

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: Governmental Oversight and Productivity Committee

BILL: CS/SB 2176

SPONSOR: Governmental Oversight and Productivity Committee and Senators Posey and Baker

SUBJECT: Electors and Elections

DATE: April 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubinas	Rubinas	EE	Fav/1 amendment
2.	Rhea	Wilson	GO	Fav/CS
3.			TA	
4.				
5.				
6.				

I. Summary:

In October, 2002, the U.S. Congress passed and the President signed the Help America Vote Act of 2002 (“HAVA”).¹ It authorized 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 contained a host of new, highly-technical substantive requirements. One of the substantive requirements of the HAVA provided for the creation of a Statewide Voter Registration System by January 1, 2006, which would serve as the official registration record for all federal elections. The system database was required to be cross-referenced against driver’s license and social security administration data to confirm the identities of persons registering to vote.

The proposed committee substitute creates the Florida Voter Registration System.

This bill amends the following sections of the Florida Statutes: 97.012, 97.021, 97.026, 97.051, 97.052, 97.053, 97.0535, 97.055, 97.057, 97.058, 97.061, 97.071, 97.073, 97.1031, 97.105, 98.015, 98.045, 98.065, 98.075, 98.077, 98.081, 98.093, 98.212, 98.461, 100.371, 101.043, 101.045, 101.048, 101.161, 101.56062, 101.5608, 101.62, 101.64, 101.657, 101.663, 101.6921, 101.6923, 102.012, 104.013, and 196.141.

The bill creates sections 98.035, 98.0755, 101.573, Florida Statutes.

The bill repeals the following sections of the Florida Statutes: 98.055, 98.095, 98.0977, 98.0979, 98.101, 98.181, 98.231, 98.451, 98.481, and 101.635.

¹ H.R. 3295 (2002) [Enrolled].

II. Present Situation:

Currently, the department of state is required to prescribe a uniform statewide voter registration application, which must be accepted for any of the following purposes: initial registration, change of address, change of party affiliation, change of name, or replacement of voter registration identification card.² Voter registration applications or changes in registration must be accepted in the office of any supervisor of elections, the division of elections, a driver license office, a voter registration agency, or an armed forces recruitment office.³

The Department of Highway Safety and Motor Vehicles is required to provide the opportunity to register to vote or update a voter registration. The Department of Highway Safety must forward completed voter registration applications within 5 days after receipt to the supervisor of elections of the county in which the office where the registration was processed or received is located.⁴

Supervisors of elections are required to ensure that all voter registration and list maintenance procedures conducted by a supervisor are in compliance with any applicable provisions of the Voting Rights Act of 1965, and to ensure proper training in voter registration procedures.⁵ Each supervisor is required to maintain for at least 2 years, and make available for public inspection, all records concerning implementation of registration list maintenance programs and activities. Registration list maintenance programs must be conducted by a supervisor biennially to maintain accurate lists of current registered voters.⁶ Supervisors are required to maintain lists of registered voters residing within their counties of jurisdiction, and treat information from another supervisor concerning a voter's new registration in a different county as a request by the voter to have that voter's name removed from the registration books of the supervisor's county.⁷ The department of state is required to operate and maintain a statewide, on-line voter registration database and associated website until the statewide voter registration system is operational, pursuant to the Federal Help America Vote Act (HAVA) of 2002. Under the HAVA, Florida must establish an official, uniform and nondiscriminatory statewide computerized voter registration list that is centralized and interactive. While the system must allow supervisors of elections to enter information and have access to the list, the Secretary of State has overall responsibility and authority for the uniform voter registration list.⁸

The database is required to contain voter registration information from each of the 67 supervisors of elections and must be accessible through an internet website. The database is required to be updated on a daily basis, in order to ensure that all registered voters are in fact eligible to vote. The department is not permitted to contract with any private entity for the operation of the statewide database. Supervisors of elections will be required to update the database as necessary to reflect the current registered voters within their jurisdictions as part of their list maintenance responsibilities, and are subject to criminal penalties for failure to do so.⁹

² Section 97.052, Florida Statutes.

³ Section 97.053, Florida Statutes.

⁴ Section 97.057, Florida Statutes.

⁵ Section 98.015, Florida Statutes.

⁶ Section 98.065, Florida Statutes.

⁷ Section 98.045, Florida Statutes.

⁸ Department of State, Division of Elections, Florida Voter Registration System.

⁹ Section 98.0977, Florida Statutes.

The Secretary of State is the chief elections officer of the state and it is his or her responsibility, inter alia, to obtain and maintain uniformity in the application, operation, and interpretation of the election laws. The division of elections may currently issue advisory opinions to supervisors of elections, candidates, local officers having elections related duties, political committees, committees of continuous existence, political parties, and other organizations engaged in political activity.¹⁰ These opinions, however, are only binding upon the party requesting the opinion and do not have general applicability to all parties.

During the 2004 election cycle, several circumstances arose which arguably created questions requiring the uniform application of the state election laws without a suitable remedy available to the Secretary of State to address these situations.

III. Effect of Proposed Changes:

The bill makes the following substantive changes:

Section 1. This section amends s. 97.012, F.S., which provide authority to the Secretary of State as the chief elections officer of the state. The bill provides clear rulemaking authority to the Department of State in the interpretation and implementation of the election laws. The bill authorizes the department to adopt rules for chapters 97 through 102 and 105 of the Election Code.

The bill authorizes the Secretary to delegate voter registration duties and records maintenance activities to voter registration officials.

The bill also provides the Secretary of State, as the chief elections officer, to bring and maintain such actions at law or in equity by mandamus or injunction to enforce the performance of any duties of a county supervisor of elections or any official performing duties with respect to chs. 97-102 and 105 of the election code, or to enforce compliance with a rule of the department adopted to interpret or implement those chapters.

Venue for an action taken to enforce compliance is in the circuit court of Leon County, Florida.

The bill provides that actions under the section must receive preferential scheduling by the court under certain circumstances. If the secretary files an action under the section and not more than 60 days remain before an election as defined in s. 97.021, F.S., a court, including an appellate court, must set an immediate hearing, giving the case priority over other pending cases.

The bill also requires the secretary or a designee to attempt to obtain compliance by a supervisor of elections prior to filing an action.

Under the bill, a court may impose a civil penalty against a supervisor personally and individually for a willful violation of any provision of chs. 97-102 and 105, F.S. The penalty may not exceed \$5,000 per violation.

¹⁰ Section 106.23, Florida Statutes.

Section 2. This section amends s. 97.021, F.S., which provides definitions. The section amends “lists of registered electors” to mean names and information of registered voters maintained by the department in the statewide voter registration system or generated or derived from the statewide voter registration system. Lists may be produced in printed or electronic format.

The bill also defines “voter registration official” as any supervisor of elections or individual authorized by the Secretary of State to accept voter registration applications and execute updates to the statewide voter registration system. (Only the supervisors, their staff, the Department and its staff will be updating the system)

Section 3. This section amends s. 97.026, F.S., to make a cross reference change. Rulemaking authority is also provided.

Section 4. This section amends s. 97.051, F.S., to amend the oath required of applicants for voter registration to mirror the Constitutional oath and for the applicant to swear that all information is true. The requirement that the affiant swears he or she is a citizen of the United States and a legal resident of Florida is stricken.

Section 5. This section amends s. 97.052, F.S., to codify the current practice of allowing a voter registration application to be used to update a voter’s signature or otherwise update their registration record. Rulemaking authority is also provided.

The section also clarifies that the applicants include his or her last, first, and middle name, including any suffix.

Further, the bill deletes item on the voter registration application which requests the address of property for which a homestead exemption has been granted. Also deletes the requirement that a statement be on the form regarding registering to vote at a location other than the one in which property which has been granted a homestead exemption is located. This information is not currently being used by the property appraisers.

Adds to the information requested on a voter registration application an indication if the applicant has not been issued a Florida driver’s license, Florida identification card, or a social security number.

Clarifies the questions relating to citizenship, felon status and mental incapacity on the registration form.

Modifies the statement on the application regarding the requirement for first time voters who register by mail.

Section 6. This section amends s. 97.053, F.S., to clarify that a voter registration application must be complete prior to book closing for the applicant to be registered for the upcoming election. If the applicant fails to complete his or her voter registration application prior to the date of book closing for an election, then the applicant is not eligible to vote in that election.

The bill clarifies that the postmarked date in determining the date of registration is the date of the postmark to a driver license office, a voter registration agency, an armed forces recruitment office, the division, or the office of any supervisor of elections in the state. This is needed for those applications that are mailed to a third party organization, which then mails the application to the voter registration official.

Clarifies that a mark must be in the various check boxes affirming the applicant's eligibility in order for an application to be complete. Also clarifies that the application must contain an original signature (no copies) or a digital signature from the DSHMV.

Requires that a voter registration may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver's license number, Florida identification card number or last four digits of the social security number as provided by the applicant. If the department is not able to verify the information prior to an election, the applicant will be provided a provisional ballot, which will be counted only if the application is verified by the end of the canvassing period or the applicant presents evidence to the supervisor verifying the authenticity information provided on the application no later than 5 p.m. of the third day following the election.

Requires all voter registration applications to be entered into the statewide voter registration system within 15 days of receipt by the voter registration official. Once entered, the application is to be forwarded to the appropriate supervisor of elections.

Section 7. This section amends s. 97.0535, F.S., to clarify that voters who register by mail and have not been issued a driver's license, Florida identification card or social security number must provide identification prior to voting for the first time in the state.

Section 8. This section amends s. 97.055, F.S., to clarify that only updates to a voter's name, address and signature may be made for an upcoming election while the registration books are closed for that election.

Section 9. This section amends s. 97.057, F.S., to modify the requirements for the Department of Highway Safety and Motor Vehicles in doing voter registrations.

Requires the information captured for voter registration to be presented to the applicant and for the applicant to provide an electronic signature verifying the accuracy of the information.

Requires declinations to be forwarded to the statewide voter registration system.

Requires voter registration applications to be electronically transmitted to the statewide voter registration system within 24 hours after receipt by DHSMV. Paper applications received by DHSMV must be transmitted within 5 days of receipt.

Requires the DHSMV to retain all voter registration information for audit purposes; requires DSHMV to compare the address provided by the applicant against a database of valid street addresses provided by the DOS; requires DHSMV to enter into an agreement with DOS to verify information on the statewide voter registration system with information in the database of

DHSMV; requires DHSMV to enter into an agreement with the Commissioner of Social Security to verify the last four digits of social security numbers provided by applicants.

Section 10. This section amends s. 97.058, F.S., to make technical changes.

Section 11. This section amends s. 97.061, F.S., to make technical changes.

Section 12. This section amends s. 97.091, F.S., to rename the voter identification card as the voter information card. Modifies information on the card.

Section 13. This section amends s. 97.073, F.S., to make conforming and technical changes

Section 14. This section amends s. 97.1031, F.S., which requires updates to a voter's name, address or party affiliation to be made using a voter registration application.

Section 15. This section amends s. 97.105, F.S., to make conforming and technical changes.

Section 16. This section amends s. 98.105, F.S., which requires supervisors of elections to update voter registration information and enter new voter registrations into the statewide voter registration system. Provides that the supervisor will be the custodian of documents received by the supervisor. Requires supervisor to ensure that any voter registration system used by the supervisor complies with the statewide voter registration system. Requires supervisors to maintain lists of valid residential street addresses for purposes of verifying the legal address of voters in the county. Requires the supervisor to forward the list of residential street addresses to the statewide voter registration system.

Section 17. This section creates s. 98.035, F.S., which provides that the Secretary of State is responsible for implementing, operating, and maintaining the statewide voter registration system as required by HAVA. Provides that the statewide voter registration system is the official list of registered voters in the state. Prohibits the DOS from contracting with any other entity for the operation of the system. Authorizes the Department to adopt rules governing access, use and operation of the system.

Section 18. This section amends s. 98.045, F.S., which requires the Department of State to determine initial eligibility of applicants. Clarifies when a voter's name may be removed from the statewide voter registration system.

Section 19. This section amends s. 98.065, F.S., which revises list maintenance activities of supervisors relating to change of addresses. Requires address confirmation notices to be sent but deletes the requirement for a final address confirmation notice. Specifies contents of address confirmation notices. Provides that the SOE will notify the Department twice yearly of the list maintenance activities conducted under this section. If the department determines that the list maintenance activities are not being conducted pursuant to law, the department will conduct the list maintenance activities for that county.

Section 20. This section amends s. 98.075, F.S., which revises procedures for removing names of ineligible voters. Requires the Department of State to initially identify voters who are

potentially ineligible to vote and to review all documentation relating to such potential ineligibility. If the Department determines that the information is credible and reliable, the department will notify the appropriate supervisor of elections and forward all documentation to the supervisor. The supervisor is required to provide notice to the voter by certified mail and, if the notice is not received, must publish notice in a newspaper of general circulation in the county. If the voter denies the accuracy of the information, he will be provided the opportunity to appear at a hearing prior to a final determination of eligibility by the supervisor. Provides that the SOE will notify the Department twice yearly of the list maintenance activities conducted under this section. If the department determines that the list maintenance activities are not being conducted pursuant to law, the department will conduct the list maintenance activities for that county.

Section 21. This section amends s. 98.0755, F.S., which creates an appeal process for voters who have been determined ineligible and removed from the statewide voter registration system.

Section 22. This section amends s. 98.077, F.S., which requires signature updates to be made using a voter registration application.

Section 23. This section amends s. 98.081, F.S., which requires the supervisor of elections to retain voter registration applications.

Section 24. This section amends s. 98.093, F.S., which requires various agencies to provide information to the Department for use in determining eligibility of applicants and voters (deceased persons, convicted felons, persons granted clemency, persons adjudicated mentally incapacitated, etc).

Section 25. This section amends s. 98.212, F.S., to make technical changes

Section 26. This section amends s. 98.461, F.S., which requires the supervisor of elections of the county of the voter's registration to retain the voter registration application.

Section 27. This section amends s. 100.371, F.S.

Effective January 1, 2007, removes the requirement for the supervisors of elections to provide a certification of the number of signatures verified for initiative petitions. This will no longer be needed because the DOS will be able to retrieve this information from the statewide voter registration system.

Section 28. This section amends s. 101.043, F.S., which sets forth the allowable photo identifications for voting. This is needed because of the changes to s. 97.0535, F.S. Makes conforming changes.

Section 29. This section amends s. 101.045, F.S., which allows voters who move within the state to vote in their new precinct even if they have not submitted a change of address prior to the election. These will be treated as address updates in the statewide voter registration system.

Section 30. This section amends s. 101.048, F.S., which modifies requirements to voting a provisional ballot to allow a voter claiming to be registered in the state, rather than the county, to vote a provisional ballot. The ballot will be counted only if it is determined that the person was registered to vote in the state and was in the correct precinct.

Section 31. This section amends s. 101.161, F.S., changing a cross reference.

Section 32. This section amends s. 101.56062, F.S., regarding the requirement for accessible voter interface devices. Under the bill, such devices must be installed in each polling place, instead of each precinct.

Section 33. This section amends s. 101.5608, F.S., which related to voting by electronic or electromechanical method. The bill deletes the requirement that each elector sign his or her name in ink or indelible pencil to an identification blank, signature slip, or ballot stub on which the ballot serial number may be recorded. The bill permits a signature on another form or device provided by the supervisor.

Section 34. This section creates s. 101.573, F.S., to provide that, within 75 days after the date of a municipal election or runoff, whichever occurs later, a presidential preference primary, or a general election, the supervisor of elections shall file with the department precinct-level election results for that election cycle, including any primary elections. These results must record for each precinct the returns of ballots cast at the precinct location to which have been added the returns of absentee and early ballots cast by voters registered in the precinct.

Section 35. This section amends s. 101.62, F.S., to make a cross reference change.

Section 36. This section amends s. 101.64, F.S., to require the supervisor to mark, code, indicate on, or otherwise track the precinct of the absent elector for each absentee ballot.

Section 37. This section amends s. 101.657, F.S., to require the supervisor to mark, code, indicate on, or otherwise track the voter's precinct for each early voted ballot.

Section 38. This section amends s. 101.663, F.S., to remove a provision relating to changes of residence from county to county within the state. These will now be treated as address updates.

Section 39. This section amends s. 101.6921, F.S., to make a conforming change.

Section 40. This section amends s. 101.6923, F.S., to make technical and conforming changes.

Section 41. This section amends s. 101.012, F.S., to make a technical change.

Section 42. This section amends s. 104.013, F.S., to make a conforming change.

Section 43. This section amends s. 196.141, F.S., to remove a requirement that the property appraiser examine each referral of a person registering to vote at an address different from the one where the person has filed for a homestead exemption.

Section 44. This section amends s. 120.54, F.S., to clarify that rules adopted pursuant to chs. 97-102 and 105, F.S., fall within the definition of health, safety, or welfare for purposes of emergency rulemaking.

Section 45. Amends s. 99.061, F.S., which provides the method of qualifying for nomination or election to federal, state, county, or district office. The bill provides that for persons seeking to qualify for nomination or election to the office of state attorney or public defender, filing papers and fees are due at any time after noon of the 1st day for qualifying, which is the 120th day prior to the first primary, but not later than noon of the 116th day prior to the date of the first primary.

Section 46. Repeals ss. 98.055, 98.095, 98.0977, 98.0979, 98.101, 98.181, 98.231, 98.451, 98.481, and 101.635, F.S.

Section 47. Effective date: January 1, 2006, unless otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill is linked to the Committee Substitute for Senate Bill 2178. The bill expands and creates a number of public-records exemptions:

- The bill makes a voter's social security number, driver's license number, and Florida identification number of a voter confidential and exempt from disclosure.
- The bill makes a voter's signature on any document (i.e., voter registration form, absentee ballot request, absentee ballot mailing envelope, provisional ballot voter's certificate) exempt from public records *for the purpose of copying*; voter's signatures may still be *inspected*.

The bill also reenacts existing public records exemptions for: declinations to register to vote; and, information relating to the place where a person registered or updated a voter registration.

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 federal Help America Vote Act (HAVA) of 2002 provides funding to states to improve the administration of elections and to assist with election reforms mandated by HAVA that must be in place by January 1, 2006. Under the provisions of the HAVA, Florida has received a total of \$158,531,048.

Pursuant to Title III, Section 303 in the Help America Vote Act, each state “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.”

In order to meet these requirements, in FY 2003-04 the Legislature appropriated \$1 million and funding for nine positions to conduct a needs assessment for the system. In FY 2004-05, the Legislature appropriated an additional \$10,179,969 to begin development and implementation of a system that will meet the HAVA requirements.

Current estimated costs for design, development and implementation of the statewide voter registration system total \$22,872,791. In addition to development and implementation costs, the system will require continued annual funding for ongoing maintenance and support.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.
