

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.)

Prepared By: Judiciary Committee

BILL: CS/SBs 1268 & 1956

SPONSOR: Ethics and Elections Committee and Senators Clary and Posey

SUBJECT: Primary Elections

DATE: April 19, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Rubinas</u>	<u>EE</u>	<u>Fav/Combined CS</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bills 1268 and 1956 permanently repeals the second primary election, and makes numerous conforming changes. The second primary election has been suspended by the Legislature in the past two election cycles, 2002 and 2004, and without this repeal a second primary would have to be held in the next election cycle, 2006.

This committee substitute repeals sections 100.091 and 100.096, of the Florida Statutes and amends the following sections of the Florida Statutes: 97.021, 97.055, 97.071, 97.1031, 98.081, 99.061, 99.095, 99.063, 99.103, 100.061, 100.081, 100.111, 100.141, 101.252, 101.62, 102.014, 103.021, 103.022, 103.091, 105.031, 105.041, 105.051, 106.07, 106.08, and 106.29, to conform.

II. Present Situation:

Currently, 10 (primarily southern) states hold a second primary or “runoff” election: Alabama, Arkansas, **Florida**, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, and Texas.

Florida law requires three elections to be held in a nine-week period. The first primary election is held nine weeks prior to the general election; the second primary election is held five weeks prior to the general election; the general election is held on the first Tuesday following the first Monday in November.

In the early 1980’s, the Federal Government sued the State of Florida claiming that the state’s system of holding three elections in nine weeks violated the Uniformed and Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. The suit alleged that the nine week span 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 for 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 a plan of compliance be drawn to provide for the mailing of overseas ballots at least 35 days prior to the deadline for the receipt of ballots.

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-2.013, 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 which is current law. 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.

For the past two election cycles (2002 and 2004), the Legislature *temporarily* suspended the operation of the second primary;¹ the State has not conducted a second primary election since fall of 2000. Barring legislative action to further suspend or repeal the second primary, it will return by operation of law on January 1, 2006.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bills 1268 and 1956 eliminates the second primary election. This change will result in nine weeks between the primary and general election, allowing sufficient time for overseas ballots to be printed, mailed, and returned. This should place the State of Florida in a position to petition the federal court for a release from the consent agreement entered into in 1982, because there will no longer be any need for a 10-day, ballot-receipt grace period for federal races.

The committee substitute repeals the 45-day overseas advance balloting system for the second primary and general elections, and makes numerous other conforming changes. Additionally, the

¹ See, s. 46, ch. 2001-40, L.O.F., suspending the second primary election for the 2002 election cycle; and s. 30, ch. 2003-415, L.O.F., suspending the second primary election for 2004 election cycle.

committee substitute removes references to judicial and school board members on election ballots and replaces these references with the more general classification of “nonpartisan” office.

The committee substitute provides an effective date of January 1, 2006.

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:

None.

C. Government Sector Impact:

The elimination of the second primary election could result in an aggregate cost savings to the counties of as much as \$15-20 million per election cycle.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Historically, voter turnout in Florida’s second primary election has been relatively low compared to voter turnout in first primaries and general elections.

PERCENTAGE OF FLORIDIANS CASTING BALLOTS (1996-2000)*

Year	1 ST PRIMARY		2 ND PRIMARY		GENERAL ELECTION	
	Voting Age Population	Registered Voters	Voting Age Population	Registered Voters	Voting Age Population	Registered Voters
1996	17.1	25.0	4.1	16.8	48.0	67.4
1998	11.1	15.3	3.0	4.7	34.4	49.5
2000	16.7	24.6	3.2	12.4	49.5	70.1
AVG.	15.0	21.6	3.4	11.3	44.0	62.3

* Source: Florida Division of Elections Web site (<http://election.dos.state.fl.us/online/voterpercent.shtml>)

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
