

## **ELECTIONS**

### **CS/SB 1118 — Florida Election Reform Act of 2001**

by Ethics & Elections Committee and Senators Posey, Lawson, Bronson, Sebesta, Brown-Waite, Dyer, Smith, Constantine, Carlton, Jones, and Crist

The Florida Election Reform Act of 2001 is an historic piece of legislation designed to address the problems highlighted by the 2000 U.S. Presidential election. Specific provisions of the bill include:

#### ***Voting Systems***

Punchcards, paper ballots, mechanical lever machines and central-count voting systems will no longer be used in the state, beginning with the 2002 primary election. Any future system certified for use in the state must employ precinct-count tabulation, and offer the voter an opportunity to correct certain mistakes. The only system currently used in Florida that meets this standard is precinct-based optical scan, although the Act does contemplate the use of more technologically-advanced “direct recording equipment” or touchscreen computer technology if and when the Division of Elections certifies its use.

The Division of Elections is required to adopt a uniform primary and general election ballot design for each certified voting system. Following each general election, local supervisors of elections and the Division are required to report on voter errors in order to identify ballot design and voting system problems, along with possible solutions.

Funding is provided to the counties based on the number of precincts in the county as of the 2000 General Election. Small counties with a population of 75,000 or less will receive \$7500 per precinct and other counties will receive \$3750 per precinct. The distribution of funds is to be made over a two-year period.

#### ***Provisional Ballots***

Voters who go to the polls on election day and whose eligibility cannot be determined will be allowed to vote a conditional, or “provisional,” ballot. If the canvassing board subsequently determines that the voter was eligible to vote and the voter cast the provisional ballot in his or her proper precinct, the provisional ballot will be counted in the final vote tally. This change was made in response to reports that eligible voters were turned away from the polls on election day because their names were not on the precinct registers, and, conversely, that persons not eligible to vote were allowed to cast ballots.

### ***Recounts***

To address the equal protection concerns identified by the United States Supreme Court, the Act requires the same manner of recount to be conducted in each affected jurisdiction. For statewide elections, recounts will be conducted in every county in Florida. For multicounty races, all counties comprising the district of the candidacy or ballot measure will be required to recount. There will be no more partial recounts.

The local canvassing boards now have specific guidelines for when to order a recount; the Act does away with the canvassing boards' standardless and unfettered discretion to order recounts. An automatic machine recount will be conducted if the margin of victory is  $\frac{1}{2}$  of one percent or less. An automatic manual recount of the overvotes and undervotes will be conducted if the margin of victory is  $\frac{1}{4}$  of one percent or less. If the margin of victory is between  $\frac{1}{4}$  and  $\frac{1}{2}$  of one percent, an affected candidate or party is entitled to a manual recount of the overvotes and undervotes if requested in writing no later than 5 p.m. on the second day after the election.

The current statutory standard of voter intent is clarified for purposes of manual recounts. A vote will count only if there is a "clear indication on the ballot that the voter has made a definite choice." The Department of State is charged with adopting rules for each certified voting system prescribing precisely what constitutes a "clear indication on the ballot that the voter has made a definite choice," and for prescribing uniform recount procedures.

### ***Certification Deadlines***

The deadlines for county canvassing boards to certify the results of an election are modified as follows:

- *First and Second Primary Election:* 7 days following the primary.
- *General Election:* 11 days following the election.

The 11 day general election deadline will allow sufficient time for receipt of all overseas ballots, which pursuant to a federal court order must be counted up to 10 days after the general election for certain races.

Significantly, any returns not filed by the deadline will be ignored except in the case of a major emergency.

### ***Second Primary Election***

For the 2002 election cycle, the second primary will be eliminated. The remaining primary will be held on the second Tuesday in September to avoid the Labor Day holiday. Various dates are revised to conform to this change for the 2002 elections.

### ***Military and Overseas Voting***

Several new sections are created to facilitate the provisions of the federal Uniformed and Overseas Citizens Absentee Voting Act. These provisions include late registration, a state write-in ballot, e-mail notification of names of candidates, and electronic transmission of absentee ballots and requests from overseas voters.

A date line is provided on the absentee ballot envelope and a presumption is created to provide that a ballot from an overseas voter was mailed on the date signed and witnessed, regardless of whether there is a postmark or whether a postmark indicates a date after the election. This change was designed to afford overseas voters the opportunity to conform to the requirements of the federal court order providing for the counting of certain votes 10 days after the election.

The Elections Canvassing Commission is authorized to adopt emergency rules to avoid the disenfranchisement of voters during times of crises.

### ***Absentee Ballots***

The Act amends a number of provisions of the 1998 Voter Fraud Act that were not approved for implementation by the U.S. Justice Department, or that proved unworkable in practice.

All registered voters in Florida may cast an absentee ballot without restriction; the “for cause” requirements for casting an absentee ballot have been eliminated. Persons requesting an absentee ballot no longer need to provide social security numbers or voter identification numbers. The absentee ballot Voter’s Certificate is amended to require only the signature of the voter and the signature and address of a witness 18 years of age or older.

Provisions of law relating to absentee ballot coordinators and limitations on returning more than 2 ballots have been repealed.

In an effort to enhance election day administration, canvassing boards may now process absentee ballots through the tabulating equipment up to 4 days before the election instead of having to wait until the morning of the election. No results may be released until after the polls close and any person who releases results early commits a 3<sup>rd</sup> degree felony.

### ***Pollworker Training***

Minimum standards and hourly requirements are provided for the training of pollworkers. In addition, the Division of Elections is required to adopt a uniform polling place manual to guide the pollworkers on procedures to be followed on election day.

### ***Voter Education***

The Division of Elections is required to adopt rules with minimum standards for voter education. Each county will be able to receive funds for voter education and pollworker training upon submission to the Division of a detailed description of the programs to be implemented. The supervisors of elections and the Division must submit post-election reports on the effectiveness of voter education efforts, and the Division must re-examine its voter education rules in light of the information in the reports.

A Voter's Bill of Rights and Responsibilities must be posted at each polling place on election day, identifying such things as the voter's right to a provisional ballot if his or her registration is in question.

### ***Elections Canvassing Commission***

The composition of the Elections Canvassing Commission is modified. The Commission will consist of the Governor and two members of the Cabinet. Any vacancy must be filled with an elected official.

### ***Election Contests***

The grounds for an election contest are modified. The current provision, which affords a circuit judge unfettered discretion in fashioning orders and the authority to order investigations to prevent or correct any alleged wrong and to provide any appropriate relief, is eliminated.

### ***Statewide Voter Registration Database***

The Department of State is authorized \$2 million dollars to develop a statewide voter registration database containing voter registration information from all of the counties. The Department is given the authority to contract with the Florida Association of Court Clerks to analyze, design, develop, operate, and maintain the database. A criminal penalty is provided for any supervisor of elections who willfully refuses or neglects to perform his or her duties with respect to the implementation and administration of the database.

### ***Time Zone Study***

The Division of Elections, in conjunction with the Florida State Association of Supervisors of Elections, is required to study the benefits and drawbacks of having uniform poll opening and closing times throughout the state. A report of the findings is to be provided no later than January 1, 2002. This study is a direct response to the media inaccurately naming Al Gore, Jr., as the winner in Florida approximately ½ hour before the polls closed in the central time zone.

***Public Financing***

Contributions from out-of-state residents will not be counted toward the threshold amounts statewide candidates need to raise to receive public financing and will not qualify as matching contributions. Prior to this change, contributions of \$250 or less from out-of-state residents counted toward the threshold amount a candidate needed to raise and could be matched with state funds.

If approved by the Governor, these provisions take effect January 1, 2002, except as otherwise provided.

*Vote: Senate 38-2; House 120-0*

*[Senator Campbell recorded a change of vote after roll call from “nay” to “yea.”]*

