



Committee on Ethics & Elections

**Thursday, March 8, 2007
10:00 AM- 11:00 AM
12 HOB**

Meeting Packet

**Marco Rubio
Speaker**

**Pat Patterson
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on Ethics & Elections

Start Date and Time: Thursday, March 08, 2007 10:00 am

End Date and Time: Thursday, March 08, 2007 11:00 am

Location: 12 HOB

Duration: 1.00 hrs

Consideration of the following bill(s):

HB 391 Early Voting by Richter

HB 559 Private Property Rights by Brown


NOTICE FINALIZED on 03/06/2007 16:14 by AMM

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 391
SPONSOR(S): Richter
TIED BILLS:

Early Voting

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Expansion & Infrastructure Council	_____	Brown	Tinker
2) Committee on Ethics & Elections	_____	Brown	Mitchell 
3) Policy & Budget Council	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill allows supervisors of elections (supervisors) to establish additional early voting sites upon request and approval from the Department of State, Division of Elections (the Division). The Division is responsible for reviewing requests, and receiving public comment on those requests. The bill establishes criteria for requests, including a detailed rationale and geographic map of current and proposed early voting locations.

The bill may have a minimal fiscal impact regarding the Division's oversight of the new request process.

The bill is effective July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Current early voting provisions have evolved from a 1998 law allowing absentee ballots to be cast in person at a supervisor's office.¹ Under this law, the elector was required to be physically unable to attend a polling place on Election Day.² In 2000, the Legislature added a requirement that the elector attest to this inability.³ In 2001, the process was expanded to include all voters, not just those physically unable to vote on Election Day.⁴

In 2004, the Legislature dramatically restructured the concept of casting absentee ballots in person by changing the name of the process to simply "early voting," streamlining the process, and providing requirements for:

- Allowable early voting locations,
- Minimum required hours of operation,
- A two-week early voting period, and
- Changes to the early voting certificate.⁵

Some additional minor requirements were added in 2005.⁶

Current law allows a supervisor of elections to establish early voting sites.⁷ These sites may be located in:

- the main office of a supervisor or a branch office, if that branch is a "permanent facility" and has been in use for more than a year prior to the election,⁸ and
- a city hall or a public library, so long as such sites are "geographically located so as to provide all voters... an equal opportunity to cast a ballot..."⁹

The early voting sites must be identified no less than 30 days before the election, and they must be open on the same days and for the same amount of time.¹⁰ Supervisors have requested that they have greater flexibility when designating early voting sites.¹¹

¹ Chapter 98-129, Laws of Florida, s. 17., codified at s. 101.657, F.S.

² Pursuant to s. 101.64, F.S. (1999), absentee ballots required affirmation that the elector was unable to attend the polls on Election Day. In keeping with the changes described in this analysis, such affirmation had been removed from the current absentee ballot procedure. See generally, s. 101.62 – 101.64, F.S.

³ Chapter 2000-249, Laws of Florida, s. 2.

⁴ Chapter 2001-40, Laws of Florida, s. 55.

⁵ Chapter 2004-252, Laws of Florida, s. 13.

⁶ Chapter 2005-277, Laws of Florida, s. 45, and Chapter 2005-278, Laws of Florida, s. 39.

⁷ Section 101.657(1)(a), F.S.

⁸ Id.

⁹ Id.

¹⁰ Section 101.657(1)(b)-(c), F.S.

¹¹ The Florida State Association of Supervisors of Elections in its 2007 legislative proposal states:

Proposed Changes

The bill grants supervisors the flexibility to add additional early voting sites, if "permitted early voting sites are not sufficient to provide adequate voter opportunity for convenient use." In order to add such sites, a supervisor must file a request with the Division, no later than 180 days before the first statewide election for which the sites would be used for early voting. Like the currently allowable sites, the requested sites must be "geographically located so as to provide all voters... an equal opportunity to cast a ballot."

The supervisor's request to the Division must contain the following:

- The rationale for the request along with supporting documentation,
- A description of the requested sites, and
- A map of the affected county, identifying the additional requested locations.

The Division is granted 30 days to receive public comment on the proposed additional sites, and must respond to the supervisor no later than 60 days after the supervisor has submitted the request. Once a location has been approved for an election, the supervisor can continue to use the site for future elections under the same conditions that the supervisor may use other allowed sites.

The bill also allows supervisors additional flexibility in assigning hours of operations for early voting sites, by eliminating the 7 A.M. and 7 P.M. limitations and replacing that language with "times selected by the supervisor of elections."

The bill makes technical changes to align the new language with current municipal election laws. Municipal elections are not substantively affected by the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 101.657, F.S., providing a request procedure allowing supervisors to expand early voting sites; providing for public comment and a timeframe for determining such sites; and revising the time early voting sites may remain open.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal fiscal impact on the Division as it will be required to review requests for additional early voting sites.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Florida law currently allows early voting at the supervisor of elections' office, libraries and city halls. In many cases, the limited size and limited parking available at these locations cause long lines and frustrated voters.

2. Expenditures:

Counties may experience additional costs for setting up and staffing additional early voting sites, if approved by the Division.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

This bill amends s. 101.657, F.S., to provide a means for a supervisor of elections to request from the Division approval to establish a better location for early voting. Currently, early voting locations are restricted by statute to various locations that may be unable to accommodate early voting because of parking restriction, space or hours of operations. This bill provides a means to address these inadequate locations and establish more convenient locations to increase voting. Any request for exception would be required to be approved by the Division.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to early voting; amending s. 101.657, F.S.; providing for the supervisor of elections to file a request with the Division of Elections of the Department of State to designate additional early voting sites; providing requirements for such request; requiring that the division receive public comment on the proposed early voting sites; specifying a timeframe within which the division must approve or disapprove a request for additional sites; revising the time when early voting sites are required to be open; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 101.657, Florida Statutes, is amended to read:

101.657 Early voting.--

(1) (a) As a convenience to the voter, the supervisor of elections shall allow an elector to vote early in the main or branch office of the supervisor. The supervisor shall mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot. In order for a branch office to be used for early voting, it shall be a permanent facility of the supervisor and shall have been designated and used as such for at least 1 year prior to the election. The supervisor may also designate any city hall or permanent public library facility as early voting sites; however, if so designated, the sites must be

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29 | geographically located so as to provide all voters in the county
 30 | an equal opportunity to cast a ballot, insofar as is
 31 | practicable. The results or tabulation of votes cast during
 32 | early voting may not be made before the close of the polls on
 33 | election day. Results shall be reported by precinct.

34 | (b)1. If the supervisor determines that the statutorily
 35 | permitted early voting sites are not sufficient to provide
 36 | adequate voter opportunity for convenient use of early voting,
 37 | the supervisor may file a request for exception with the
 38 | division and propose additional locations for early voting
 39 | sites. The proposed locations must be geographically located so
 40 | as to provide all voters in the county an equal opportunity to
 41 | cast a ballot, insofar as is practicable. The request for
 42 | exception shall be submitted to the division no later than 180
 43 | days before the first statewide election for which the proposed
 44 | locations will be used as early voting sites and must include:

- 45 | a. The rationale for the supervisor's request for an
 46 | exception, along with supporting documentation;
- 47 | b. A detailed description of the proposed locations and
 48 | premises requested for use as additional early voting sites; and
- 49 | c. A map of the county identifying the requested placement
 50 | of the proposed early voting locations.

51 | 2. The division shall have 30 days after receipt to
 52 | receive public comment concerning the proposed locations. The
 53 | division shall review and approve or disapprove the request, in
 54 | whole or in part, no later than 60 days after submission.

55 | (c) ~~(b)~~ The supervisor shall designate each early voting
 56 | site by no later than the 30th day prior to an election and

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57 shall designate an early voting area, as defined in s. 97.021,
 58 at each early voting site. If the supervisor chooses to use a
 59 location previously approved as an early voting site by the
 60 division using the procedure set forth in paragraph (b), the
 61 supervisor may continue to use this location without submitting
 62 a second request for exception, but shall designate the location
 63 as an early voting site no later than the 30th day prior to an
 64 election and shall designate an early voting area, as defined in
 65 s. 97.021, at the early voting site.

66 (d)~~(e)~~ All early voting sites in a county shall be open on
 67 the same days for the same amount of time and shall allow any
 68 person in line at the closing of an early voting site to vote.

69 (e)~~(d)~~ Early voting shall begin on the 15th day before an
 70 election and end on the 2nd day before an election. For purposes
 71 of a special election held pursuant to s. 100.101, early voting
 72 shall begin on the 8th day before an election and end on the 2nd
 73 day before an election. Early voting shall be provided for 8
 74 hours per weekday and 8 hours in the aggregate each weekend at
 75 each site during the applicable periods. Early voting sites
 76 shall open ~~no sooner than 7 a.m.~~ and close ~~no later than 7 p.m.~~
 77 on each applicable day at times selected by the supervisor of
 78 elections.

79 (f)~~(e)~~ Notwithstanding the requirements of s. 100.3605,
 80 municipalities may provide early voting in municipal elections
 81 that are not held in conjunction with county or state elections.
 82 If a municipality provides early voting, it may designate as
 83 many sites as necessary and shall conduct its activities in
 84 accordance with the provisions of paragraphs (a), (c), and (d)

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85 | ~~(a)-(e)~~. The supervisor is not required to conduct early voting
86 | if it is provided pursuant to this subsection.

87 | (g) ~~(f)~~ Notwithstanding the requirements of s. 189.405,
88 | special districts may provide early voting in any district
89 | election not held in conjunction with county or state elections.
90 | If a special district provides early voting, it may designate as
91 | many sites as necessary and shall conduct its activities in
92 | accordance with the provisions of paragraphs (a), (c), and (d)

93 | ~~(a)-(e)~~. The supervisor is not required to conduct early voting
94 | if it is provided pursuant to this subsection.

95 | Section 2. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 559

Private Property Rights

SPONSOR(S): Brown

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Ethics & Elections</u>	_____	Brown <i>RB</i>	Mitchell
2) <u>Economic Expansion & Infrastructure Council</u>	_____	Brown	Tinker
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill grants private property owners the explicit right to prohibit signature-gathering activities relating to citizen ballot initiatives; the property owner may prohibit activities generally or on any specific initiative, or may permit such activities with reasonable "time, place, and manner" restrictions to be uniformly applied.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Constitutional Ballot Initiatives

The Florida Constitution allows voters to approve state constitutional amendments proposed by citizen initiative petition.¹ The procedure for placing an initiative on the ballot is provided in s. 100.371, F.S. In order to obtain ballot position:

- The sponsor of an amendment must register as a political committee pursuant to s. 106.03, F.S., and submit the text of the amendment with the form on which the signatures will be obtained;
- The Secretary of State must approve the submitted form before signatures are obtained;
- After signatures are obtained, the Secretary of State must determine the total number of valid signatures (signatures are valid for four years from the date when made) and the distribution from congressional districts;
- The certification of ballot position must be completed by February 1 of the year the general election is held; and
- The Florida Supreme Court must approve the validity of the proposal pursuant to s. 101.161(1), F.S.

Signature Gathering on Private Property

Nationwide, political activities such as handbill distribution and signature-gathering have generated legal conflicts when entities seek to gather signatures on the private property of others, particularly store-fronts and shopping malls.²

There is an inherent tension between the First, Fifth, and Fourteenth Amendments to the U.S. Constitution in regard to an entity's political activities taking place on another entity's private property. In 1972, the U.S. Supreme Court stated:³

It must be remembered that the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property... The Due Process clauses of the Fifth and Fourteenth Amendments are also relevant... They provide that 'no person shall be deprived of life, liberty, or property, without due process of law.' There is a further proscription in the Fifth Amendment against the taking of 'private property... for public use, without just compensation.'

(Emphasis added.)

¹ Art. XI, s. 3, Fla. Const.

² See, e.g., *Batchelder v. Allied Stores International, Inc.*, 388 Mass. 83 (1983) (A "free elections" provision in Massachusetts constitution protected signature gatherers at a private mall (but see *Commonwealth v. Hood*, 452 N.E.2d 188 (Mass. 1983) in which the same court declined to extend state protection to speech unrelated to a pending election that was expressed on private property)); and *New Jersey Coalition Against the War in the Middle East v. JMB Realty Corp.*, 138 N.J. 326 (New Jersey's state constitution contained 'enhanced' free speech rights entitling pamphleteers to distribute materials in shopping center subject to reasonable restrictions).

³ *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

To simplify a large body of case law, the fundamental issue revolves around whether a given private property owner has, by virtue of allowing the public to come onto the property, converted that property into a public forum, and thus is barred from excluding an individual or group from exercising their First Amendment rights. In the landmark case of *Marsh v. State of Alabama*, 326 U.S. 501 (1946), the U.S. Supreme Court determined that where a private party built and owned an entire "company town,"⁴ a religious pamphleteer could not be ejected or arrested on the grounds that she was trespassing on private property. The Court opined:

The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. [Citations omitted]. Thus, the owners of privately held bridges, ferries, turnpikes and railroads may not operate them as freely as a farmer does his farm.⁵

In the case of an entire "company town," the Court determined that allowing the property owner/employer to bar certain First Amendment activities curtailed the citizen/employees' ability to participate in their civic duties. "These people, just as residents of municipalities, are free citizens of their State and country.... To act as good citizens they must be informed. In order to enable them to be properly informed their information must be uncensored...."⁶

Entities engaging in subsequent political activities have attempted to apply the concepts laid out in *Marsh v. State of Alabama* to other private property owners. In the frequently-cited *Lloyd Corporation, Ltd. v. Tanner*, 407 U.S. 551 (1972), the U.S. Supreme Court refused to extend the *Marsh* concept to a common shopping mall. The mall was permitted to eject pamphleteers on the grounds that the mall's open invitation to the public is to come to the mall in order to patronize the tenants in the mall. The mall allows certain "meetings and promotional activities," but the

obvious purpose, recognized widely as a legitimate and responsible business activity, is to bring potential shoppers to the Center, to create a favorable impression, and to generate goodwill. There is no open-ended invitation to the public to use the Center for any and all purposes....⁷

In at least one state, the concept of *Marsh* was extended to smaller areas such as shopping centers. The California case of *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980) makes this extension, but the rationale for such extension rests solely on the California constitution, which contained a freedom-of-speech protection exceeding the federal protection against government interference found in the First and Fourteenth Amendments.⁸ A 2004 court ruling from Connecticut concisely summarizes the concepts of both *Lloyd* and *Pruneyard*:

It is well established that there is no right under the first amendment of the United States constitution for a person to use a privately owned shopping center as a forum to communicate without the permission of the property owner. *Lloyd Corp. v. Tanner* [additional citations omitted]. A state, however, may adopt greater protection for free expression on private property, so long as such protection does not conflict with any federally protected property rights of the owners of

⁴ Gulf Shipbuilding Corporation owned and operated the private town of Chickasaw, AL, consisting of "residential buildings, a system of sewers, a sewage disposal plant and a 'business block' on which business places are situated. A deputy of the Mobile County Sheriff, paid by the company, serves as town's policeman. Merchants and service establishments have rented the stores and business places on the business block and the United States uses one of the places as a post office.... The town and the surrounding neighborhood, which cannot be distinguished from the Gulf property by anyone not familiar with the property lines, are thickly settled and according to all indications the residents use the 'business block' as their regular shopping center." *Marsh v. Alabama*, 326 U.S. 501, 502-503.

⁵ *Id.* at 506.

⁶ *Id.* at 508.

⁷ *Lloyd Corporation, Ltd. v. Tanner*, 407 U.S. 551, 564-565.

⁸ In *Pruneyard*, the U.S. Supreme Court upheld the California Supreme Court's findings that (i) the California Constitution expressly protects speech and petitioning, reasonably exercised, in shopping centers even when the center is privately owned, and (ii) this state law does not infringe a mall owner's federally-protected property rights.

private shopping centers. See *Pruneyard v. Robins* [additional citations omitted].⁹

Recent Florida caselaw

One of the most recent cases to address this issue is *Publix Super Markets, Inc. v. Tallahasseeans for Practical Law Enforcement, et al.*, 2005 WL 3673662 (Fla. 2d Cir. 2005). Tallahasseeans for Practical Law Enforcement were members of a political action committee seeking decriminalization of marijuana laws, and were engaged in signature-gathering on the private property of a Publix grocery store in Tallahassee.

The court framed the case as follows:

The issue presented in this litigation is whether Publix, which invites the public onto its premises primarily for the purpose of grocery-shopping... has the right to exclude persons in a non-discriminatory manner where such persons seek to use the property for purposes other than shopping.

The court answered this question in the affirmative, summarily noting that the First Amendment of the U.S. Constitution and Art. I, s. 4 of the Florida Constitution "only protect against government infringement of an individual's right to engage in free speech."¹⁰ Because Publix stores are located on privately-owned or leased properties, the court determined that it "can find no authority to support Defendants' contention that they have a constitutional right to solicit at such properties over Publix's objection."¹¹

The court recognized that a state "may provide greater protection under its state constitution for free expression on private property, so long as such protection does not conflict with... federally protected... rights" of the owner.¹² In *New Jersey Coalition Against the War in the Middle East v. JMB Realty Corp.*, 138 N.J. 326 (1994), and the California case of *Pruneyard Shopping Center v. Robins*, 447 U.S. 74 (1980), the relevant state constitution was deemed to have 'enhanced' free speech rights beyond those contained in the federal Constitution. However, the circuit court noted that "the Florida Supreme Court has held that the scope of the Florida Constitution's protection of freedom of speech is the same as that required under the First Amendment [citation omitted],"¹³ and that Florida courts "must apply the principles of freedom of speech announced in the decisions of the United States Supreme Court [citations omitted]."¹⁴

In finalizing its review of the relevant case law in Florida, other states, and the Supreme Court, the Court states:

Owners of private property have the right to allow... periodic use of their premises by civic groups without waiving or otherwise forfeiting their right to exclude other groups seeking to use the premises for political speech, solicitation of petition signatures, or other non-shopping purposes. [Previous case law has] rejected claims that the retailers were improperly discriminating based on such action....

Defendants are not entitled under the First Amendment or the Florida Constitution to solicit signatures... on Publix's privately owned property without Publix's permission.¹⁵

⁹ *United Food and Commercial Workers' Union, Local 919, AFL-CIO v. Crystal Mall Associates, L.P.*, 852 A.2d 659, 666 (2004).

¹⁰ *Publix Super Markets, Inc. v. Tallahasseeans for Practical Law Enforcement, et al.*, at 3.

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 5.

Proposed Changes

The bill recognizes the *Publix Super Markets* case by codifying the result in s. 100.371, F.S. An owner, lessee, or other person lawfully exercising control over private property may prohibit all activities regarding initiatives, permit or prohibit activities for any particular initiative, or permit activities subject to reasonable time, place, and manner restrictions.

The bill does not affect other political activities or otherwise modify existing federal and state caselaw; it is specifically directed toward signature-gathering for citizen ballot initiatives.

C. SECTION DIRECTORY:

Section 1. Amends s. 100.371, F.S., permitting private property owners to prohibit or permit signature gathering activities on their property.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Pursuant to Art VII, s. 18(d), Fla. Const., as it relates to elections laws, this bill is exempt from the unfunded mandate provisions of Art. VII, s. 18(a), Fla. Const.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to private property rights; amending s.
 3 100.371, F.S.; providing private property rights relating
 4 to activity on the property that supports or opposes
 5 ballot initiatives; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Subsection (7) is added to section 100.371,
 10 Florida Statutes, to read:

11 100.371 Initiatives; procedure for placement on ballot;
 12 private property rights.--

13 (7) In addition to any other practice or action
 14 permissible under law, an owner, lessee, or other person
 15 lawfully exercising control over private property may:

16 (a) Prohibit persons from engaging in activity on the
 17 property that supports or opposes initiatives;

18 (b) Permit or prohibit persons from engaging in activity
 19 on the property in support of or opposition to a particular
 20 initiative; or

21 (c) Permit persons to engage in activity on the property
 22 that supports or opposes initiatives, subject to restrictions
 23 with respect to time, place, and manner that are reasonable and
 24 uniformly applied.

25 Section 2. This act shall take effect upon becoming a law.