

II. FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government

The bill expands the authority of the Secretary of State and Division of Elections. The state officer is empowered to issue statements of interpretations of election laws to the county election supervisors and county canvassing boards and other officials performing election-related duties. The Division of Election, through the Secretary of State, is given the authority to take county election supervisors to court and impose penalties contained in s. 104.051(2), F.S.

B. EFFECT OF PROPOSED CHANGES:

Background

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 three 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 enacted several reforms that address 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. However, there are still some provisions of Florida law that need retrofitting to meet HAVA's new 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

HAVA provides the statewide voter registration system must be an interactive statewide list maintained and administered at the state level, containing the name and address of every voter, with a unique identifier for each voter. The system must serve as the single system for storing and managing the official list of voters and coordinate with other agency databases. Any election official in the state must be able to obtain immediate electronic access to the information and supervisors of elections must enter information in the database on an expedited basis. The computerized list will serve as the official voter registration list for federal elections.

The effects of the proposed changes of this bill are addressed in the Section Directory.

C. SECTION DIRECTORY:

Section 1. Section 97.012, F.S.

Authorizes the Secretary of State to delegate voter registration duties and records maintenance activities to voter registration officials.

Section 2. Section 97.021, F.S.

Defines "lists of registered electors" to mean name and information of registered voters maintained in the statewide voter registration system or generated or derived from the statewide voter registration system.

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.

Section 3. Section 97.026, F.S.

Cross reference change.

Section 4. Section 97.051, F.S.

Amends the oath required of applicants for voter registration to mirror the Constitutional oath and require the applicant to swear that all information is true.

Section 5. Section 97.052, F.S.

Codifies the current practice of allowing a voter registration application to be used to update a voter's signature or otherwise update their registration record.

Clarifies that the applicant includes his or her last, first, and middle name, including any suffix on the statewide voter registration application.

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. Section 97.053, F.S.

Clarifies that a voter registration application must be completed prior to book closing for the applicant to be registered for the upcoming election.

Clarifies that the postmark 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 applications that are mailed to a third party organization, who 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 Department of Highway Safety and Motor Vehicles (DHSMV).

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 day of receipt by the voter registration official. Once entered, the application will be immediately forwarded to the appropriate supervisor of elections.

Section 7. Section 97.0535, F.S.

Clarifies 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. Section 97.055, F.S.

Clarifies 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. Section 97.057, F.S.

Modifies the requirements for the Department of Highway Safety and Motor Vehicles (DHSMV) for conducting 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, and requires declinations to be forwarded to the statewide voter registration system.

Requires voter registration applications to be electronically retransmitted to the statewide voter registration system within 24 hours after receipt by the Department of Highway Safety and Motor Vehicles. Paper applications received by the department must be transmitted within five days of receipt.

Requires the Department of Highway Safety and Motor Vehicles to retain all voter registration information for audit purposes; requires the department to compare the address provided by the applicant to a database of valid street addresses provided by the Department of State; requires DHSMV to enter into an agreement with the Department of State to verify information o 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 number provided by applicants.

Section 10. Section 97.058, F.S.

Technical changes.

Section 11. Section 97.061, F.S.

Technical changes and conforming changes.

Section 12. Section 97.071, F.S.

Renames the voter identification card as the voter information card. Modifies the information on the card.

Section 13. Section 97.073, F.S.

Conforming and technical changes.

Section 14. Section 97.1031, F.S.

Requires updates to a voter's name, address or party affiliation to be made using a voter registration application.

Section 15. Section 97.105, F.S.

Technical and conforming changes.

Section 16. Section 98.015, F.S.

Requires supervisor of elections to update voter registration information and enter new voter registration into the statewide voter registration system. Provides that the supervisor will be the custodian of documents received by the supervisor related to the registration of voters and change in voter registration of voters of the supervisor's county. Requires the 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 voter in the county. Requires the supervisor to forward the list of residential street addresses to the statewide voter registration system.

Section 17. Section 98.035, F.S.

Provides that the Secretary of State is responsible for implementing, operating, and maintaining the statewide voter registration system as required by the Help America Vote Act. Provides that the voter information contained in the statewide voter registration system is the official list of registered voters in the state. Prohibits the Department of State from contracting with any other entity for the operation of the system. Authorizes the DOS to adopt rules governing access, use and operation of the system.

Section 18. Section 98.045, F.S.

Requires the DOS to determine initial eligibility of applicants.

Requires the DOS to compile and maintain a statewide electronic database of valid street addresses from information provided by the supervisors of elections.

Section 19. Section 98.065, F.S.

Revises list maintenance activities of supervisors of elections 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 supervisor of election 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. Section 98.075, F.S.

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 news paper of general circulation in the county. If the voter denies the accuracy of the information, he or she will be provided the opportunity to appear at a hearing

prior to a final determination of eligibility by the supervisor. Provides that the supervisor of election 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. Section 98.0755, F.S.

Creates an appeal process for voters who have been determined ineligible and removed from the statewide voter registration system.

Section 22. Section 98.077, F.S.

Requires signature updates to be made using a voter registration application; provides a deadline for updating a voter's signature for use in verifying absentee and provisional ballots for an election.

Section 23. Section. 98.081, F.S.

Technical and conforming changes.

Section 24. Section 98.093, F.S.

Requires various agencies to provide information to the department for use in determining eligibility of applicants and voters.

Section 25. Section 98.0981, F.S.

Requires the Department of State, effective August 1, 2006, to send information from the statewide voter registration system to the Legislature following each election to assist with redistricting efforts.

Section 26. Section 98.212, F.S.

Technical changes.

Section 27. Section 98.461, F.S.

Technical and conforming changes.

Section 28. Section 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 certification will no longer be necessary since the Department of State will be able to retrieve this information from the statewide voter registration system.

Section 29. Section 101.001, F.S.

Effective August 1, 2006, requires maps of new precincts to contain additional information needed for redistricting.

Section 30. Section 101.043, F.S.

Sets forth the allowable photo identifications for voting. This section is necessary to comply with changes to s. 97.0535, F.S. Section also makes conforming changes.

Section 31. Section 101.045, F.S.

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 actions will be treated as address updates in the statewide voter registration system.

Section 32. Section 101.048, F.S.

Modifies requirements for provisional ballot voting 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 33. Section 101.161, F.S.

Cross reference change.

Section 34. Section 101.56062, F.S.

Modifies the requirements for accessible voting systems to require one device in the polling place, rather than one in each precinct.

Section 35. Section 101.5608, F.S.

Allows a voter to sign an electronic device at the polling place, if one is provided for that purpose.

Section 36. Section 101.5614, F.S.

Requires early voted ballots and absentee ballots to be aggregated with the results for each precinct.

Section 37. Section 101.573, F.S.

Creates a new section, effective August 1, 2006, which requires the supervisors of elections to file precinct-level results with the Department of State within 75 days after the election cycle.

Section 38. Section 101.62, F.S.

Cross reference change.

Section 39. Section 101.64, F.S.

Requires the supervisor of elections to mark, code, track, or otherwise indicate the precinct number of the voter on each absentee ballot.

Section 40. Section 101.657, F.S.

Requires the supervisor of elections to mark, code, track, or otherwise indicate the precinct number of the voter on each early voted ballot.

Section 41. Section 101.633, F.S.

Removes the provision relating to changes of residence from county to county within the state. These changes of resident will be treated as address updates.

Section 42. Section 101.6921, F.S.

Conforming change.

Section 43. Section 101.6923, F.S.

Technical and conforming change.

Section 44. Section 102.012, F.S.

Technical change.

Section 45. Section 104.013, F.S.

Conforming change.

Section 46. Section 106.23, F.S.

Authorizes the Secretary of State, through the Division of Elections, to issue statements of interpretation of the election laws to supervisors of elections, county canvassing boards, and other officials having election related duties when the Secretary finds that there is a lack of uniformity in the application of the election code. Provides for reconsideration and appeal of the statement to the First District Court of Appeals. Provides that failure to follow the statements is a violation of s. 104.051(2), F.S.

Section 47. Section 196.141, F.S.

Repeals provision relating to property appraiser initiating procedures based on voter registration application information.

Section 48. Repealer Section

Repeals sections 98.055, 99.095, 98.0977, 98.0979, 98.101, 98.181, 98.231, 98.451, 98.481 and 101.635, F.S.

Section 49. Effective Date

Provides the effective date of the bill as January 1, 2006, except as otherwise provided in the legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Secretary of State, Division of Elections, has requested two positions to provide assistance with the voter registration component of the Florida Voter Registration System (FVRS). These positions will be responsible for conducting the credibility and reliability review of voter registration information. The estimated cost for the new positions and associated expenses is \$142,191. Currently, the House of Representatives General Appropriations Bill (HB 1885, First Engrossed) does not include funding for the two additional positions. The 2004-2005 General Appropriations Act appropriated twenty positions and associated expenses for the Florida Voter Registration System.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Since more than one precinct can vote at the same polling location, county election supervisors may have some cost savings due to fewer purchases of voting machines.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or take any action requiring the expenditures of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of State is given specific authority to adopt rules governing the access, use, and operation of the statewide voter registration system to ensure security, uniformity, and integrity of the system; and to adopt rules prescribing the form by which supervisors of elections will submit election results for each precinct.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Ethics & Elections Committee adopted a strike-all amendment offered by the bill sponsor, Representative Brown. The bill was reported favorably as amended, with a committee substitute. The amendment does the following:

- Removes the language authorizing the Department of State to issue "binding directives" and instead authorizes the Department to issue statements of interpretation to supervisors of elections and county canvassing boards that are appealable to the First District Court of Appeal.
- Removes the optional provision of a voter's e-mail address on the voter registration application.
- Clarifies that the county supervisors of elections will make the final determination of a person's eligibility to vote.
- Makes August 1, 2006, the effective date for the Department to submit to the Legislature a copy of the complete voting file after each election.
- Clarifies that the supervisors are the final keeper of all voter registration forms and that the Department of Highway Safety and Motor Vehicles is responsible for ensuring that voter registration forms are complete.
- Requires the supervisors, effective August 1, 2006, to delineate precincts by census blocks. However, a supervisor may request a waiver from this requirement until January 1, 2012.

- Requires the supervisors to aggregate absentee ballots and early voted ballots for each precinct.
- Requires the supervisors to report election results by precinct to the Department within 75 days of a municipal, run-off, presidential preference primary or general election.
- Requires the supervisors to mark, code, track or otherwise indicate on each absentee ballot the precinct number of the absentee voter.