

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29B Elections
SPONSOR(S): Harrington, Zapata & Murzin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections (Sub)	7 Y, 0 N	Mitchell	Randle
2) Procedures		Mitchell	Randle
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 29B is designed to implement the federal Help America Vote Act of 2002 (HAVA), which was enacted on October 29, 2002. HAVA establishes election standards that must be followed by every state, while also authorizing federal funds to help states meet those standards. HAVA's federal funding is designed to improve election administration, replace antiquated voting equipment to include providing access to disabled voters and improve other aspects of the election process.

Under HAVA, states will be required to meet certain uniform voting standards. Among those requirements, the bill mandates that:

- States must give voters an opportunity to check for and correct ballot errors in private.
- States must ensure that at least one voting machine per precinct is accessible to the disabled. Florida enacted similar requirements in 2002 under CS/SB 1350 (effective within one year after funds are appropriated).
- States are responsible for establishing an interactive, computerized statewide voter registration list. This database must be maintained at the state level and contain the name and registration of every legally registered voter in the state. Florida already has such a system but it must be modified to comply with the new HAVA requirements.
- States must provide provisional ballots to ensure that no individual is denied the opportunity to vote while his or her eligibility is under review. Florida enacted provisional ballot regulations in 2001.

Portions of the bill related to HAVA are essentially the same as HB 1861 and HB 7A, bills that were unanimously passed by the House during the 2003 Regular Session and Special Session A, respectively.

HB 29B also suspends the second primary election for the 2004 election cycle. Under the bill's provisions, a single primary election would be held on August 31, 2004, and a general election on November 2, 2004.

Except as otherwise provided, the bill takes effect January 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0029Ba.pr.doc
DATE: June 16, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

The bill requires that state and local election officials make a number of changes to the administration and conduct of elections in Florida.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

The Help America Vote Act of 2002

On October 29, 2002, the U.S. Congress passed and the President signed the federal Help America Vote Act of 2002 (“HAVA”).¹ It authorizes over \$3 billion dollars in federal aid over 3 years 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 several 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 used to bring the State into compliance with the new substantive federal requirements and for future election administration projects.

HAVA is, in part, a response to the circumstances surrounding the 2000 U.S. Presidential election and the subsequent problems experienced in two of Florida’s largest counties during the September 2002 primary election. The Florida Legislature has already enacted a number of reforms that go a long way toward meeting the new federal requirements - many of the key components of HAVA reflect the fixes adopted by the Florida Legislature in the Election Reform Act of 2001² and subsequent glitch legislation³. Despite the foresight of the State’s legislative leaders, 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.
- **Statewide Voter Registration System:** By January 1, 2006 (pursuant to requested waiver of a 2004 deadline by the State of Florida), the State must make operational a statewide voter registration system that will serve as the official registration record for all federal elections; the system database

¹ H.R. 3295 (2002) [Enrolled].

² CS/SB 1118 (ch. 2001-40, Laws of Fla.).

³ CS/SB 618 (ch. 2002-17, Laws of Fla.).

must be cross-referenced against driver's license and social security administration records to confirm the identities of persons registering to vote.

- Expanded Use of Provisional Ballots
 - "Late-Voted" Provisional Ballots: Voters who cast ballots after the polls close *pursuant to court or other order extending hours* must vote by provisional ballot. Any such "late-voted" provisional ballots must be kept 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 at the Polls: 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 and valid identification or other prescribed document with the voter's name & address at the time of registration or when voting, either in person or by absentee ballot; otherwise, they must vote by provisional ballot. 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 Election

Florida has had some form of a second primary or runoff election since the early 1900's. Under Florida's current election scheme, the general election is held on the first Tuesday after the first Monday in November in each even-numbered year. Art. VI, s.5(a) Fla. Const. By law, the second primary is held five weeks prior to the general election (s. 100.091, F.S.) and the first primary is held four weeks prior to the second primary election (s. 100.061, F.S.; 9 weeks before the general election). This schedule provides one of the tightest election timeframes in the United States with three major elections occurring in a nine-week period.

In any primary contest with more than two candidates the two candidates receiving the highest number of votes are placed on a runoff primary election when one of the candidates does not receive 50% plus one vote or a majority of those voting. The candidate receiving a majority of the votes cast in the second primary proceeds to the general election as the nominee of his or her respective party.

There are currently ten states that have a second primary election.⁴ Those states are primarily southern states, which are listed below, along with their corresponding state election dates for 2002. The general election was held on November 5, 2002.

Alabama	(June 4, 2002; June 25, 2002)
Arkansas	(May 21, 2002; June 11, 2002)
Florida	(September 10, 2002; no 2 nd primary in 2002)
Georgia	(August 10, 2002; September 10, 2002)
Mississippi	(June 4, 2002; June 25, 2002)
North Carolina	(May 7, 2002; June 4, 2002)
Oklahoma	(August 27, 2002; September 17, 2002)
South Carolina	(June 11, 2002; June 25, 2002)

⁴ *Book of the States*, 2002.

South Dakota
Texas

(June 4, 2002; June 18, 2002)
(March 12, 2002; April 9, 2002)

Only three of the states above have second primaries that occurred in September 2002 or later – Florida, Georgia and Oklahoma.

Under current law, the filing of campaign reports is tied to primary and general election dates. Reports must be filed on the 32nd, 18th and 4th days immediately preceding the first primary election, and on the 18th and 4th days immediately preceding the second primary and general elections. Statewide candidates who are participating in public campaign financing⁵ or statewide candidates who are in a race with a participating candidate must file reports on the 32nd, 25th, 18th, 11th, and 4th days prior to the first primary and general elections, and on the 25th, 18th, 11th, and 4th days prior to the second primary.

Proposed Changes:

The Help America Vote Act of 2002

The bill makes changes to Florida law that are required for implementation of HAVA. A section-by-section analysis of those changes is contained in the bill analysis for HB 1861 filed during the 2003 regular session.

Second Primary Election

The bill suspends the second primary election for the 2004 election cycle. A single primary election would be held on August 31, 2004, and a general election on November 2, 2004.

Although there is no gubernatorial election scheduled until 2006, the bill provides for selection of a Lieutenant Governor candidate within 9 days of the first primary election in 2004, if necessary. This provision is included in the bill to make current law consistent with HB 1051, which passed during the 2003 Regular Session. HB 1051 amended section 14.055, Florida Statutes, to provide that upon a vacancy in the office of Lieutenant Governor, the Governor shall appoint a successor, to serve for the remainder of the term. If, however, following such appointment, a vacancy in the office of Governor should occur and there are more than 28 months left in that term of office, electors must choose a Governor and Lieutenant Governor at the next general election. That election would be held in 2004, if such a vacancy occurs with more than 28 months remaining in the Governor's term of office.

The bill would require, for the 2004 elections, campaign reports to be filed on the 32nd, 18th and 4th days preceding the first primary election (as in current law), and *two additional bi-weekly reports* immediately preceding the general election.

The bill would require, for the 2004 elections, statewide candidates who are participating in public campaign financing or statewide candidates who are in a race with a participating candidate to file *three additional weekly reports* immediately preceding the general election, in addition to the reports that currently required before the first primary election.

Except as otherwise provided, the bill takes effect on January 1, 2004.

C. SECTION DIRECTORY:

⁵ ss.106.32-106.355, F.S. (2002).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

HAVA authorizes about \$3.65 billion in federal funding to the States over a 3-year period. While it is doubtful that all funding will be specifically appropriated by Congress, Florida's share of the first year funds (already specifically appropriated by Congress) is over \$83 million. Most of this money is tied to election administration, and would not be available as General Revenue to fund projects unrelated to elections.

The two main costs associated with the bill are: the design, development, and operation of the statewide voter registration system; and, purchasing and locating one disability-friendly touch screen voting system in every polling place in the State. There are also other relatively minor costs associated with: reprinting voter registration forms, ballot instructions, and ballot envelopes; making forms available in disability-friendly alternative formats; and, additional election administration efforts by the Division of Elections and local supervisors of elections.

The State should realize a sizeable net gain from the initial influx of federal funds, even if Congress does not specifically appropriate any additional funds in Years Two and Three as envisioned under HAVA.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

The Division of Elections and the Supervisors of Elections recently estimated a cost savings to the counties of \$6 million, if the second primary is eliminated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES