

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Ethics and Elections Committee

BILL: CS/SB 962

INTRODUCER: Committee on Ethics and Elections, and Senators Constantine & Justice

SUBJECT: Voting Systems

DATE: April 18, 2007

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Rubinas	EE	<b>Fav/CS</b>
2.			JU	
3.			TA	
4.			RC	
5.				
6.				

**I. Summary:**

Committee Substitute for Senate Bill 962 will result in the replacement of all touchscreen voting systems in the state with optical scan systems using marksense ballots, with the exception of equipment necessary to accommodate disabled voters. It authorizes the use of ballot-on-demand technology to produce early-voting and absentee marksense ballots, and further authorizes the Secretary of State to permit counties to use ballot-on-demand for election-day ballot production (should the technology prove successful).

The bill also mandates that local canvassing boards complete a post-election audit of at least one percent but no more than two percent of precincts for the highest ranking contest on the ballot. The board must: make the audit results public by the 9<sup>th</sup> day after the election; and, file a report with the Department of State no later than 15 days after the audit is complete.

The bill authorizes an expenditure of approximately \$27.9 million from the Grants and Donations Trust Fund<sup>1</sup> to be used by the Department of State to purchase optical scan voting equipment and ballot-on-demand technology for the counties to replace touchscreen equipment. Any money realized by the Department of State on the sale or other disposition of a county's existing touchscreen voting equipment will be deposited back to the Trust Fund, up to and including the amount of state funding the county has accepted.

This bill substantially amends sections 101.151, 101.5612, and 101.591, creates section 101.56075, and further creates unnumbered sections of the Florida Statutes.

<sup>1</sup> The Grants and Donations Trust Fund [hereinafter, "the HAVA Trust Fund"]) houses federal monies originally provided to the State pursuant to the Help America Vote Act of 2002 ("HAVA").

## II. Present Situation:

The genesis of the current bill can be traced to the 2000 presidential contest and subsequent Florida recount. The election highlighted numerous shortcomings in the voting systems in place at the time --- namely, the infamous punch-card systems and the error-prone, central-count optical scan systems.<sup>2</sup>

The Florida Legislature responded at the next session by enacting the Florida Election Reform Act of 2001.<sup>3</sup> Along with numerous other reforms, a cornerstone of the Act was to replace problematic and antiquated voting systems with what were believed to be better, more reliable systems. The Act abolished the use of punch card, central-count optical scan, mechanical lever, and freehand paper<sup>4</sup> voting systems, and authorized in their place either *precinct-count optical scan*<sup>5</sup> or the yet-unproven, but cutting edge, *touchscreen voting system technology*.<sup>6</sup>

The State appropriated about \$12 million from the general revenue fund to help 41 counties upgrade their voting systems.<sup>7</sup> The money was distributed to the counties by the Department of State in two separate installments pursuant to the following funding formula: smaller counties (population of 75,000 or less) received \$7500 per precinct; and, larger counties (population over 75,000) received half that much, or \$3,750 per precinct. The rationale behind the funding scheme was to provide *half* of what it would cost the larger counties to purchase a *precinct-count optical scan system* (a/k/a, the “state match”), and enough money for the smaller counties to fully fund an optical scan purchase.

There were no strings attached to the money. Every county was free to purchase either a precinct-count optical scan system or throw-in with a lot more local money to purchase the expensive touchscreen systems. Ultimately, 15 Florida counties<sup>8</sup> --- including some of the largest like Broward, Hillsborough, Miami-Dade, and Palm Beach – decided to purchase primarily<sup>9</sup>

<sup>2</sup> Central-count optical scan systems are those where the voter designates selections on a marksense ballot and deposits it in a box for subsequent tabulation at a central facility like the supervisors’ office. Because the voter is not present when the ballot is run through the tabulating equipment, errors cannot be corrected. Of the three most-widely-used voting systems in Florida at the time, central-count optical scan had by far the highest error rate at 5.69%, followed by punch cards at 3.83%: precinct-count optical scan, where ballots are placed into a tabulator at the precincts and do allow for the voter to make corrections, had the lowest error rate at 0.79%. The Florida Senate, Committee on Ethics and Elections, *Review of the Voting Irregularities of the 2000 Presidential Election*, p. 9 (March 2001) (Report No. 2001-201).

<sup>3</sup> Ch. 2001-40, LAWS OF FLA.

<sup>4</sup> Freehand paper systems, in use only in Union County back in 2000, required the voter to mark his or her ballot selections with a check mark. The election officials subsequently hand-counted the ballots to determine election results.

<sup>5</sup> Beginning in the late 1980’s, many counties in Florida moved to an optical scan voting system. These systems use a ballot card with names of candidates and descriptions of issues preprinted next to an empty circle, oval or incomplete arrow. A voter indicates his or her choice by filling in the empty circle or oval or by completing the arrow. Precinct-count optical scan systems, as opposed to central-count systems, require the voter to deposit his or her ballot into an automatic tabulating device at the polling place.

<sup>6</sup> In 2001, touchscreen technology was in its infancy in this country. Although limited experience with the touchscreens indicated an undervote rate that was troublingly high --- about 3%, roughly the same as for the old punch-card systems --- many believed that this figure was the result of voter inexperience with the systems, and that voter education efforts would drastically reduce these error rates.

<sup>7</sup> See 2001 General Appropriations Act, Specific Appropriation No. 2898B and Ch. 2001-40, ss. 71, 74, 76, LAWS OF FLA.

<sup>8</sup> Broward, Charlotte, Collier, Hillsborough, Indian River, Lake, Lee, Martin, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Sarasota, and Sumter counties.

<sup>9</sup> Counties that use touchscreen equipment still needed optical scan equipment to process absentee voters.

touchscreen systems (collectively, “the touchscreen counties”). Subsequently, a number of optical-scan counties have chosen to implement touchscreen systems for early voting (collectively, “the hybrid counties”).<sup>10</sup>

Despite the efforts of election administrators, there continues to be public concern with respect to the accuracy and security of paperless touchscreen voting systems.

### **III. Effect of Proposed Changes:**

The bill requires all voters, except disabled voters, to cast a marksense ballot on an optical scan voting system. Disabled voters may continue to vote on the existing touchscreen equipment. Thus, the effect of the bill is to replace all touchscreen voting systems in the state with optical scan systems, with the exception of equipment necessary to allow disabled voters to cast an independent ballot.

Further, the bill allows the use of ballot-on-demand technology to produce early-voting and absentee marksense ballots, and authorizes the Secretary of State to permit counties to use ballot-on-demand for election-day ballot production (should the technology prove successful).

The bill also requires the Secretary of State/Department of State to negotiate the disposition of unnecessary touchscreen voting equipment and to purchase new optical scan and ballot-on-demand equipment, including optical scan tabulators, on behalf of counties electing to receive state funding.<sup>11</sup> Proceeds realized from the sale of a county’s existing touchscreen equipment will be deposited to the HAVA Trust Fund, up to and including the amount of state funding that the county has received for the purchase of new equipment.

Finally, the bill replaces an unused audit provision in Florida law with a requirement that local canvassing boards complete a public, post-election audit of at least one percent but no more than two percent of the precincts in the highest ranking contest on the ballot. The board must: make the audit results public by the 9<sup>th</sup> day after the election, which allows time for the filing of an election contest;<sup>12</sup> and, file a report with the Department of State no later than 15 days after the audit is complete. It also authorizes the department to adopt an audit reporting form and detailed, uniform rules for audit procedures.

Various effective dates govern the voting systems provisions in the bill, all leading to implementation by the primary election in the fall of 2008.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>10</sup> Bay, Brevard, Clay, Escambia, Jackson, Levy, Marion, Monroe, Nassau, Okaloosa, Orange, Osceola, Santa Rosa, St. Johns, Taylor, and Washington counties.

<sup>11</sup> Counties that wish to dispose of their existing equipment and purchase new equipment on their own may choose to opt-out of the state funding provision by filing a letter to that effect with the Department of State by June 30, 2007.

<sup>12</sup> An election contest must be filed no later than 10 days after the election results are certified. s. 102.168, F.S.

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:

The bill appropriates \$27,861,850 from the Grants and Donations Trust Fund (HAVA money) to the Division of Elections for the purpose of implementing the Act, presumably broken down approximately as follows:

- \$22.86 million, for election-day, optical scan tabulators [15 touchscreen counties]
- \$5 million, for ballot-on-demand systems for early voting --- including optical scan tabulators [29 hybrid counties]

It is unclear at this time whether the State will be able use the HAVA money to pay the \$27.86 million for optical-scan tabulators and ballot-on-demand systems. The State is involved in ongoing discussions with the federal Election Assistance Commission, the agency charged with administering the HAVA program, to try and resolve the HAVA funding issue.

It is also unclear precisely what assumptions are underlying the cost figures cited above. For example, does the \$5 million for ballot-on-demand systems budget for *one* printer per early voting site, which would clearly be insufficient because a printer problem would effectively equate to having no ballots at the site? A minimum of *two* printers per site appears to be a necessity.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The fact that the proposed ballot-on-demand technology is relatively untested combined with the disastrous results experienced in Broward and Miami-Dade counties during the 2002 primary,<sup>13</sup> when the State authorized the use of *new and unproven* touchscreen voting equipment with scarcely more than 12 months lead time, militate strongly for implementation of this act in the 2010, not the 2008, election cycle. Noteworthy, also, is the fact that the State of Maryland recently decided to abandon its statewide touchscreen voting system in favor of an optical scan system, *effective for the 2010 election cycle*.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>13</sup> Equipment problems in Broward and Miami-Dade prompted Governor Bush to issue an executive order extending the polling hours statewide by 2 hours during the 2002 primary election.



## **VIII. Summary of Amendments:**

None.

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