

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 10B

SPONSOR: Senator Cowin

SUBJECT: Elections

DATE: June 17, 2003

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------|
| 1. | Fox | Rubinas | EE | Favorable |
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| 3. | | | | |
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I. Summary:

Senate Bill 10B accomplishes the following major purposes:

- **HAVA:** Retrofits many of Florida's existing laws to meet the new, somewhat technical, election administration requirements in the federal Help America Vote Act of 2002 ("HAVA").
- **Second Primary Election:** Continues the current moratorium on the second primary election through December 31, 2005.

This bill creates a number of unnumbered sections of Florida law and substantially amends, creates, or repeals the following sections of the Florida Statutes: 97.012, 97.021, 97.052, 97.053, 97.028, 97.0535, 98.045, 98.097, 98.0977, 98.212, 98.461, 98.471, 98.491, 101.048, 101.049, 101.111, 101.62, 101.64, 101.657, 101.6921, 101.6923, 101.6925, 101.694, 102.141, 125.01; and section 20, Chapter 2002-281, Laws of Fla.

II. Present Situation:

HAVA

In October, 2002, the U.S. Congress passed and the President signed the Help America Vote Act of 2002 ("HAVA").¹ It authorizes over \$3 billion dollars over 3 years in federal aid to the States to upgrade antiquated voting equipment, to assist the States in meeting the new election administration requirements in the bill, and for other election administration projects. It also contains a host of new, highly-technical substantive requirements. Florida expects to receive about \$83 million dollars this fiscal year from HAVA disbursements, the bulk of which must be

¹ H.R. 3295 (2002) [Enrolled].

used to bring the State into compliance with the new substantive federal requirements and for future election administration projects.

HAVA is, at least in part, a response to circumstances surrounding the 2000 U.S. presidential recount and the subsequent problems experienced in two of Florida's largest counties during the September 2002 primary election. Having had occasion to grapple with these issues firsthand, the Florida Legislature has already enacted a number of reforms that go a long way toward meeting the new federal requirements. Thus, it should come as no surprise that many of the key components of HAVA reflect the fixes adopted by the Florida Legislature in the Florida Election Reform Act of 2001 and subsequent glitch legislation. Despite this apparent kinship, there are still many provisions of Florida law that need retrofitting to meet HAVA's new, somewhat technical substantive requirements.

Some of the more important substantive requirements of HAVA include:

- **Voting Systems for the Disabled:** by January 1, 2006, every polling place must have technology that allows an individual with a disability to cast a secret and independent ballot.²
- **Statewide Voter Registration System:** by January 1, 2006 (pursuant to requested waiver of a 2004 deadline by the State of Florida), the State must have operational a statewide voter registration system that will serve as the official registration record for all federal elections; the system database must be cross-referenced against driver's license and social security administration data to confirm the identities of persons registering to vote.
- **Expanded Use of Provisional Ballots**
 - "Late-Voted" Provisional Ballots: Voters who vote after polls close *pursuant to court or other order extending hours* must vote by provisional ballot. Any such "late-voted" provisional ballots must be held separate and apart from other provisional ballots.
 - Certain First-Time Voters/Mail-In Registrants at the Polls: Persons who register by mail, are voting for the first-time, and do not bring the requisite identification to the polls must be allowed to vote a provisional ballot.
 - Certain First-Time Voters/Mail-In Registrants Voting Absentee: Persons who register by mail, are voting for the first-time by absentee ballot, and do not include the requisite identification must have their absentee ballot treated as a provisional ballot.
- **New Identification Requirements for First-Time Voters Who Register by Mail (hereinafter, "Unknown Voters"):** Unknown voters must provide a copy of a current, valid photo ID or other prescribed document with voter's name & address at the time of registration or when voting, either in person or by absentee ballot;

² In order to comply with this January 1, 2006 deadline, the State may choose to begin appropriating funds in advance of this date for the purchase of disability-friendly voting systems to be located in counties without touch screen voting systems. Any such appropriation would trigger the provisions of last year's disability voting bill (Chapter 2002-281, Laws of Florida), which has essentially the same requirement as HAVA --- that each precinct have a disability-friendly voting machine in operation one year after the legislature appropriates the funds. Thus, *under current federal and state law*, Florida will be required to have a disability-friendly voting machine in place in each precinct by January 1, 2006, or one year after the State appropriates funds for such purpose, whichever occurs earlier.

otherwise, they must vote provisionally. Exceptions exist for absent military and overseas voters and their families, persons voting pursuant to the federal Elderly and Handicapped Act, and anyone otherwise entitled to vote an absentee ballot under federal law.

Second Primary Moratorium

The second primary election is a runoff election between the two top vote-getters to determine the nomination of major party candidates for office. A second primary election is held when no candidate wins a majority in the first primary election.

Florida held its first runoff election in 1904. It is currently one of only about 9 or 10 states that holds a second primary election --- all Southern states, with the exception of South Dakota.

Since 1984, with the exception of the 2002 election cycle, Florida's first primary election has been held 9 weeks prior to the general election and the second primary election has been held 5 weeks prior to the general election. Because of this tight schedule and the difficulties in mailing and receiving ballots, a federal court has ordered Florida to count certain absentee ballots from overseas voters received up to 10 days following the general election (*see infra*, **VII. Related Issues: Second Primary Moratorium**).

The Florida Election Reform Act of 2001³ eliminated the second primary election for the 2002 election cycle only. The second primary will return for the 2004 election cycle and thereafter by operation of law if the Legislature does not enact legislation to further suspend its operation.

III. Effect of Proposed Changes:

A section-by section explanation of the bill is provided below:

HAVA

Section 1. General Duties (s. 97.012) -- Modifies the responsibilities of the Secretary of State; replaces the term "central voter file" with "statewide voter registration database"; designates an office within the Department of State to provide information regarding registration and absentee ballot procedures to military and overseas voters.

Section 2. Definitions (s. 97.021) -- Deletes an obsolete definition ("central voter file"); amends the definition of "provisional ballot" to mean generally a "conditional" ballot that meets certain other criteria, thereby accommodating HAVA's expanded use of provisional balloting (i.e., extended polling hours voting, first-time voter, mail-in registrant without proper identification). The specific circumstances under which a provisional ballot is issued and canvassed are enumerated in the substantive statutes.

³ Ch. 2001-40, Laws of Fla.

Section 3. *First-Time Voters Who Registered By Mail (hereinafter, "Unknown Voters")* (s.97.052) -- Amends the statewide voter registration application; adds a statement informing first-time, mail-in registrants that they will be required to provide identification prior to voting.

Section 4. *Voter Registration Application/Requirements for Acceptance* (s. 97.053) -- Modifies the requirements for acceptance of voter registration application; provides that an application must contain one of the following: a Florida driver's license number; the identification number from a Florida identification card; or, the last four digits of the applicant's social security number.

Section 5. *Administrative Complaint Procedure* (s. 97.028) – Effective upon becoming a law, establishes a summary administrative complaint procedure within the Department of State for alleged violations of Title III of HAVA (substantive election administration provisions); provides for an administrative hearing; authorizes the Department to issue orders to remedy violations; specifically excludes the new administrative complaint procedure from procedures in Chapter 120, Florida Statutes.

Section 6. *Unknown Voters/Voter Registration* (s. 97.0535) -- Contains additional identification requirements for mail-in voter registrants who have never previously voted in the county; allows such voters to include required identification with registration application in lieu of having to produce documentation at the time of voting; lists acceptable forms of identification; provides exemptions for certain active duty military voters and their spouses/dependents, overseas voters, voters over 65 years of age, and persons with temporary or permanent physical disabilities.

Section 7. *Technical* (s. 98.045) – Deletes a cross-reference to the central voter file.

Section 8. *Central Voter File* (s. 98.097) – Repeals an obsolete provision of Florida law governing the central voter file, which has been replaced by the Statewide Voter Registration Database.

Section 9. *Statewide Voter Registration Database* (s. 98.0977) – Provides that the Department shall continue to operate the statewide voter registration database until the Statewide Voter Registration System mandated by HAVA is operational; deletes obsolete references.

Section 10. *Statewide Voter Registration System (unnumbered)* – Contains a timetable and plan for developing and implementing the Statewide Voter Registration System mandated by HAVA, such system to be operational no later than January 1, 2006; authorizes State to request waiver from the 2004 HAVA deadline, which cannot practically be met; provides for a periodic progress report to the Governor and Legislature. This section is effective upon becoming law.

Section 11. *Technical* (s. 98.212) – Deletes a duty of the supervisors of elections relating to the central voter file.

Section 12. *Precinct Registers* (s. 98.461) – Modifies the items included in the precinct register; removes a permissive provision relating to permissible picture identification; deletes an obsolete reference.

Section 13. *Picture I.D. at the Polls (s. 98.471)* – Clarifies the types of picture identification a voter must present at the polls; provides that if a first-time, mail-in registrant at the polls does not have the requisite picture I.D., he or she votes a provisional ballot; also, moves the provision to s. 101.043, F.S.

Section 14. *Technical (s. 98.491)* – Repeals an obsolete provision relating to intent that alternative electronic procedures for registration and elections be followed at the discretion of the supervisors of elections.

Section 15. *Provisional Ballots (s. 101.048)* – Modifies the Provisional Ballot Voter's Certificate and Affirmation to include a line for "driver's license number or last four digits of social security number"; authorizes the Department of State to further prescribe the form of the provisional ballot envelope; authorizes the use of electronic, or "touch screen," provisional ballots provided the system is certified by the Division of Elections; requires each supervisor of elections to set up a free access system to allow provisional voters to find out if their vote counted no later than 30 days after the election, and, if not, why not; requires poll workers to give written instructions to provisional voters regarding the free access system.

Section 16. *Provisional Ballots/Extended Polling Hours (s. 101.049)* -- Creates a sub-category of provisional ballots called "late-voted" provisional ballots, consisting of ballots cast after the polls close *pursuant to court or other order extending polling hours*; requires these "late-voted" provisional ballots to remain segregated from all other ballots for purposes of counting and canvassing; authorizes the use of electronic, or "touch screen," provisional ballots provided the system is certified by the Division of Elections.

Section 17. *Provisional Ballots/Challenged Voter (s. 101.111)* – Modifies the written oaths involved with a challenge to a voter's right to cast a ballot at the polls; provides that if a challenged voter refuses to take an oath or if the poll workers doubt the eligibility of the person to vote, the person shall cast a provisional ballot.

Section 18. *Absentee Ballots/Requests For (s. 101.62)* – Technical; adds a cross-reference to conform Section 25 of the bill relating to requests for absentee ballots by federal postcard application.

Section 19. *Absentee Ballots/Voter's Certificate (s. 101.64)* – Technical; modifies a reference to the absentee ballot instruction sheet.

Section 20. *Absentee Ballots/Instructions (s. 101.65)* – Directs voters to mark only the number of candidates or issue choices for each race as indicated on the ballot; warns voters that if they vote for more than one choice in a race labeled "Vote for One," their vote in that race will not count.

Section 21. *Absentee Ballots/Voting in Person (s. 101.657)* – Modifies the photo identification requirements for persons seeking to cast an in-office absentee ballot to mirror the requirements at the polls (see Sections 6 and 13 of the bill); Unknown Voters who fail to furnish the requisite photo I.D. and who have not previously provided I.D. to the supervisor shall be allowed to cast a provisional ballot.

Section 22. *Unknown Voters/Special Absentee Ballots (s. 101.6921)* – Applies only to unknown voters who have not previously provided the requisite identification information to the supervisor of elections by the time the absentee ballot is mailed; creates a new procedure for absentee balloting requiring the unknown absentee voter to place identification information inside an outer mailing envelope (the ballot is sealed in a secrecy envelope, which is then inserted into the envelope containing the voter’s certificate, which, in turn, is inserted into a mailing envelope along with the I.D. information); creates a new voter’s certificate; exempts certain voters from the I.D. requirements (as provided in Section 6 of the bill) if they certify on the voter’s certificate that they are exempt by checking the appropriate box (i.e., 65 years of age or older).

Section 23. *Unknown Voters/Special Absentee Ballot Instructions (s. 101.6923)* – Creates a new instruction sheet to accompany special absentee ballots for unknown voters; identifies the acceptable forms of identification and directs the voter to insert a copy of the identification in the mailing envelope and notifies the voter that if the identification is inserted into either the secrecy envelope or the envelope bearing the voter’s certificate, the ballot will not be counted.

Section 24. *Unknown Voters/Canvassing Special Absentee Ballots (s. 101.6925)* – Creates a procedure for canvassing special absentee ballots of unknown voters; provides that the outer mailing envelope is opened to see if the voter has provided the requisite I.D. or indicated that he or she is exempt for one of the reasons enumerated on the voter’s certificate; if so, the supervisor notes that the voter has provided the I.D. on the voter’s registration records and proceeds to canvass the ballot like any other absentee ballot; if no I.D. is inside the mailing envelope and no exemption indicated on the voter’s certificate, the supervisor shall check the voter registration records to determine if the voter had previously submitted the requisite I.D. or notified the supervisor’s office that he or she was exempt from the identification requirements; if not, the envelope with the voter’s certificate shall not be opened unless the supervisor has received the required information or written indication of exemption by 7 p.m. on election day.

Section 25. *Absentee Ballots/Requests For (s. 101.694)* – Provides that a request for an absentee ballot made by federal postcard application shall be effective through the next two general elections; other requests are valid for one calendar year, pursuant to s. 101.62(1), F.S.

Section 26. *County Canvassing Board Duties/Provisional Ballots (s. 102.141)* – Technical/conforming; adds cross-references to incorporate the expanded use of provisional ballots (i.e., “late-filed” provisionals, special absentee ballot provisionals, etc.); requires canvassing boards to canvass provisional ballots such that votes on late-filed provisional ballots can be segregated from other votes; grants the Division of Elections statutory authority to promulgate rules with regard to automatic machine recounts.

Section 27. *Technical (s. 125.01)* — Conforms a cross-reference.

Section 28. *Technical (s. 20, Ch. 2002-281, Laws of Fla.)* – Eliminates the future revision of a cross-reference.

Section 29. *Effective January 2, 2004*, provides that the State will not have a second primary election during the 2004 election cycle by suspending the second primary election through

December 31, 2005. After that date, the second primary would return by operation of law should the Legislature fail to affirmatively act to further suspend its operation or repeal it.

For 2004, the bill also returns the primary election to 9 weeks before the general election (August 31, 2004), consistent with the pre-2001 law governing the timing of the first primary election.

Section 30. *In pari materia* provision (*unnumbered*) – Bill drafting provision harmonizing changes to the same statute amended in the general and the special session.

Section 31. *Effective Date* – Except as otherwise provided, the bill takes effect January 1, 2004 (election administration provisions are subject to preclearance by the U.S. Justice Department, as provided by federal law).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Second Primary Moratorium

The bill reduces *overall* contribution limits for most partisan candidates from \$1,500 to \$1,000 per contributor, per *election cycle*.

C. Government Sector Impact:***HAVA***

HAVA authorizes about \$3.65 billion in federal funding to the States over a 3-year period. While it is doubtful all this funding will be specifically appropriated by Congress, Florida's share of the first year monies (already specifically appropriated by Congress) is over \$83 million. Almost \$48 million of that amount is tied to the passage of a HAVA implementing bill by the end of the current federal fiscal year. Most of this money is tied to election administration, and would not be available as General Revenue to fund non-election-related projects.

The two main costs associated with the HAVA portion of the bill are: the design, development, and operation of the new statewide voter registration system; and, purchasing and locating one disability-friendly, touch screen voting system with audio ballot capacity in every polling place in the State (which will take place by January 1, 2006, or one year after the State begins funding the purchase of voting machines for the disabled, whichever occurs earlier). There are also other comparatively minor costs associated with: reprinting voter registration forms, ballot instructions, and ballot envelopes; and, additional election administration efforts by the Division of Elections and local supervisors.

The State should realize a sizeable net gain from the initial influx of federal funds, anticipated to begin around the end of this year, even if the Congress does not specifically appropriate any further money in Years 2 and 3 as HAVA directs.

Second Primary Moratorium

Until 2001, a statewide election was estimated to cost a minimum of \$4 to \$5 million. It is unclear precisely how the introduction of new voting technology in 41 of Florida's 67 counties in 2001-2002 will impact these cost estimates. The experiences of the 2002 election cycle suggest that these costs could be much higher. Current estimates are somewhere between \$10 million and \$13 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:***Second Primary Moratorium; Overseas Absentee Ballots***

In the early 1980's, the Federal Government sued the State of Florida claiming that the state's system of holding three elections from September to November violated the Uniformed and Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. The suit alleged that the time frame did not provide sufficient time for supervisors of elections to prepare absentee ballots, mail them to overseas voters, and have the voters return them by election day.

A federal district court entered a temporary restraining order on November 6, 1980, extending by 10 days the deadline for receipt of the 1980 general election ballots cast pursuant to the federal acts.

In early 1982, the State of Florida and the Federal Government entered into a consent decree covering federal contests. The decree required overseas absentee ballots in the 1982 general election to be counted if the ballots were postmarked by election day and received by the supervisors no later than 10 days after the election. In addition, the decree required that absentee ballots for the 1982 first primary be mailed to overseas electors at least 35 days before the first primary. Finally, the consent decree directed that the State draw up a plan of compliance to provide for the mailing of overseas ballots at least 35 days prior to the deadline for the receipt of ballots in future elections.

In 1984, the federal district court approved Florida's plan of compliance, which modified the election schedule and resulted in the adoption of Rule 1C-7.013, F.A.C. (subsequently renumbered as 1S-7.013, F.A.C.). This rule required the supervisors of elections to mail overseas absentee ballots for federal office at least 35 days prior to the election. The rule also provided that, with respect to a presidential preference primary or general election for federal office, an otherwise proper overseas ballot postmarked or signed and dated no later than the date of the election must be counted if received up to 10 days after the election.

In an effort to further facilitate absentee voting by overseas electors, the 1989 Legislature adopted the advance ballot system still in use today. Under Florida's advance ballot system, supervisors of elections mail first primary absentee ballots to qualified overseas electors not less than 35 days before the first primary. Subsequently, the supervisors mail *advance* ballots for the second primary and general election at least 45 days prior to these elections, followed by regular second primary and general election ballots when they become available. If both ballots for the same election are returned, only the regular ballot is counted.

2003 Regular Session Activity

During the 2003 regular session, the Senate passed the sum and substance of this bill (HAVA implementation/second primary moratorium) as components of CS/SB 1500. (The House of Representatives passed the HAVA component, only.) CS/SB 1500 also contained two other components --- one relating to issue advocacy regulation and the other re-establishing leadership funds. Senators voiced no serious concerns over the HAVA component or the Second Primary component during the Senate floor debate on CS/SB 1500.

VIII. Amendments:

None.