

1989

Session Law 89-348

Florida Senate & House of Representatives

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H 1529 GENERAL BILL/CS/CS/2ND ENG by Rules & Calendar; Ethics & Elections; Guber and others (Similar CS/S 499)
Elections/Voting Equipment & Systems; revises definition of term "voting equipment"; amends provision re purchase of voting equipment; provides for experimental use of voting systems; authorizes Dept. of State to review county voting systems; requires dept. to audit county voting systems; provides requirements for elections canvassing boards; creates Bureau of Voting Systems Certification within Elections Div., etc. Amends Ch. 101, 97.012,.021, 102.166. Effective Date: 01/01/90, except as otherwise provided.

03/28/89 HOUSE Prefiled

04/04/89 HOUSE Introduced, referred to Ethics & Elections; Appropriations -HJ 145

04/06/89 HOUSE On subcommittee agenda—Ethics & Elections, 04/10/89, 3:30 pm, 317-C

04/10/89 HOUSE Subcommittee Recommendation: Favorable with 3 amendments; On Committee agenda, pending subcommittee action—Ethics & Elections, 04/12/89, 1:15 pm, 317-C

04/12/89 HOUSE Preliminary Committee Action by Ethics & Elections: Favorable as a CS

04/24/89 HOUSE Comm. Report: CS by Ethics & Elections -HJ 258; CS read first time -HJ 257; Now in Appropriations -HJ 258

05/22/89 HOUSE On Committee agenda—Appropriations, 05/23/89, 8:00 am, 21-HOB—Temporarily passed

05/24/89 HOUSE On Committee agenda—Appropriations, 05/25/89, 8:0 am, 21-HOB

05/25/89 HOUSE Preliminary Committee Action by Appropriations: Favorable; Also referred to Rules & Calendar -HJ 655; Comm. Report: Favorable by Appropriations -HJ 657; Now in Rules & Calendar -HJ 657; On Committee agenda—Rules & Calendar, 05/26/89, 8:00 am, 413-C

05/26/89 HOUSE Preliminary Committee Action by Rules & Calendar: Favorable as a CS

05/29/89 HOUSE Comm. Report: CS/CS by Rules & Calendar, placed on Calendar -HJ 774; CS read first time -HJ 773

05/30/89 HOUSE Placed on Special Order Calendar

05/31/89 HOUSE Read second time; Amendment adopted; Read third time; CS passed as amended; YEAS 96 NAYS 18 -HJ 898

05/31/89 SENATE In Messages

06/02/89 SENATE Received -SJ 869; Substituted for CS/SB 499; CS passed as amended; YEAS 39 NAYS 0 -SJ 970

06/02/89 HOUSE In Messages

06/03/89 HOUSE Concurred; CS passed as further amended; YEAS 98 NAYS 11 -HJ 1546

06/03/89 Ordered engrossed, then enrolled

06/20/89 Signed by Officers and presented to Governor

07/05/89 Approved by Governor; Chapter No. 89-348

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1529-f.hee
 DATE: July 5, 1989

HOUSE OF REPRESENTATIVES
 COMMITTEE ON ETHICS AND ELECTIONS
 FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/CS/HB 1529

RELATING TO: Elections; voting systems

SPONSOR(S): Committees on Rules and Calendar and Ethics and Elections and
 Reps. Guber, Mackenzie, Ostrau, Huenink

EFFECTIVE DATE: January 1, 1990

DATE BECAME LAW: July 5, 1989

CHAPTER #: 89-348, Laws of Florida

COMPANION BILL(S): CS/SB 499

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
 (2) Rules and Calendar

I. SUMMARY:

A. PRESENT SITUATION:

Sections 101.5601 through 101.5615, F.S., comprise the "Electronic Voting Systems Act." This act authorizes and governs the use of electronic and electromechanical voting systems in Florida.

The Department of State is required to examine and certify all makes of electronic or electromechanical voting systems before they may be purchased for use by any county. After a voting system has been approved, any changes to it must also be approved by the Department prior to use by the county.

The Department of State is required to promulgate rules establishing minimum security guidelines for electronic and electromechanical voting systems. Each supervisor of elections utilizing an electronic voting system must establish written security procedures which the Division of Elections must approve and review periodically.

The Act establishes the voting procedures to be followed when using an electronic voting system and establishes the ballot requirements. Each supervisor of elections is required to test the operation of the voting system no more than 10 days prior to each election. The law establishes procedures for canvassing returns and conducting recounts.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the "Voter Protection Act" which amends various portions of the Election Code with regard to voting systems.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. Provides for the act to be known as the "Voter Protection Act."

Section 2. Provides the Secretary of State with the responsibility to provide technical assistance on voting systems to the supervisors of elections.

Section 3. Creates a definition of "voting system" to include paper ballots, voting machines, and electronic or electromechanical systems.

Section 4. Requires the Department of State to adopt rules establishing hardware and software standards for electronic and electromechanical voting systems. Requires all electronic and electromechanical voting systems purchased on or after January 1, 1990, to meet the minimum standards. All electronic and electromechanical voting systems in use on or after July 1, 1993, must also meet the standards.

Sections 5 and 6. Revises the purchase amount for which competitive bids are required for voting equipment from \$1,000 to the threshold for Category Two purchases in s. 287.017 (\$3,000).

Section 7. Amends s. 101.31, F.S., to allow experimental use of voting systems by counties and municipalities, with the concurrence of the supervisor of elections.

Section 8. Creates a definition of "software."

Section 9. Requires the Department of State to test software required for an electronic or electromechanical voting system prior to certifying the system for use in Florida.

Section 10. Amends s. 101.5606, F.S., to require any electronic voting system approved by the Department of State to be capable of providing an audit trail.

Section 11. Provides that copies of the program codes, the user and operator manuals, and all software, specifications, or documentation relating to an approved voting system to be filed with the Department of State by the supervisor of elections prior to their use in an election.

Requires the supervisor of elections to file a copy of the program used for the logic and accuracy test with the Department of State. Authorizes the Department of State to develop public domain software for use with voting systems. The software would be made available at the cost of duplication.

Section 12. Amends s. 101.5609, F.S., requiring the Department of State to prescribe ballot standards for use with electronic voting systems.

Section 13. Amends s. 101.5615, F.S., to conform.

Section 14. Creates s. 101.591, F.S., to require the Department of State to audit the voting system in each county at least every five years.

Section 15. Authorizes the county canvassing board to conduct a manual recount of the ballots under certain circumstances. Provides procedures.

Section 16. Creates a Bureau of Voting Systems Certification within the Division of Elections of the Department of State to provide technical support to the supervisors of elections and which is responsible for voting systems standards and certification.

Section 17. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

The Department of State estimates that sixteen positions will be needed to implement the provisions of this act. Total estimated cost is projected at \$669,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

None

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

This bill implements the recommendations made by the Joint Committee on Information Technology Resources regarding the security of voting systems.

The purpose of this bill is to improve the integrity of electronic voting systems and to regain the voters' trust in those systems and the elections process. This bill addresses issues from the Policy Statement from the Legislative Issues Conference and the Mission Statement, both of which include statements charging the Legislature to "increase the public's faith in the integrity of the electoral process."

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Sarah Jane Bradshaw
Sarah Jane Bradshaw

Staff Director:

Wayne R. Malaney
Wayne R. Malaney

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

STORAGE NAME: h1529-f.hee
DATE: July 5, 1989
PAGE: 5

APPROPRIATIONS:
Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Stephens</u>	<u>Stephens</u>	1. <u>EE</u>	<u>Fav/CS</u>
2. <u>Kane</u>	<u>Stengle</u>	2. <u>GO</u>	<u>Fav/2 amends.</u>
3. _____	_____	3. <u>AP</u>	_____
4. _____	_____	4. _____	_____

SUBJECT: Elections; Voting Equipment and Systems

BILL NO. AND SPONSOR: CS/SB 499 by Ethics & Elections and Senator Stuart, et al.

I. SUMMARY:

A. Present Situation:

Chapters 97 through 106, F.S., constitute "The Florida Election Code." The Secretary of State is the chief election officer of the state. The secretary is responsible for maintaining and obtaining uniformity in the application, operations, and interpretation of the elections laws, providing uniform standards for the proper and equitable implementation of the registration laws, examining the effectiveness of the election laws, and providing technical assistance to the supervisors of elections on voter education and election personnel training services.

Forty-one counties in Florida use computerized voting systems. A draft report of the legislature's Joint Committee on Information Technology Resources issued in March 1989, entitled *The State's Information Policy: Response to Changes in an Electronic Age*, noted that concerns have been expressed in Florida and throughout the country about the accuracy of elections in which votes are cast and counted on systems that rely on computer software. The integrity of election results frequently depends on the security and accuracy of the software programs on which electronic voting systems rely. The draft report raised questions concerning whether such computer software, and the accompanying hardware and supplies, are adequately maintained and monitored.

The Division of Elections of the Department of State is required to adopt uniform rules for the purchase, use, and sale of voting equipment. Governing bodies are not permitted to purchase equipment that has not been certified by the department for use in this state. Pursuant to s. 101.31, F.S., governing bodies are permitted to provide for the experimental use of voting machines in one or more precincts.

Sections 101.5601-101.5615, F.S., the "Electronic Voting Systems Act," were enacted by ch. 73-156, L.O.F., and authorize the use of electronic and electromechanical voting systems in which votes are registered electronically or are tabulated on automatic tabulating equipment or data processing equipment. The act does not define the term "computer software."

Section 101.5606, F.S., provides the criteria which electronic and electromechanical voting systems must meet in order to be approved by the department. This section also provides that the department, by public examination, is to determine whether such systems comply with the law.

Neither that section nor s. 97.021, F.S., which provides for many of the definitions of terms used in The Florida Election Code, includes a definition for the term "voting systems."

Section 101.5607, F.S., provides that the Department of State must prescribe rules to achieve accuracy and efficiency in voting procedures. The department is required to promulgate rules establishing minimum security guidelines for electronic and electromechanical voting systems, and is required to maintain technological expertise in the field of computer security. The supervisors of elections are to maintain procedures for accuracy and security of electronic systems, subject to approval and periodic review by the Division of Elections.

Section 101.5609, F.S., provides for the physical requirements for ballots.

Each county has a county canvassing board, composed of the supervisor of elections, a county court judge, and the chairman of the board of county commissioners. The board assesses the election results and the accuracy of the functioning of certain machines and procedures. In specified situations the board may, or is required to, order a recount. The board certifies the results of the election to the Department of State and files a report with the Division of Elections on the conduct of the election. Section 102.166, F.S., provides for the protest of the returns of an election by any candidate or qualified elector.

B. Effect of Proposed Changes:

The "Voter Protection Act" would be created, and the "Electronic Voting Systems Act" would be amended. The Secretary of State would be given increased responsibilities for, and authority over, certain voting methods and procedures in elections relating to the security and accuracy of elections. Attention would be directed to the computer software used in voting systems. The proposed changes to the law are analyzed section-by-section, as follows:

Section 1. Short title.

Section 2. The Secretary of State would be required to provide technical assistance to supervisors of elections on voting systems.

Section 3. A definition of the term "voting system" would be added to The Florida Election Code to mean a method of voting or processing votes that relies upon mechanical or electromechanical or electronic apparatus, or uses paper ballots, and would include but would not be limited to, the procedures for casting and processing votes, and the programs, materials, and other software necessary for the system's operation.

Section 4. The department would be required to adopt rules to establish minimum standards for hardware and software for voting systems, which would include standards for performance levels and evaluation criteria. In addition, the department would be required to adopt rules to provide for correctness, impartiality, and efficiency of voting procedures, and to establish minimum security standards for voting systems. The supervisors of elections would be required to establish written security procedures, which would be reviewed every other year by the department. Revisions would have to be submitted to the department prior to use. Voting systems acquired after January 1, 1990 would be required to meet the minimum standards of the act. Existing voting systems would be required to meet the minimum standards of the act by July 1, 1993.

Section 5. The definition of the term "voting equipment" would be amended to include ballot cards.

Section 6. In addition to adopting uniform rules for the purchase, use, and sale of voting equipment in the state, the Division of Elections of the Department of State would be required to review purchase contracts for voting equipment. The department, with the assistance of the Division of Purchasing of the Department of General Services, would be permitted to negotiate and execute purchasing agreements and contracts under which governing bodies would be able to purchase elements of voting systems.

Section 7. Counties and municipalities would be permitted to provide for the use of experimental voting systems in one or more precincts.

Section 8. A definition for computer software would be added to the definitions section of the Electronic Voting Systems Act, ss. 101.5601-101.5615, F.S.

Section 9. The testing required of an electronic or electromechanical voting system, for certification by the department, would include testing of all software necessary for the system's operation.

Section 10. An electronic or electromechanical voting system could not be approved by the department unless the voting system is capable of providing records from which the operation of the voting system may be audited.

Section 11. Certain information required by the department concerning approved electronic or electromechanical voting systems and equipment would be required to be on file with the department and, if not filed, would not be permitted to be used in an election. Supervisors of elections would be required to send the department a copy of the tabulation program used in a logic and accuracy test within 24 hours of the testing. The department would be authorized to review a county voting system to ensure compliance with the Electronic Voting Systems Act at any time.

Certain specified software on file with the department as required by law, which is obtained by an agency under a licensing agreement that prohibits its disclosure and which is a trade secret, and agency-produced data processing software which is sensitive, would be exempt from the public access provisions of the Public Records Law. The department would be permitted to develop software for use with an electronic or electromechanical voting system, which would be a public record and would be available upon payment of the cost of duplication of such software.

Section 12. Section 101.5609, F.S., concerning statutory standards for ballot requirements for electronic or electromechanical voting systems utilizing a paper ballot, would be amended to require the department to adopt rules prescribing standards for ballots used in electronic or electromechanical voting systems. Standards would include the physical characteristics for ballots and ink for ballots, ballot printing, and ballot scoring.

Section 13. Would make minor amendments to language in provisions for procedures in recounts and election contests.

Section 14. Provision would be made for the audit of county voting systems by the department. The department would be required to audit the voting system in each county every 5 years. The law would prescribe the nature of the audit, the purpose of which would be to ensure that the system is accurate, and provides safeguards from unauthorized manipulation and fraud.

Section 15. The procedure for protest of election returns would specify separate procedures to be followed by the canvassing board when paper ballots are used, when voting machines are used, and when electronic or electromechanical equipment is used. In the case of voting machines, when there is a discrepancy between the returns and the counters of the machines, the counters would be presumed correct. The canvassing board, in the case of electronic or electromechanical equipment, would be permitted to correct a clerical error. In the case of a discrepancy which could affect the outcome of an election, the canvassing board would be permitted to recount the ballots on the automatic tabulating equipment.

A manual recount would be permitted to be requested by any candidate, any political committee, or political party with a specified interest in the election, if made to the canvassing board prior to the time of its adjournment or within 5 days after midnight of the day of the election, whichever is later.

The county canvassing board would be permitted to authorize a manual recount. Procedures for conducting the recount would be established by law, including the notification of each candidate whose race is being recounted and, when requested in writing by the canvassing board, verification by the department of the tabulation software. Verification of the tabulation software by the department would include comparing the software used in the election with that on file with the department, and checking the election parameters. The department would be required to respond to the request of the canvassing board within 3 working days.

Section 16. A Bureau of Voting Systems Certification would be established within the Division of Elections, and would provide technical support to the supervisors of elections and would be responsible for voting system standards and certification. Sixteen positions would be established initially in the bureau, and \$669,000 would be appropriated from the General Revenue Fund to the Division of Elections.

Section 17. The bureau would be established effective July 1, 1989, or upon becoming law, whichever is later. All other provisions of the act would take effect January 1, 1990.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

Creation of the Bureau of Voting Systems Certification within the Division of Elections would include 16 initial positions. The sum of \$669,000 would be appropriated to the Division of Elections from the General Revenue Fund for FY 1989-90.

Reduced costs to local governments for acquiring voting systems could result from volume purchasing agreements negotiated by the Department of State. In addition, local governments could ultimately realize a savings by purchasing, at the cost of duplication, software developed by the department for use in voting systems.

III. COMMENTS:

None.

REVISED: April 26, 1989

BILL NO. CS/SB 499

DATE: April 26, 1989

Page 5

IV. AMENDMENTS:

#1 by Governmental Operations:

Eliminates language that would have required local governments to submit all contracts for the purchase of voting equipment to the Department of State for review prior to purchase.

#2 by Governmental Operations:

Conforming title amendment.

SENATE COMMITTEE AMENDMENT

CS/SB 499

No. 1
(reported favorably)

HB _____

The Committee on...Gov. Operations....recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Senate Amendment

On page4....., lines ..22-30.., and
on page5....., lines ..1 and 2.., strike

all of said lines

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No -	Yes

and insert:

Section 6. Subsection (4) is added to section 101.294,
Florida Statutes, to read:

101.294 Purchase and sale of voting equipment.--

CODING: Words stricken are deletions; words underlined are additions.

* Amendment No. 1, taken up by committee: 04/26/89 Adopted x *
* Offered by Senator Langley Failed _ *

(Amendment No. _____ Adopted ___ Failed ___ Date __/__/__)

SENATE COMMITTEE AMENDMENT

CS/SB 499

No. 2
(reported favorably)

HB _____

The Committee on...Gov. Operations....recommended the following amendment which was moved by Senator.....and adopted: and failed:

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Senate Amendment

In title, on page1....., lines ..9-11..., strike

all of said lines

If amendment is text from another bill insert:

Bill No.	Draft No.	With Changes?	No	Yes
			-	

and insert:

amending s. 101.294, F.S.;