

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1589 Elections
SPONSOR(S): Brown
TIED BILLS: HB 1591 **IDEN./SIM. BILLS:** SB 2176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Ethics & Elections Committee		West	Mitchell
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1589 is designed to implement the statewide voter registration database that is part of the requirements of 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.

HAVA requires each state to maintain and operate a statewide voter registration system. Section 303(a) of HAVA provides, in pertinent part:

"Each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State."

HB 1589 is an attempt to meet the federal mandate to move the statewide voter registration system from the control of the 67 county supervisors of elections (supervisors) and place it under the control of the Department of State's Division of Elections.

This bill authorizes the Secretary of State as chief elections officer to maintain uniformity in the application of the election code by issuing binding directives to the supervisors and canvassing boards when it identifies that a "lack of uniformity exists in the application, operation, or interpretation of the election laws."

This bill makes changes to ss. 97.012, 97.021, 97.026, 97.051, 97.052, 97.053, 97.535, 97.055, 97.057, 97.058, 97.061, 97.071, 97.073, 97.1031, 97.105, 98.015, 98.035, 98.045, 98.055, 98.065, 98.075, 98.0755, 98.077, 98.081, 98.093, 98.095, 98.0977, 98.0981, 98.101, 98.212, 98.231, 98.451, 98.461, 98.481, 100.371, 101.043, 101.045, 101.048, 101.161, 101.5608, 101.62, 101.663, 101.6921, 101.6923, 102.012, 102.151, 104.013, 104.051 and 120.52, F.S.

The bill takes effect January 1, 2006.

NOTE: THE BILL SPONSOR MAY OFFER AN AMENDMENT AT COMMITTEE TO ADDRESS SOME CONCERNS OF THE DEPARTMENT OF STATE AND THE COUNTY SUPERVISORS OF ELECTIONS.

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government

Changes proposed to s. 97.012, F.S., relating to binding directives, raise the policy question, should the Secretary of State be given authority to issue directives to supervisors who are constitutional officers? The bill also subjects supervisors and members of county canvassing boards who do not follow such directives to a civil penalty of \$1,000 to be paid from personal funds.

B. EFFECT OF PROPOSED CHANGES:

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"). 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.

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 2001 and subsequent glitch legislation. Despite the foresight of the State's legislative leaders, there are still some provisions of Florida law that need retrofitting to meet HAVA's new, somewhat technical substantive requirements.

One of the more important substantive requirements of HAVA is:

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

HAVA Computerized Statewide Voter Registration List Requirements

The statewide voter registration list must be an Interactive statewide list maintained and administered at the state level, containing name and address of every voter, with a unique identifier having the following attributes:

- Serves as the single system for storing and managing the official list of voters
- Must contain the name and registration information of every registered voter in the state
- Must have a unique identifier assigned to each voter
- Must coordinate with other agency databases
- Any election official in the state must be able to obtain immediate electronic access to the information
- Supervisors of elections must enter information in the database on an expedited basis
- State must provide support to supervisors
- Computerized list serves as the official voter registration list for federal elections

HB 1589 is an attempt to meet this federal mandate to move the statewide voter registration system from the control of the 67 county supervisors of elections and place it under the control of the Department of State's Division of Elections.

This bill authorizes the Secretary of State in her responsibility as chief elections officer to maintain uniformity in the application of the election code by issuing binding directives to the supervisors and canvassing boards when it identifies that a "lack of uniformity exists in the application, operation, or interpretation of the election laws."

This bill makes changes to ss. 97.012, 97.021, 97.026, 97.051, 97.052, 97.053, 97.535, 97.055, 97.057, 97.058, 97.061, 97.071, 97.073, 97.1031, 97.105, 98.015, 98.035, 98.045, 98.055, 98.065, 98.075, 98.0755, 98.077, 98.081, 98.093, 98.095, 98.0977, 98.0981, 98.101, 98.212, 98.231, 98.451, 98.461, 98.481, 100.371, 101.043, 101.045, 101.048, 101.161, 101.5608, 101.62, 101.663, 101.6921, 101.6923, 102.012, 102.151, 104.013, 104.051 and 120.52, F.S.

The bill takes effect January 1, 2006.

Binding Directives

Section 97.012, F.S., is amended to authorize the Secretary of State to issue binding directives to the county supervisors of elections and county canvassing boards to assure uniformity in the application, operation, or interpretation of the election laws. The Division of Elections may issue advisory opinions to supervisors of elections, candidates, local officers having election-related duties, political committees, committees of continuous existence (CCE's), political parties and other organizations engaged in political activity under section 106.23, F.S., but such opinions are only binding on the person who sought the opinion and do not have general applicability.

The Secretary of State sees a need for binding directives in order to bring more uniformity in the application and operation of Florida's election laws. There were a number of examples of disparate treatment of ballots, voters and registrants during the 2004 elections:

- **Voter Challenges:** The election code requires voter challenges to be handled by the Election Board (precinct clerks and inspectors, i.e. poll workers), which by statute must make the initial determination of whether to sustain a challenge. When it became evident that voter challenges were likely to occur, the Division of Elections sent a memorandum to all supervisors discussing the statutory process and provided suggested procedures to ensure uniformity. Several counties established their own hybrid challenge process: one decided challenges by a subset of the Election Board; one used the precinct clerk and the supervisor of elections to make the determination, rather than the Election Board; and one county even advised the Division they would not implement the procedures outlined in the memorandum and stated, "[t]he Division does not have the authority to mandate it" and that, "[t]hey will follow procedures as they interpret them."
- **Early Voting:** During the primary, one south Florida county permitted 16 hours of early voting on the weekend (only 8 hours total is permitted under current law) and, while most counties permitted voters in line at the close of early voting to cast their ballots, some counties, forced voters to leave and come back another day.
- **Voter Registration Applications:** Notwithstanding clear language in the statute and legislative history, five counties accepted incomplete voter registration applications in which the voter failed to mark the citizenship check box, as required by law. The other counties followed the Division's interpretation of the law and treated such applications as incomplete.

- Book Closing: One county permitted changes to incomplete voter registration applications after the book closing date.
- Removal of Ineligible Voters: One north Florida county has steadfastly refused to follow the process outlined in statute regarding the removal of felons from the voter registration rolls.

Supervisors and members of the canvassing board are subject to a \$1,000 fine, to be paid from personal funds, if they are found to have willfully failed to follow a binding directive. The Secretary is the only party who may file a complaint with the Florida Elections Commission alleging such a violation, pursuant to a new subsection in s.104.051, Florida Statutes.

Binding directives are exempt from the definition of an agency rule in section 120.52, F.S.

C. SECTION DIRECTORY:

Section 1, Page 6: Section 97.012, F.S., is amended to:

- provide the Secretary broad rulemaking and enforcement power.
- make the Secretary the administrator of the statewide voter registration system.

Section 2, Page 7: Section 97.021, F.S., is amended to:

- Updates language on what is a “Lists of registered electors”.
- Updates language on what is a “Voter registration official”.

Section 3, Page 8: Section 97.026, F.S, is amended to:

- Deletes reference to 98.055.

Section 4, Page 9: Section 97.051, F.S., is amended to:

- Changes the oath a person must swear when registering from a statement verifying that they are a citizen to affirming that all the information is true on voter registration form.

Section 5, Page 9: Section 97.052, F.S, is amended to:

- Changes wording from “voter registration identification card” to “voter information card.”
- Adds a voter signature update to actions that require a voter to fill out a voter registration application.
- Adds that you need to fill out a voter registration to update the registration record.
- Changes the requirements of the voter registration form to:
 - asks for the persons last, first and middle name including suffix
 - deletes asking for the address in which a person has been granted homestead
 - deletes asking for a person’s race. (It needs to be determined if this is in violation of Title 28 of the federal Code, Section 51.27 for submission to Justice department pursuant to Section 5 of the voting rights act)
 - adds a question to whether the person has a Florida license or ID card
 - asks for an email address
 - asks if a Citizen by providing a check box

- asks if applicant has been convicted of a felony
- asks if applicant has been adjudicated mentally incapacitated
- Delete statement that voter information be forwarded to the property appraiser.
- States that person not having a Florida license, identification card number or social security card will need to show identification (ID) the first time they vote.

Section 6, Page 14: Section 97.053, F.S., is amended to:

- Voter's application becomes official when it is completed so that it can determine ones eligibility to vote and insure that information is verified. This must be done before book closing.
- Adds driver license office, recruitment office or office of supervisor as places applications can be sent.
- A registration is complete if the information to establish eligibility to vote is complete including marking a box to show that the person is a citizen.
- Requires a license number, if they don't have that, then they will need to give the last 4 digits of their Social Security number, If they don't have either form of identification, they must affirm this fact.
- Requires mark in the check box that states that the voter is not a felon.
- Requires mark in the check box that states that the voter is not mentally incapacitated.
- Requires original signature or digital signature from Department of Highway Safety and Motor Vehicles (DMV).
- Registrations only accepted if it matches with a DMV license or Social Security (SS) number. If not verified, voters get a provisional ballot until verified. Registration must be entered into statewide system within 15 days.

Section 7, Page 18: Section 97.0535, F.S., is amended to:

- If applicants' license or SS number could not be verified then they must show ID the first time they vote. This should be noted in the database and the voter will not need to show ID in future.
- If the voters ID can not be verified then they will be sent a letter to tell them they need to show ID the first time they vote.
- Drops Fla. License and ID card as valid ID (has already been found that this ID could not be match to the databases of the DMV).

Section 8, Page 20: Section 97.055, F.S., is amended to:

- Voter will only be able to update name, address and signature after close of books.

Section 9, Page 21: Section 97.057, F.S., is amended to:

- If applicant can't hear, the examiner must ask in writing whether the applicant wishes to register to vote.
- Change from having to sign by hand, to electronic signature verifying the accuracy of voter information at the DMV.
- If a person does not want to register at the DMV it will be noted in their records and forwarded to the statewide voter registration system.

- The voter registration form at the DMV needs to have the same content but not the same format and size.
- The DMV must forward electronic registrations within 24 hours and paper registrations to the department within 5 days.
- The DMV will no longer have to compile lists of drivers that have received driver licenses in another state and send them to the supervisors.
- The DMV shall keep the information on voters they register for audit.
- The department shall supply the DMV with all the legal addresses. The DMV will compare applicant addresses to this list to verify.
- The DMV will work with the department to match license numbers for voter registration.
- The DMV will work with the Commissioner of Social Security to verify SS numbers.

Section 10, Page 26: Section 97.058, F.S., is amended to:

- Some rewording that does little to change meaning.

Section 11, Page 27: Section 97.061, F.S., is amended to:

- Requires that the precinct register is to be generated by the supervisors and they are responsible to track if a person is disabled.

Section 12, Page 28: Section 97.071, F.S. is amended to:

- **Changes** “voter identification card” to “voter information card” and subtracts the following information from the card: date of birth, race or ethnicity, sex, and place for signature.

Section 13, Page 29: Section 97.073, F.S., is amended to:

- If voter registration is incomplete the missing information needs to be put on a registration form and not just put in writing.
- When a person registers in Florida the department must notify the state they moved from that they are now registered in Florida. The supervisors will no longer do this.

Section 14, Page 30: Section 97.1031, F.S., is amended to:

- When a person changes name or address they will need to fill out a new voter registration. They will no longer be able to change information by phone. A new voter information card will be issued.
- Voter must use the voter registration form to change their party and it will be done based on the rules in 97.071, if far enough before the election.

Section 15, Page 31: Section 97.105, F.S., is amended to:

- Some word changes; clean-up.

Section 16, Page 32: Section 98.015, F.S., is amended to:

- Requires supervisor to enter data into voter registration system and keep the documents. Supervisors no longer have exclusive control of matters in relation to voter registration database.
- Requires supervisor to keep registration as prescribed by the department.
- Requires supervisor to use system that meets department standards. Supervisor will no longer forward voter addresses to property appraiser for verification.

Section 17, Page 33: Section 98.035, F.S., is amended to:

- Secretary of State shall maintain internally the official statewide voting system and allow access to those that need it.
- Supervisors will be able to have their own system as well to maintain their voter registrations.
- The department will set-up rules for the security and operation of the voter registration system.

Section 18, Page 34: Section 98.045, F.S., is amended to:

- Makes department as end authority if a person is eligible to vote. Can make an applicant ineligible for following reasons: didn't complete registration, dead, felon, mentally incapacitated, not old enough, not a citizen, is a fictitious person, false address, license not verified.
- Department shall keep a statewide street address database from information provided by different government databases and give it to the DMV.

Section 19, Page 36: Section 98.065, F.S., is amended to:

- If the supervisors receive a change of address from Postal Service, DMV, or Jury Duty report, the voter shall be sent a notice with prepaid return to affirm that person has moved, inform them how to register in new state, and request that the enclosed form be returned in 30 days. If returned they will be removed from file if out of state. If moved in state, registration will change to new location. If they don't return card they will be marked as inactive. If no activity in 2 election cycles they will be removed from list.

Section 20, Page 42: Section 98.075, F.S., is amended to:

- Department will remove older duplicate registrations, dead people, mentally incapacitated, felons, not of age, not citizen, fictitious people, and false address.
- Supervisor shall notify voter by mail of why ineligible to vote, if reason is not due to duplication or death. They must respond in 30 days, to admit or deny the accuracy, and can request a hearing. This notice should include information for restoring civil rights. If notice is returned undeliverable, publish in paper persons name and reason can't vote and that they may be removed from voter list. Then if no response remove voter from list and notify by mail.

Section 21, Page 48: Section 98.0755, F.S., is amended to:

- The departments ruling can be taken to court. If person can not show name removed, erroneously or illegally, or is indigent, the person will bear the cost of trial.

Section 22, Page 49: Section 98.077, F.S., is amended to:

- A registered voter can update their signature at any time, up to the time the canvassing board meets.

Section 23, Page 50: Section 98.077, F.S., is amended to:

- Clean-up language for statewide registration.

Section 24, Page 51: Section 98.093, F.S., is amended to:

- To maintain the voter file, other agencies will deliver to department lists of felons, people that have died, people mentally incapacitated, jury notice of address change, and people that have been granted drivers license in another state.

Section 25, Page 55: Section 98.0981, F.S., is amended to:

- Requires the department to send the legislature a copy of the statewide database after each election.

Section 26, Page 56: Section 98.212, F.S., is amended to:

- Cleans-up the language.

Section 27, Page 57: Section 98.461, F.S., is amended to:

- Changes to allow for statewide database.

Section 28, Page 58: Section 100.371, F.S., is amended to:

- Requires number of petitions needed to be filed with the Secretary of State by Feb 1. The petitions are good for 4 years from date on petition. The supervisor shall record valid petitions in the statewide database. Within 45 days of filing the petitions the financial impact shall be determined.

Section 29, Page 64: Section 100.001, F.S., is amended to:

- Require the use of census blocks to delineate precincts.

Section 30, Page 65: Section 101.043, F.S., is amended to:

- Requires each elector to show a current picture ID with voter's signature. The voter shall sign the register or an electronic recording device. If the person is voting for the first time and doesn't have ID then must use a provisional ballot. If voted before must fill out an affidavit.

Section 31, Page 66: Section 101.045, F.S., is amended to:

- No longer allows ability to change your address when requesting an absentee ballot. The supervisor will no longer be able to reinstate a voter that has been erroneously omitted from election books.

Section 32, Page 70: Section 101.048, F.S., is amended to:

- Changes one word; county to state.

Section 33, Page 70: Section 101.161, F.S., is amended to:

- Changes a reference.

Section 34, Page 71: Section 101.5608, F.S., is amended to:

- Allows use of other methods of signing the voter registration rather than signing the register with pen.

Section 35, Page 72: Section 101.62, F.S., is amended to:

- Changes a reference.

Section 36, Page 73: Section 101.663, F.S., is amended to:

- Deletes section that allows a person that moves after book close to vote absentee in the precinct of their former residents.

Section 37, Page 74: Section 101.6921, F.S., is amended to:

- Makes voter subject to showing ID the first time they register.

Section 38, Page 74: Section 101.6923, F.S., is amended to:

- Makes subject to showing ID the first time you register. Person can send a copy with ballot.

Section 39, Page 77: Section 102.012, F.S., is amended to:

- Supervisors to use list rather than registration books to list electors in precinct.

Section 40, Page 77: Section 102.151, F.S., is amended to:

- Requires the count canvassing board to transmit to department electronically the results for each election.

Section 41, Page 79: Section 104.013, F.S., is amended to:

- Changes wording to match rest of bill.

Section 42, Page 79: Section 104.051, F.S., is amended to:

- Subjects any supervisor or canvassing board member that fails to follow the department's directives shall be to a \$1,000 fine.

Section 43, Page 80: Section 120.52, F.S., is amended to:

- Adds to definition of "rule" as advisory opinions issued by Department of State.

Section 44, Page 80: Section 196.141, F.S., is amended to:

- Takes away **property** appraiser review of voter list.

Section 45, Page 81: Repeals the following sections:

- 98.055 Registration list maintenance forms.
- 98.095 County registers open to inspection; copies.
- 98.0977 Statewide voter registration database; operation and maintenance.
- 98.0979 Statewide voter registration database open to inspection; copies.
- 98.101 Specifications for permanent registration binders, files, and forms.
- 98.181 Supervisor of elections to make up indexes or records.
- 98.231 Supervisor of elections to furnish Department of State number of registered electors.
- 98.451 Registration; automation in processing.
- 98.481 Challenge to electors.
- 101.635 Distribution of blocks of printed ballots.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2. Expenditures:

The Division of Elections has proposed 23 new positions for the handling of the operation and maintenance of the statewide voter registration system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

2. Expenditures:

The workload for supervisors may actually decrease with respect to maintenance of their county voter registration lists.

The supervisors will realize some cost savings attributed to mailing of address confirmations for voter list maintenance. They will also be spared the cost of return postage when a person returns an address confirmation saying that they have or have not moved.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

2. Other:

Authorizing the Department to issue binding directives may raise concerns about the separation of powers among the branches of government. The bill appears to give the Department the ability to exercise its discretion to determine what the law is, a task which should fall to the judicial branch when a case or controversy exists.

The Department may intend for the directives to provide a quick resolution to a problem in the face of impending elections. In reality, it may slow the process down and increase election-related litigation.

Finally, it is unclear what protections would be afforded to a supervisor or canvassing board if they follow a binding directive of the Department, but are then sued by an affected party such as a voter or group of voters who are deemed to be ineligible to vote.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES