

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 213

Electronic Voting System Paper Records

SPONSOR(S): Hukill and others

TIED BILLS:

IDEN./SIM. BILLS: SB 1174, PCS/SB 962

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-------------------------|-------------|-----------------|
| 1) <u>Committee on Ethics & Elections</u> | <u>(W/D)</u> | <u>West</u> | <u>Mitchell</u> |
| 2) <u>Economic Expansion & Infrastructure Council</u> | <u>14 Y, 0 N, As CS</u> | <u>West</u> | <u>Tinker</u> |
| 3) <u>Policy & Budget Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

CS/HB 213 creates the "Truth in Elections Act", and addresses the following:

Primary Election Date - Moves the primary back one week so that it does not follow the long holiday weekend (Labor Day). There would now be ten weeks between the primary election and the general election.

Canvassing of Absentee and Mail Ballots - Allows a canvassing board two additional days to canvass absentee and mail ballots (currently, they can begin four days prior to election). Under the CS, canvassing of absentee and mail ballots may begin on the sixth day prior to an election.

Ballot-on-Demand - Encourages the county supervisors of elections to use ballot-on-demand technology for all types of voting. Ballot-on-demand is simply a method for printing un-marked ballots and is not considered a new voting system.

Paper Ballots - Requires that voting be conducted using marksense ballots (conventional, paper ballots), except that persons with disabilities may continue to vote on touch screen machines with no add-on printers. This requirement is contingent on an appropriation by the Legislature, or at the county's option, using local funding.

Audits - Requires random audits of the voting machines in four percent of the precincts in close elections (when there is a race that is decided by 1/2 % or less).

Mail Ballot Elections - Permits *but does not require* counties and cities to conduct mail ballot elections for all local races, including candidate races.

Funding and Effective Date - Requires the Department of State to seek funding for any new voting equipment from Help America Vote Act (HAVA) funds, or other federal sources. The CS further provides that the voting equipment sections (4, 5) of the CS are effective one year after a legislative appropriation, or implementation using local funds at the county's option. The remaining provisions are effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower taxes – The CS will cause a significant impact on local government. Some counties may have issued bonds to pay for the touch screen voting systems that were required by legislation enacted after the 2000 election, in addition to using federal HAVA funds. Now many of these systems may be rendered obsolete by the requirements in the CS. The voting system components of the CS may result in expenses to the counties unless grants are made available from federal or state sources. The counties will have to make up the difference from the local budgets. The CS's voting systems components are effective one year after legislative appropriation, or at the county's option, using local funds.

This CS has a potential savings for counties and cities in other areas. The CS will allow cities and counties to conduct mail ballot elections for candidate races, in addition to local referenda. This will save from one-third to one-half of the expenses for running of each mail ballot election.

B. EFFECT OF PROPOSED CHANGES:

Background on Voting Systems

Optical Scan Machines

This is the primary voting system that uses a paper ballot. In order to meet the requirements of the CS, optical scan tabulators or ballot-on-demand systems would have to be provided for roughly 3,345 precincts and 283 early voting sites that currently use touch screen voting systems.

AutoMark Ballot Marking Device

There is only one system that is certified that produces a paper ballot and meets state and federal laws covering disabled voters. This system currently is only certified and available from ES&S and is called AutoMark. According to figures furnished by the Sarasota County Supervisor of Elections, the AutoMark system would cost \$7,450 for each complete system. For one complete system per precinct (Florida has 6,854 precincts¹) the cost of this system would be \$51,063,300. One major obstacle is that 32 of the 67 counties currently use ES&S voting systems. The remaining counties' voting systems may not be compatible with the AutoMark system. Diebold is looking to get this technology certified in Florida within the year. Until this and similar technology matures the state will need to continue to use the touch screen technology for voters with disabilities.

Printers and a Voter-Verified Paper Audit Trail (VVPAT) for Touch Screen Systems

The CS does not require a printer or Voter Verified Paper Audit Record (VVPAT) to be attached to touch screen voting systems. This technology does not seem to be mature. Most jurisdictions that have used this technology have experienced problems.

The voter's ability to verify one's vote is less than ideal. The ES&S system does not have the ability to go back and review your choices once the text has scrolled off the screen. The Sequoia system turns off the touch screen monitor when the paper ballot is printed for a voter to see. A voter cannot compare the screen with the paper printout.

¹ The number of units required may actually be lower where there are several precincts in one polling place.

Only the Diebold system was demonstrated to have a secure cartridge that can be easily changed when the paper is used up. The Diebold system has a sensor that alerts the touch screen when the paper gets low and will alert the poll worker to change cartridges before another voter starts.

If the printer option was chosen, a printer would have to be added to all touch screens voting systems in the state. To add the current VVPAT's, the costs for each system would roughly be:

- Diebold systems - \$500; 29 counties made up of 1,984 precincts
- ES&S systems - \$1,295; 32 counties with 3,490 precincts
- Sequoia systems - \$1,400. 6 counties with 1,585 precincts

The total for the precincts will be about \$7,432,950. This cost is without spares or printers for the early voting sites.

Current Situation

Since 2002, no punch cards, mechanical lever machines nor central-count voting systems have been used in the state. Current voting systems certified for use in the state must employ precinct-count tabulation, and offer the voter an opportunity to correct a ballot containing any over-votes. The two systems used in Florida are precinct-based optical scan systems, and the more technologically-advanced "direct recording equipment" (DRE) or touch screen systems. Only fifteen counties exclusively use touch screen systems, but those counties contain more than 1/2 of the state's registered voters (over 5.3 million). The three vendors of touch screen systems are Sequoia, Election Systems and Software (ES&S), and Diebold.

Several advocacy groups favor a conversion to the exclusive use of optical scan systems in Florida. Touch screen systems are needed to meet the requirements of the Federal Help America Vote Act for voters with disability. The touch screen systems can produce ballot images, if required. There is one touch screen system certified that marks ballots. This is only available to Florida counties that use ES&S voting systems.

With the increased use of touch screen voting systems in the past 5 years, there has been considerable discussion regarding their reliability, accuracy, and security. Supervisors of elections maintain that these systems are a very secure and accurate method of voting while understanding the public's perception for the need for a paper receipt at the polls.

Impact of Purchase of New Voting Equipment

One year after the funding is appropriated from federal or state funds, counties currently using touch screen voting systems would be required to change to optical scan voting systems for the majority of their voters. The newly-certified² AutoMark ballot marking system, when funded, and touch screen systems would be available for use by voters with disabilities.

Ballot-on-Demand

The biggest problem with using optical scan tabulators has been the number of options needed for early voting sites. A county such as Miami-Dade requires a separate ballot for each of its 749 precincts, each of which must be available in three languages, and finally for primary elections, a different ballot for Republican, Democrat and "no party affiliation" voters. To further complicate the situation, the number of races on a ballot may be up to four pages on two sides. It is difficult to store and retrieve such a large number of paper ballots at each early voting site.

The only solution has been the use of touch screen voting systems. The CS envisions the use of a ballot-on-demand system that will allow the voter to come in and for the poll worker to generate and

² Certified February 27, 2007, by the Department of State.

print on a standard printer a ballot for the voter to mark. An optical scan machine will be needed to scan this printed ballot and to record the vote. Diebold has produced a machine that can handle an unlimited number of ballot-on-demand type ballots and that meets the needs of the state's larger counties. ES&S claims to have a ballot-on-demand system used in other states, but it is believed that the ES&S ballot-on-demand system will not be compatible with the older ES&S Eagle optical scan machines which are currently used in seven counties. The tabulators in these counties will have to be replaced after the 2008 election.

Impact of Manual Audit Requirements

The CS requires that each county canvassing board conduct an audit of the results of votes cast on voting systems used in the county after the certification of the official results of each election.³ The audit must be conducted on 4 percent of the precincts in that county, but only in the elections where the winner won by less than one half of one percent. It is unclear what the audit requirement may cost counties given that it will only be triggered in close election contests. In a Washington State 2004 audit of its gubernatorial race, the average cost was \$0.36 per ballot.

Vote-by-Mail

There are current statutory limitations on the use of mail ballots, pursuant to s. 101.6102, F.S. Generally, mail ballots may be used for referendum elections in local jurisdictions such as counties, cities, single county school districts and special districts. Under current law, mail ballot elections cannot be used for elections at which any candidate is nominated, elected, retained, or recalled. s. 101.6102(2)(a), F.S.

Mail ballot elections are significantly less costly than traditional elections which require the set-up of precincts, additional voting equipment and staff. According to Oregon Secretary of State Bill Bradbury in an article titled "A Better Way to Vote"⁴, Oregon has used voting by mail since 1998. Secretary Bradbury believes that the system has proven to be fraud-free because Oregon's election officials verify each voter's signature against the signature on that voter's registration card. Further, under Oregon's law, as in Florida, mailed ballots are not forwarded if a voter has moved.

There are other advantages to using a mail ballot system:

- Voter participation: It increases turnout – 84% in Oregon.
- Convenience: People can vote according to their schedule; 80% of Oregon voters said they prefer to vote by mail.
- Education: People have time to study issues and candidates before voting.
- Fraud protection: It has built-in safeguards that increase the integrity of the elections process.
- Built-in "paper record".
- Voter eligibility: Built-in time to resolve disputes.
- Actual results are released when polls close as opposed to unreliable "exit polls"
- Financial: It saves money; roughly 30% over traditional, polling place elections.

Critics of mail ballot elections and absentee ballots cite the following concerns:

- Ballots might be obtained and filled out by someone other than the voter.
- Without the necessity of appearing in person, it is easier to falsely register and vote.
- Without the privacy of the ballot booth, a vote could be coerced or unduly influenced.
- A voter isn't required to show ID to vote.
- Signatures of voters could be forged by people that have copies of a person's signature.

³ Pursuant to s. 102.112, F.S., returns must be filed by 5 p.m. on the 7th day following a primary election and 5 p.m. on the 11th day following a general election.

⁴ www.sos.state.or.us/executive/speeches/111906.htm

Florida's current election system permits three types of voting: a voter can early vote, vote at the polls, or as an increasing number of voters do, vote by absentee ballot. If a county adopts a mail ballot plan for county elections, options in some county elections would actually be eliminated - everyone would have to vote by mail.

New Felony Offense

The CS makes it a third degree felony offense for an unauthorized person to take or remove any ballot from the polling place before the close of the polls. This provision differs from the provisions of s. 104.20 F.S., which only make it a *first degree misdemeanor* to remove any ballot from the polling place before the polls are closed.

Removal of Deceased Voters from Voter Rolls

The CS allows a supervisor of elections to remove a voter from the voter rolls if presented with a certified copy of a death certificate. Under current law, a supervisor must wait for evidence of a voter's death to be filed with the Office of Vital Statistics and then sent to the Department of State for entry into the Statewide Voter Registration Database. This process can often take several months.

Moving Primary Election Date

The CS would move the primary back from the Tuesday nine weeks⁵ prior to the general election to ten weeks prior the general election. In 2006, the primary was held on the Tuesday immediately following a long holiday weekend (Labor Day). Without a change, the primary election will occur on September 2, 2008, again the day after Labor Day. It is hoped that this change will enhance turnout for the voters that would normally be vacationing during this weekend.

Canvassing Absentee and Mail Ballots

The CS will permit a canvassing board to begin canvassing mail and absentee ballots on the sixth day prior to an election. Under current law, canvassing of such ballots may begin at 7 a.m., on the fourth day prior to an election.⁶ The change is an attempt to improve work flow in supervisors' offices in the frenetic days leading up to election day.

C. SECTION DIRECTORY:

- Section 1:** Names the act as the "Trust in Elections Act"
- Section 2:** Section 98.075, F.S., is amended to allow the supervisors to remove a voter from the voter registration rolls, if the supervisor is presented with a certified copy of a death certificate.
- Section 3:** Section 100.061, F.S., is amended to move the primary back one week so that there are ten weeks between the primary election and the general election.
- Section 4:** Subsection (1) of section 101.151, F.S., is amended to encourage the supervisors of elections to use ballot-on-demand technology for all types of voting.
- Section 5:** Section 101.56075, F.S., is amended to require that voting be conducted using marksense ballots (conventional, paper ballots), except that persons with disabilities may continue to vote on touch screen machines with no add-on printers.

⁵ Section 100.061, F.S.

⁶ Section 101.6103(6), F.S., address mail ballots. Section 101.68(2), F.S., addresses absentee ballots.

- Section 6:** Section 101.5612, F.S., is amended to require counties to use ballots printed using ballot-on-demand technology for their pre-election testing if they chose to use ballot-on-demand technology in their elections.
- Section 7:** Section 101.591, F.S., is substantially amended to require a random audit of the voting machines in four percent of the precincts, but only in close races (when there is a race that is decided by 1/2 % or less).
- Section 8:** Section 101.6102, F.S., is amended to allow cities and counties the option to run mail ballot only elections for city and county elections, including candidate races.
- Section 9:** Section 101.6103, F.S., is amended to allow the canvassing of mail ballots six days before an election, rather than four days.
- Section 10:** Section 101.68, F.S., is amended to allow the canvassing of absentee ballots six days before an election, rather than four days.
- Section 11:** Section 104.20, F.S., is amended to make it a third degree felony offense for someone to remove a paper ballot from the polling place before the close of the polls.
- Section 12:** Requires the Department of State to seek funding for any new voting equipment from Help America Vote Act (HAVA) funds, or other federal sources.
- Section 13:** Provides that the voting equipment sections (sections 4 & 5) of the CS are effective upon a legislative appropriation, or implementation using local funds at the county's option.
- Section 14:** Makes sections, except sections 4 and 5, effective July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The Governor initially requested \$32.5 million to implement a voting system that produces a paper trail which would have included add-on printers for all touch screen machines used for disabled voters. Complete implementation of such a system would likely cost significantly more than this requested amount.

No funds from general revenue are contemplated for underwriting the cost of new voting equipment in sections 4 and 5 of the CS. The voting system components would only become effective one year after any funds are appropriated by the Legislature. Likewise, the Department of State is instructed to seek federal funds to cover the cost of the any new voting systems.

The CS creates a new, unranked third degree felony offense. According to the state's criminal sentencing guidelines, unranked third degree felonies rarely require a prison sentence. The Criminal Justice Impact Conference has not met to estimate the prison bed impact of the CS, but the likely impact, however, is insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Generally, counties in Florida are required to fund elections. As such, any amount not covered by appropriations from General Revenue or any other state or federal funding source would have to be underwritten by the counties. Those impacts cannot be specifically determined at this time, but they could be considerable. Most estimates for implementation of the CS are at \$27-28 million.

The CS allows counties, at their option, to move ahead with the replacement of touch screen voting systems using local funds. Only if the Legislature appropriates funds would the counties be *required* to convert to an optical scan system, and they would have one year after the funds are appropriated to do so.

The audit requirement of this CS would also impose new fiscal impacts on the counties. Because of the difference in ballot length and uncertain turnout, the total costs cannot be determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

NONE

D. FISCAL COMMENTS:

SEE ABOVE

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Elections laws are exempt from the mandates requirements of Art. VII, s. 18(a), Florida Constitution.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 17, 2007, a strike-all amendment offered by the sponsor in the Economic and Infrastructure Council was adopted, along with two additional amendments. This analysis has been modified to reflect the new CS incorporating the strike-all and the two amendments. The CS makes the following changes to HB 213, as filed:

- Encourages the use of ballot-on-demand technology for production of ballots.
- Removes the requirement for add-on printers with touch screen voting systems.
- Removes the requirement to audit every race on a ballot in four-six percent of the precincts.
- Requires a random audit of the voting machines in 4 percent of the precincts, but only in close races (when there is a race that is decided by 1/2 % or less).
- Allow city and county commissions to conduct mail ballot elections for candidate races.
- Allows a supervisor to remove a voter from the rolls if the supervisor is presented with a certified copy of a death certificate.
- Moves the primary election date back one week so that it does not follow the long holiday weekend (Labor Day).
- Allows the supervisors two more days to canvass absentee and mail ballots (currently, they can begin four days prior to an election, but with the change they may begin six prior to an election).
- Makes effective the voting system sections of the CS (sections 4 & 5) *one year after they are funded by the Legislature*, or at the county's option, using county funds.