, 106.075, 106.08, 106.085, 106.087, 106.09, 106.11, 106.141, 106.144, 106.25, 106.29, and 287.057.

## II. Present Situation:

The Florida Legislature made extensive changes to the Florida Election Code after the 2000 Presidential Election governing the administration of future elections. The enactment of the Florida Election Reform Act of 2001 has resulted in only two types of voting machines being certified for use – optical scan machines using marksense ballots and touch screen systems (a/k/a “direct recording equipment” or “DRE”). A number of existing election provisions have lost their usefulness or application due to these and other changes made in the Election Reform Act, and its progeny.

Fifteen counties in Florida use touchscreen voting systems, and fifty-two counties use marksense voting, or optical scanning systems.

## III. Effect of Proposed Changes:

### Section 1.

The definition of “paper ballot” and references to that term in s. 97.021, F.S., are changed to “marksense ballot;” references to “tabulating cards” are changed to “supplies.”

### Section 2.

Section 97.052, F.S., is amended to clarify that the voter registration application can be used for updating a voter signature, and to define the scope of persons that may reproduce a copy of the voter registration form instead of allowing “any private individual or group” to do so.

### Sections 3-5.

Effective January 1, 2005, the alternative method for candidates to qualify has been completely reworked. Section 99.095, F.S., has been amended so that it applies to all candidates. The redundant or unnecessary requirements in s. 99.0955 and s. 99.096, F.S.,

were then deleted. Section 105.031, F.S., relating to judicial candidates, is amended to conform to these changes. The following changes were made to the process:

- The requirement that a candidate file an oath indicating that he or she is going to qualify by the petition method has been removed;
- The restriction on not being able to circulate petitions prior to the first Tuesday after the first Monday in January of the election year has been removed and replaced with the requirement that signatures may not be obtained until the campaign treasurer is appointed;
- The date for submission of candidate petitions to supervisors for verification has been moved up one week; and
- The date for supervisors to certify the number of valid petitions has been moved up one week.

#### Section 6.

Language has been added to s. 100.011, F.S., to clarify that if an elector is in line at the time the polls close, he or she will be allowed to vote. This has been the practice in Florida, but has never been clarified in the Code.

#### Section 7.

Section 100.111, F.S., is amended to revise the procedures under which a candidate's name is stricken from the ballot when ballots have already been printed or programmed into the machines.

#### Section 8.

Section 101.031, F.S., is amended to delete the minimum requirement for the Division to provide the local supervisor of elections two voter instruction cards per precinct. Supervisors will be permitted to request the number they need so that they can provide the appropriate number to the precincts in their respective counties.

#### Sections 9-10.

Effective January 1, 2006, s. 101.048 and s. 101.049, F.S., are amended to require that touch screen voting systems must permit persons with disabilities to vote a provisional ballot on such systems; also makes technical changes to the local canvassing board's use of Provisional Ballot Voter's Certificates in determining validity.

#### Section 11.

Section 101.131, F.S., is amended to allow one poll watcher for each polling room rather than for each precinct. The section is also amended to allow political committees registered to support or oppose an issue on the ballot to have one watcher in each polling room.

#### Section 12.

Section 101.151, F.S., is amended to change the reference from paper ballots to marksense ballots.

Section 13.

Section 101.171, F.S., is amended to allow a copy of constitutional amendments that are provided at the polling place to be in either poster or booklet form and be either posted or available (currently must be posted).

Section 14.

Consistent with the change made in section 7 of the bill, s. 101.253, F.S., is amended to revise the procedures under which a candidate's name is stricken from the ballot when ballots have already been printed or programmed into the voting machines. The new procedures would allow the supervisor to do one of the following in the event a candidate's death, resignation, removal or withdrawal:

- Reprint or reprogram the ballots;
- Strike through the name of a candidate and if, necessary, insert the name of a new nominee; or
- Provide notice in a newspaper of general circulation and post a notice in each voting booth explaining the consequences of a vote for the former candidate. A notice to that effect would also be required to be mailed with each absentee ballot.

Sections 15-16.

Sections 101.294 and 101.295, F.S., are amended to prohibit voting equipment vendors from providing any uncertified voting system, voting system component, or voting system upgrade in this state. It also provides for a third degree felony penalty for violations.

Section 17.

Effective January 1, 2006, s. 101.5606, F.S., is amended to require all electronic voter interface devices to allow voters to cast both regular and provisional ballots.

Section 18.

Section 101.595, F.S., is amended to require information on the number of overvotes and undervotes in either the Presidential race or the governor's race (whichever is applicable), rather than the first race appearing on the ballot.

Section 19.

Section 101.6103, F.S., is amended to specifically allow the canvassing board to begin the canvass of ballots in all-mail ballot local referendum elections (including processing them through the tabulating equipment) at 7 a.m. on the fourth day before a mail ballot election. It also clarifies that no results shall be released until 7 p.m. on election day, and creates a third degree felony for anyone who releases results early.

Section 20.

Section 101.62, F.S., is amended to delete the provision that if a request for an absentee ballot is received after the Friday before the election from an overseas voter, the supervisor does not send the absentee ballot. Because electronic transmission of ballots is now available, an overseas voter can receive, vote, and return the ballot in a shorter period of time. This section is also amended to clarify that an *advance* absentee ballot to overseas voters is not required if the regular absentee ballots are mailed 45 days before the election.

Sections 21.

Section 101.64, F.S., replaces the absentee ballot witness requirement for voters casting a ballot pursuant to the Uniformed and Overseas Citizens Absentee Voting Act with the standard oath prescribed by the UOCAVA.

Section 22.

Section 101.68, F.S., is amended to conform to the change in Section 21 of the bill with respect to UOCAVA voters and absentee ballot witnessing requirements.

Section 23.

Section 101.6923, F.S., is amended to provide that the instructions sent with absentee ballots to certain first-time voters be in *substantially* the form set out in statute. This will allow minor variations to accommodate different voting systems.

Section 24.

Section 101.694, F.S., is amended to delete the specifications for envelopes being sent to absent electors overseas. This is replaced with a requirement that the Division determine the specifications, after consulting with the Federal Voting Assistance Program and the U. S. Postal Service.

Section 25.

Section 101.697, F.S., is amended to clarify that the Division only need adopt rules authorizing supervisors of elections to accept requests for absentee ballots or voted absentee ballots by electronic transmission if it can be assured that the security of the ballot can be established.

Section 26.

Section 102.012, F.S., is amended to remove references to two election boards being appointed for each election. This is an obsolete provision that is no longer used.

Section 27.

Section 102.111, F.S., is amended to allow the Elections Canvassing Commission to delegate the authority to order recounts to the chief election officer. There is no discretion in the statutes for ordering recounts so there is no need for the Elections Canvassing Commission to hold a public meeting for this purpose.

Section 28.

There was some confusion during the 2002 election with regard to whether election results needed to be posted at the polls, particularly with regard to counties using touch screen voting systems. Section 102.071, F.S., is amended to require the results to be posted in all counties. The number of certificates completed at the polling place is changed from three to one, with the single copy transmitted to the supervisor. The copy currently required to be filed with the county court judge is eliminated.

Section 29.

Section 102.141, F.S., is amended to clarify that the Elections Canvassing Commission is the board responsible for ordering federal, state and multicounty recounts, and that the county canvassing board is responsible for ordering county and local recounts. It also provides that the second set of unofficial returns in a recount must be provided by a canvassing board to the Department of State on the *fourth* day after an election (rather than the third day under current law). This section also makes conforming changes to the phrase “paper” to “marksense” ballot.

Section 30.

Section 102.168, F.S., is amended to clarify that under an election contest, the complaint must be filed with the clerk of the circuit court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies those results; and clarifies the proper party defendants, depending on the type of election (county canvassing board in county and local elections; the Elections Canvassing Commission in federal, state, and multicounty races).

Section 31.

Section 105.031, F.S., is amended to specifically clarify that nonpartisan school board candidates qualifying by the petition method are exempt from qualifying fees.

Section 32.

Effective January 1, 2005, s. 105.035, F.S., is amended to provide that candidates for judicial office and school board member may begin collecting petition signatures after they have appointed a campaign treasurer and designated a campaign depository. To be consistent with the changes to partisan candidate petition qualifying in Sections 3-5 of this bill:

- The date for submission of candidate petitions to supervisors for verification has been moved up one week, to 28 days before the beginning of qualifying; and
- The date for supervisors to certify the number of valid petitions has been moved up one week.

Section 33.

A new definition of “eliminated candidate” is added to s. 106.011, F.S., to mean “a candidate for elected office who failed to receive a sufficient number of votes to be certified as the winner of an election or as a runoff candidate in an election.” The new definition allows candidates who have filed a timely contest of election to continue to receive contributions and make expenditures solely for the purpose of paying legal fees and costs associated with the contest.

Section 34.

Effective January 1, 2005, s. 106.07, F.S., is amended to include a reference to new s. 106.0705, F.S., (created in Section 35 of the bill) which will require electronic filing of campaign finance reports. This section also contains conforming amendments.

Section 35.

Effective January 1, 2005, s. 106.0705, F.S., is created to require electronic filing of campaign finance reports by individuals and groups currently required to file with the Division (including many candidates, committees, and state political parties). The electronic filing system will be Internet-based, and permit direct entry and upload of campaign finance information.

Section 36.

Section 106.075, F.S., relating to reporting of loans by successful candidates, is amended to clarify that this provision relates to “personal” loans exceeding \$500 that were used for campaign purposes.

Section 37.

Section 106.08, F.S., is amended to prohibit candidates from making expenditures from their campaign account for the purpose of receiving or obtaining an endorsement from any person, group, or organization.

Section 38.

Section 106.087, F.S., is amended to eliminate committees of continuous existence (CCE’s) from the provision relating to independent expenditures. CCE’s are currently prohibited from making independent expenditures in s. 106.04, F.S.

Section 39.

Section 106.09, F.S., is amended to clarify that a money order is treated the same as cash or a cashier’s check for the purpose of the “cash” contribution limit of \$100.

Section 40.

Section 106.11, F.S., is amended to provide that the list of persons authorized to use debit cards in campaigns should be filed with the appropriate filing officer, not necessarily with the Division.

Section 41.

Effective January 1, 2005, s. 106.29, F.S., is amended with regard to the filing of campaign finance reports by the state executive committee of a political party, to conform to the new electronic filing requirements of s. 106.0705, F.S. (see Section 35 of the bill).

Section 42.

An unnumbered section is created to require all voting systems certified after July 1, 2005, to meet the requirements of s. 101.56062, F.S., which sets forth the standards for accessible voting systems for the disabled. In addition, there is language requiring that any purchase of a voting system after July 1, 2004, must include a contract for future upgrades and equipment to meet the requirements of s. 101.56062, F.S. Finally, all voting systems in use on or after January 1, 2006, must meet the requirements in s. 101.56062, F.S.

Section 43.

Repeals s. 106.085, F.S., relating to prior notice requirements for independent expenditures, and s. 106.144, relating to required notice requirements for groups intending to make



candidate endorsements. Both provisions have been held unconstitutional.<sup>1</sup> Other provisions being repealed due to obsolescence are: s. 98.181, F.S., relating to a requirement that supervisors of elections maintain a set of records with regard to municipal elections; s. 101.635, F.S., relating to distribution of blocks of printed ballots; and, s. 102.061, F.S., relating to duties of election boards in closing the polls.

Section 44.

Section 22 of chapter 2002-281, Laws of Florida, is amended to change the effective dates in the Voting Accessibility Bill (Chapter 2002-281, L.O.F.), consistent with the provisions of the federal Help America Vote Act of 2002. This effectively puts the disabled voting machine provisions of the Voting Accessibility Bill into effect the earlier of: January 1, 2006 or one year after the legislature specifically appropriates money to the Department of State in the general appropriations act for the purchase of disabled voting machines. The specific appropriation amount is removed.

Section 45.

Section 287.057, F.S., is amended to allow voter education activities of the Department of State and the supervisors of elections to be exempt from the state competitive bidding requirements.

Section 46.

Section 101.131, F.S., is amended to provide for additional poll watchers at precincts by permitting floating “at large” poll watchers that would have access to all precincts.

Section 47.

Section 106.023, F.S., is amended to provide that the filing of the Statement of Candidate shall not create a presumption that a violation of Chapter 104 or 106, Florida Statutes, is a “willful violation.”

Section 48.

Section 106.04, F.S., is amended to reduce the fine for late-filed reports by committees of continuous existence from \$500 to \$50 per day for each day late and requires any fines so collected be deposited into the General Revenue Fund rather than the Elections Commission Trust Fund.

Section 49.

Section 106.07(4)(a)13., F.S., creates a new section within the reporting requirements of s. 106.07, F.S., to require treasurers, when making expenditures for goods and services with multiple components, to report the primary purpose of the expenditure. Section 106.07, F.S., is further amended to require fines for late-filed candidate or political committee reports be deposited into the General Revenue Fund instead of the Elections Commission Trust Fund and to permit consideration of mitigating circumstances when determining fines to be imposed by the Florida Elections Commission. It further removes the requirement that fines for late-filed reports of candidates may only be paid from the personal funds of the candidate.

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<sup>1</sup> See *Florida Right to Life, Inc. v. Mortham*, 1999 WL 33204523 at p. 6-7 (M.D. Fla, 1999) (Case No. 98-770-CIV-ORL-19A) (both s. 106.085 and s. 106.144 are unconstitutional prior restraints on speech).

Section 50.

Section 106.141, F.S., is amended to require any reimbursements for election assessments by persons qualifying for office by the alternative method be deposited into the General Revenue Fund instead of the Elections Commission Trust Fund.

Section 51.

Section 106.25, F.S., is amended to provide that a complaint to the Florida Elections Commission must be based upon the personal knowledge of the complainant and permits both complainant and respondent and their respective counsel, if any, to participate in a limited manner in the probable cause hearing. It also provides that the commission is only able to investigate those alleged violations contained within the complaint and that if any complaint fails to allege all violations that arise from the facts or allegations alleged in a complaint, the commission is barred from investigating a subsequent complaint that is based upon the facts or allegations that were raised or could have been raised in the first complaint.

Section 52.

Section 106.29, F.S., is amended to require moneys collected for fines against any state or county executive committee to be deposited into the General Revenue Fund instead of the Elections Commission Trust Fund.

Section 53.

The section makes the bill effective upon becoming law, 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:**

The mandatory electronic filing system for campaign finance reports may increase some costs for grass roots candidates.

**C. Government Sector Impact:**

There may be costs incurred by the Division of Elections for the development and implementation of the electronic filing system for campaign finance reports. Division staff has represented that the costs will be minimal.

The costs of purchasing disabled voting equipment to comply with the requirements of the federal Help America Vote Act (“HAVA”) and Florida’s Voting Accessibility Bill (Chapter 2002-281, L.O.F.) will be substantial, but should be more than offset in full by federal money to support such activities. In fact, compliance with HAVA should result in a windfall of tens of millions of federal dollars for election-related improvements in the coming years.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 16 of the bill, creating third degree felony penalties for voting system vendors who provide uncertified systems in violation of newly-created prohibitions in s. 101.294, F.S., takes effect upon becoming a law. As a practical matter, however, the only alternative to this effective date is to make the provision effective on August 1, 2004, if the prohibition is to take effect for the August 31 primary election --- which may still not provide adequate time for notice.

Alternatively, since there are currently two or possibly three certified voting system vendors in the State, the bill could be amended to require the Division to notify each individual vendor in writing of the new prohibitions and penalties.

Section 19 of the bill also imposes felony penalties for any canvassing board member or election employee releasing voting results in a local mail-ballot referendum election prior to 7 p.m. on election day. This provision is effective upon becoming law.

Section 40 of the bill also clarifies that “money orders” are to be treated like cash for purposes of the \$100 “cash” contribution limit, which carries criminal penalties for both the recipient and the contributor involved in such transaction.

**VIII. Amendments:**

None.