

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7036

INTRODUCER: Ethics and Elections Committee

SUBJECT: Presidential Preference Primary

DATE: March 11, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|---------------------------------------|
| 1. | <u>Fox</u> | <u>Roberts</u> | <u>RC</u> | EE Submitted as Committee Bill |
| | <u>Fox</u> | <u>Phelps</u> | | Pre-meeting |

I. Summary:

SB 7036 sets the date for the Florida presidential preference primary on the 3rd Tuesday in March of each presidential election year, which has the immediate effect of moving the primary in 2016 from March 1 to March 15. This change will enable the State Republican Party to *choose* whether to hold a proportional or a “winner-take-all” primary without violating the national party rules.

The bill takes effect upon becoming law.

II. Present Situation:

Florida law, adopted in 2013, provides that the Presidential Preference Primary (“PPP”) for the major political parties takes place in a presidential election year on the earliest Tuesday that complies with the parties’ rules for delegate selection without incurring a penalty.¹ Pursuant to this statutory formula, the 2016 Florida PPP is currently scheduled for March 1, 2016.

The Democratic and Republican parties differ in the way in which they determine how delegates are pledged to vote for candidates at their national conventions. The Democrats mandate some form of proportional method in all 50 states and voting territories. Each candidate is awarded a number of delegates in proportion to their support in the primary or caucus.

The Republicans allow the states/territories to *choose* whether to award delegates proportionally or on a “winner-take-all” basis, where the candidate receiving the most overall votes receives all the pledged delegates. Florida Republican Party rules have traditionally adopted a “winner-take-

¹ Ch. 2013-57, § 20, LAWS OF FLA. (codified at Section 103.101(1), F.S.)

all” approach, which dangles a big prize in front of the candidates and is generally viewed as giving greater weight to the State and its issues during the nomination process.²

Other rules governing delegate selection are set out by the national parties. For the 2016 cycle, the *Republican National Committee* rules provide that only Iowa, New Hampshire, Nevada, and South Carolina may hold a primary or caucus *before* March 1; other states may begin holding their contests on March 1, but if they go prior to March 15 the delegates must be apportioned *proportionally*.³ The first date for a “winner-take-all” primary under the current RNC rules is March 15, 2016. States (other than the four granted specific exemptions) conducting a “winner-take-all” primary between March 1 and March 14 will lose 50% of their delegates.⁴

From a practical standpoint, the 2016 primary calendar is very much in flux and will likely remain so for some time; it’s impossible to predict with any degree of certainty what the final calendar will look like.⁵ A number of States are still operating with their 2012 dates in violation of the parties’ rules, but are expected to re-schedule their contests in the coming months. Realize, however, that even if a number of states go prior to March 15, 2016 — even some big states like Texas — delegates from those contests will have to be awarded *proportionally* (except, on the Republican side, for the four states granted specific exemptions). As long as there are two competitive candidates in a race, it follows that a March 15 Florida primary may well play an important role in determining the ultimate party nominee(s).

III. Effect of Proposed Changes:

The bill sets the Florida PPP date on the *third Tuesday in March*, thereby moving back the 2016 primary from March 1 to March 15. This shift would allow the Florida Republican Party to choose whether to award all of its delegates to the winner of the primary, rather than proportionally as mandated by current Florida law and RNC rules.

Realize that this change to March 15, 2016, does not mandate a “winner-take-all” Republican primary; the Republican Party of Florida, pursuant to its internal politics, processes, and

² The current State party rule incorporates the proportional primary mandated by Florida law and the rules of the Republican National Committee. Republican Party of Florida, Party Rules of Procedure: Republican State Executive Committee, Rule 10 (January 6, 2014, revised); *see also, infra* notes 3-4 and accompanying text (discussing the RNC primary rules).

³ Republican National Committee, The Rules of the Republican Party as Adopted by the 2012 Republican National Convention, Tampa, Florida, August 27, 2012 (amended by the Republican National Committee on April 12, 2013, January 24, 2014, May 9, 2014 & August 8, 2014)[hereinafter, 2016 RNC Rules], Rules 16(c)(1) and (c)(2), available at, https://s3.amazonaws.com/prod-static-ngop-pbl/docs/Rules_of_the_Republican+Party_FINAL_S14090314.pdf. (last accessed Feb. 24, 2015). Since the Democratic National Committee mandates a proportional primary, its rules allow any state to schedule a primary/caucus as early as March 1, 2016, without penalty. (Iowa, New Hampshire, Nevada, and South Carolina are similarly granted preferential treatment to hold their contests earlier.) Democratic National Committee, Delegate Selection Rules for the 2016 Democratic National Convention (Proposed Draft) (adopted by the DNC on Aug. 23, 2014), Rules 8 and 11A., available at, http://demrulz.org/wp-content/files/Proposed_Draft-2016_Delegate_Selection_Rules_8_23_14.pdf (last accessed Feb. 24, 2015).

⁴ 2016 RNC Rules, Rule 17(a). States (other than the four granted specific exemptions) conducting any type of contest *prior to March 1* will suffer an even more draconian delegate penalty; in Florida’s case, the total delegate count would be reduced from almost 100 to 11. *Id.*

⁵ Frontloading HQ, *2016 Presidential Primary Calendar*, available at <http://frontloading.blogspot.com/p/2016-presidential-primary-calendar.html> (last accessed Feb. 25, 2015).

procedures, still has the *final say* on what *type* of primary to conduct. The bill merely reinstates the “winner-take-all” option foreclosed by the national party rule change.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In the past, some local governmental units have “piggybacked” their own elections onto the PPP in order to save some money. Given that the current statute does not establish a specific, immutable date for the election, it’s possible that this will be less of an issue in the 2016 election cycle. However, counties, municipalities, and local districts that have already pegged their local elections to the March 1 date published by the Secretary of State may incur some costs to reset them to the March 15 date envisioned in the bill. The number of impacted jurisdictions is indeterminate; however, the costs are expected to be minimal, unless a jurisdiction is unable to move its elections to the new date.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2008 and 2012, Florida “leapfrogged” most states to the front of the primary line.⁶ The moves, in contravention of the parties’ rules, encouraged other states to move their primaries forward in

⁶ In 2008, Michigan also moved its primary up in violation of party rules.

order not to get shut out of having a voice in the nomination process. This resulted in extremely accelerated, or “frontloaded,” primary seasons.

Moving to the forefront of the primary process *did* have its benefits. Florida enjoyed increased media coverage for its primary from national media outlets, and the focus of many candidates was on Florida’s issues right from the get-go. Further, many view John McCain’s 2008 victory in the Florida Republican Primary as the pivotal moment in garnering the party’s nomination.⁷

However, these benefits of going early were not without their corresponding costs; Florida delegations for both major parties incurred significant penalties as a result of the early primaries. The Republicans lost 50% of their delegates in both elections, and its delegation suffered a series of penalties and snafus as a result of being housed off-site for the 2012 Tampa convention.

On the Democratic side in 2008,⁸ the move to an early primary resulted in uncertainty and confusion. All of the major candidates signed a pledge not to “officially” campaign in Florida (although the primary *was* held), but did come to Florida for fundraising events. The DNC initially stripped Florida of all of its delegates, resulting in an unsuccessful lawsuit filed by the State Democratic Party against the DNC. However, after a marathon, nationally-televised DNC Rules committee hearing, the Party reached a compromise and decided to seat the entire Florida delegation at the convention — although each delegate was only given half a vote.

VIII. Statutes Affected:

This bill substantially amends section 103.101 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁷ See, National Public Radio, *Early Florida Primary Could Sow Confusion, Not Clout* (December 27, 2011), available at, <http://www.npr.org/2011/12/27/143467282/it-s-complicated-projecting-the-relevance-of-florida-s-gop-primary> (last accessed Feb. 24, 2015) (McCain’s win in Florida was springboard to locking-up the nomination).

⁸ President Barack Obama ran unopposed in Florida in the 2012 PPP election, so any discussion of penalties in that election is effectively moot.